

September 14, 2007

DECISION AND ORDER

OF THE DEPARTMENT OF ENERGY

Appeal

Name of Petitioner: Deborah L. Huettel

Date of Filing: July 18, 2007

Case Number: TFA-0216

This Decision concerns an Appeal filed by Deborah L. Huettel from a determination issued to her by the Department of Energy's (DOE) Oak Ridge Office (ORO). In that determination, ORO responded to a request for documents that Ms. Huettel submitted under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as implemented by the DOE in 10 C.F.R. Part 1004. ORO located, and released, some documents responsive to Ms. Huettel's request. This appeal, if granted, would require ORO to perform an additional search and either release any newly discovered responsive documents or issue a new determination justifying the withholding of any portions of those documents.

I. Background

Ms. Huettel filed a FOIA request with ORO for records pertaining to her father. Specifically, Ms. Huettel requested her father's medical records, personnel records, radiation exposure records, chest x-rays, Oak Ridge Institute for Nuclear Studies (ORINS) Hospital file, beryllium records, industrial hygiene records, personnel security file, Office of Personnel Management (OPM) background investigation, payroll records, and training records. *See* Letter from Deborah L. Huettel to Privacy Act Officer, ORO (March 15, 2007). In its determination letter, ORO provided Ms. Huettel with "copies of [her father's] payroll, personnel, and radiation exposure records from the [DOE's] Oak Ridge Office facilities." *See* Letter from Amy Rothrock, ORO, to Deborah Huettel (June 5, 2007) (Determination Letter). The Determination Letter also stated that ORO could not locate any "medical records, chest x-rays, ORINS hospital file, beryllium records, industrial hygiene records, or training records." *Id.* The Determination Letter further indicated that the requested personnel security file and OPM background investigation were unavailable because they were "destroyed in accordance with the National Archives and Records Administration [NARA] General Records Schedules." *Id.* Finally, the Determination Letter stated that ORO also forwarded Ms. Huettel's request to the DOE's National Nuclear Security

Administration (NNSA) because NNSA now has jurisdiction over records located at one of the DOE's facilities at Oak Ridge, the Y-12 site.¹ *Id.*

Ms. Huettel filed the present appeal challenging the adequacy of the search performed by ORO. Letter from Deborah L. Huettel to OHA (dated June 12, 2007) (Appeal Letter). In her appeal, Ms. Huettel stated that she had documentation indicating that some records pertaining to former employees of Rust Engineering, her father's former employer, were located at the Federal Records Center in Atlanta, Georgia, maintained by NARA. Ms. Huettel questioned whether ORO's search for records included records stored at the Federal Records Center. *Id.*

II. Analysis

In responding to a request for information filed under the FOIA, it is well established that an agency must "conduct a search reasonably calculated to uncover all relevant documents." *Truitt v. Dep't of State*, 897 F.2d 540, 542 (D.C. Cir. 1990). "The standard of reasonableness which we apply to agency search procedures does not require absolute exhaustion of the files; instead, it requires a search reasonably calculated to uncover the sought materials." *Miller v. Dep't of State*, 779 F.2d 1378, 1384-85 (8th Cir. 1985); *accord Truitt*, 897 F.2d at 542. We have not hesitated to remand a case where it is evident that the search conducted was in fact inadequate. *See, e.g., Todd J. Lemire*, 28 DOE ¶ 80,239 (August 26, 2002) (Case No. VFA-0760).²

In reviewing this appeal, we contacted ORO to ascertain the scope of the search. ORO informed us that it performed a search for records and located some, but not all, documents responsive to Ms. Huettel's request. E-mail from Amy Rothrock, ORO, to Diane DeMoura, OHA (August 1, 2007). ORO provided Ms. Huettel with a work history report located at Oak Ridge Associated Universities (ORAU), personnel security clearance assurance index card file data located at "the DOE Records Holding Area where legacy records on some employees, including Rust [Engineering] employees, go back to 1943, and some radiation exposure records located at the K-25 site and Oak Ridge National Laboratory (ORNL)." *Id.*

ORO also discussed the remaining requested records which could not be located. Regarding the requested ORINS hospital file, ORO stated that "only cancer patients undergoing treatments at ... the ORINS Hospital would have medical and radiation exposure records from ORAU ... Very few employees were treated at the ORINS Hospital. ORAU did not find any ORINS hospital records on [Ms. Huettel's father] because he was not a cancer patient at their facility." *Id.* ORO also stated that ORAU "has beryllium records on many employees since [ORAU] conducted a beryllium worker study...and administered a program for ... testing for chronic berylliosis disease (CBD)." *Id.* According to ORO, ORAU searched for, but could not locate, any records responsive to Ms. Huettel's request. Additionally, ORO stated that "some plants keep separate [industrial hygiene] records from [industrial hygiene] information collected in medical files. Any [industrial hygiene] data on [Ms. Huettel's father] would be contained in his medical file and/or [industrial hygiene] file if one was created." *Id.* According to ORO, these records are under the purview of the Y-12 site and, therefore, under the jurisdiction of

¹ Ms. Huettel filed this appeal before receiving a final response from NNSA regarding its search. Consequently, the NNSA search is not within the scope of this appeal.

² All OHA decisions issued after November 19, 1996 may be accessed at <http://www.oha.doe.gov/foia1.asp>.

NNSA. *Id.* Finally, regarding Ms. Huettel's inquiry about records maintained at the Federal Records Center in Atlanta, Georgia, ORO stated that some Rust Engineering records are located at that facility, but that those records are under the jurisdiction of NNSA and the Y-12 site. According to ORO, Y-12 site personnel generally search the records held in the records centers in response to FOIA and Privacy Act requests. *Id.*

Although Ms. Huettel did not include the NNSA determination in her appeal, we contacted NNSA to determine which, if any, records were provided to Ms. Heuttel and to determine whether the DOE Federal Records Center in Atlanta, Georgia, was included in the scope of the search for documents. According to NNSA, the Y-12 site and all of the DOE records centers, including NARA sites, were searched for responsive documents. The search was performed using Ms. Huettel's father's name and social security number. *See* Memorandum of Telephone Conversation between Carolyn Becknell, NNSA, and Diane DeMoura, OHA (August 8, 2007). NNSA informed us that it located and provided to Ms. Huettel two medical files, a personnel file, radiation exposure records, industrial hygiene records, and x-rays. E-mail from Carolyn Becknell, NNSA, to Diane DeMoura, OHA (September 5, 2007).

Based on this information, we find that ORO performed an extensive search reasonably calculated to reveal records responsive to Ms. Huettel's request. Therefore, the search was adequate. Accordingly, Ms. Huettel's appeal should be denied. Because NNSA's response was not included in the scope of this appeal, Ms. Huettel may appeal that determination separately if she was not satisfied with NNSA's response regarding the Y-12 site records.

It Is Therefore Ordered That:

- (1) The Appeal filed on July 18, 2007, by Deborah L. Huettel, OHA Case No. TFA-0216, 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 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.

William M. Schwartz
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Office of Hearings and Appeals

Date: September 14, 2007