

April 1, 2003
DECISION AND ORDER
OF THE DEPARTMENT OF ENERGY

Appeal

Name of Appellant: Gladys L. Swann
Date of Filing: February 26, 2003
Case Number: TFA-0018

Gladys L. Swann (Swann) filed this Appeal from a determination issued to her by the Oak Ridge Operations Office (OR) of the Department of Energy (DOE). The determination responded to a request for information Swann filed under the Freedom of Information Act (FOIA), 5 U.S.C. §§ 552, as implemented by the Department of Energy (DOE) at 10 C.F.R. Part 1004. In her Appeal, Swann challenges the adequacy of OR's search for documents responsive to her request.

I. Background

Swann submitted a FOIA request to OR for the medical records, chest x-rays, radiation exposure records and personnel security file of her deceased father, John A. Rowe. Rowe formerly worked for International Nickel Company (INCO) at an Ohio site that is not under OR's jurisdiction. OR responded with a Determination Letter stating that it had conducted a search of its files and found only one record that is responsive to Swann's request. Swann appealed this determination.

II. Analysis

The FOIA generally requires federal agencies to release material to the public upon request. Following an appropriate request, agencies must search their records for responsive documents. We have often stated that a FOIA request deserves a thorough and conscientious search for responsive documents, and we have not hesitated to remand a case where we believe the search conducted was inadequate. *E.g.*, *Ashok K. Kaushal*, 27 DOE ¶ 80,189 (1999); *Hobart T. Bolin, Jr.*, 27 DOE ¶ 80,124 (1998).

In a case involving the adequacy of the agency's search, "the issue is not whether any further responsive documents might conceivably exist but rather whether the government's search for responsive documents was inadequate." *Perry v. Block*, 684 F.2d 121, 128 (D.C. Cir. 1982). To determine whether an agency's search was adequate, we therefore examine its actions under a "standard of reasonableness." *McGehee v. CIA*, 697 F.2d 1095, 1100-01, *modified in part on rehearing*, 711 F.2d 1076 (D.C. Cir. 1983). This standard "does not require absolute exhaustion of the files; instead it requires a search reasonably calculated to uncover the sought materials." *Miller v. Department of State*, 779 F.2d 1378, 1384-85 (8th Cir. 1985). Furthermore, the determination of whether a search was reasonable is "dependent upon the circumstances of the case." *Founding Church of Scientology v. National Security Agency*, 610 F.2d 824, 834 (D.C. Cir. 1979).

In our review of Swann's Appeal, we contacted OR's FOIA Officer and reviewed the administrative record of Swann's request maintained by OR. The FOIA Officer provided the following description of the actions taken by OR in order to locate the information Swann requested:

We conducted a search of the locations at Oak Ridge facilities and contractor sites where the records on INCO employees were likely to exist based on our experience in processing multiple requests for records on individuals who were employed at any Atomic Weapons Employer sites outside of Oak Ridge from the 1940's to the present. All Privacy Systems of Records were searched at the DOE Oak Ridge Records Holding Area, which contains records transferred from the Oak Ridge Associated Universities Centers for Epidemiology Research that were originally compiled for use in DOE-wide health studies on former workers and consist of records in the following systems: DOE Privacy Systems of Records DOE-5 personnel records of former contractor employees, DOE-33 Personnel Medical Records, DOE-35 Personnel Radiation Exposure Records, and DOE-43 Personnel Security Clearance Files. The Oak Ridge Office of Safeguards and Security was also searched for any personnel security file held separately in that office on Mr. Rowe.

The only record we could locate on Mr. Rowe was a copy of his Personnel Security Clearance Assurance Index Card or "employment card" as we call it, since these cards list employment histories along with security clearance status information for the individual. Although we have these cards at Oak Ridge, we do not have additional personnel, medical or similar files on employees who did not work at facilities under Oak Ridge jurisdiction with the exception of copies of film badge reports for about 25 of the Atomic Weapons Employers that were generated by the New York Operations Office in the late 1940's through the mid 1950's and retained at Oak Ridge for a NIOSH health study. We conducted a search of those film badge files but did not find a file listing film badge readings on INCO employees. If such a file was in our possession, we would have done a page-by-page search for his name or other identifier and provided the relevant information if it existed.

March 20, 2003 E-mail from Amy Rothrock, FOIA Officer, Oak Ridge Operations Office to Steven L. Fine, OHA Staff Attorney.

III. Conclusion

After reviewing the description of the search conducted by OR and the administrative record, it is clear that OR conducted a search that was reasonably calculated to find the information requested by Swann. Moreover, we have no reason to believe that a further search would locate responsive records. We will therefore deny this Appeal.

It Is Therefore Ordered That:

(1) The Appeal filed by Gladys L. Swann, Case No. TFA-0018, is hereby denied.

(2) This is a final Order of the Department of Energy from which any aggrieved party may seek judicial review pursuant to the provisions of 5 U.S.C. § 552(a)(4)(B). Judicial review may be sought in the district in which the requester resides or has a principal place of business, or in which the agency records are situated, or in the District of Columbia.

George B. Breznay
Director
Office of Hearings and Appeals

Date: April 1, 2003