

May 1, 2008

**DECISION AND ORDER  
OF THE DEPARTMENT OF ENERGY**

**Appeal**

Name of Petitioner: Dorothy K. Hyde

Date of Filing: April 7, 2008

Case Number: TFA-0252

This Decision concerns Dorothy K. Hyde's Appeal from a determination that the Department of Energy's (DOE) Oak Ridge Office (ORO) issued to her on March 12, 2008. In that determination, the ORO responded to Ms. Hyde's request under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as the DOE implemented in 10 C.F.R. Part 1004. This Appeal, if granted, would require the ORO to perform an additional search and either release newly discovered documents or issue a new determination justifying their withholding.

**I. Background**

Ms. Hyde's attorney filed a FOIA request with the ORO on her behalf for "all personnel, medical[,] industrial hygiene, radiation exposure and similar records on Delmer Dayton Hutchison [Ms. Hyde's father], deceased, SS number . . . , DOB . . . , employed by JA Jones and Stone & Webster[,] 1943-1953[,] K25 and Y12." Electronic FOIA Request, Dec. 12, 2007. Ms. Hyde's attorney faxed the ORO an autopsy protocol "on Delmer Hutchison, dated 1-19-71." Facsimile from Roy P. Neuenschwander, attorney for Ms. Hyde, to Amy Rothrock, FOIA Officer, ORO, Dec. 12, 2007.

The ORO provided Ms. Hyde a copy of Mr. Hutchison's employment card. Determination Letter, Mar. 17, 2008.

Ms. Hyde then filed the present Appeal with the Office of Hearings and Appeals (OHA). Appeal Letter. In the appeal letter, Ms. Hyde's attorney recounted the correspondence between Ms. Hyde and the ORO. Next, Ms. Hyde's attorney stated that Mr. Hutchison's autopsy protocol "lists Delmer's name as being spelled as Hutcherson and Hutchenson." However, Ms. Hyde's attorney stated that, "Mr. Hutchison's death certificate is enclosed and his name is spelled correctly." Ms. Hyde's attorney then stated, "I would hope that all records be checked in regard to this matter, to include all three spellings of Delmer's name." Lastly, Ms. Hyde's attorney requested "a prompt Hearing . . . before an Administrative Law Judge." *Id.*

## II. Analysis

In responding to a request for information filed under the FOIA, courts have 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) (citations omitted). “[T]he 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 the search conducted was in fact inadequate. *See, e.g., Todd J. Lemire*, 28 DOE ¶ 80,239 (Aug. 26, 2002) (Case No. VFA-0760) (remanding for a renewed search where DOE’s initial search missed responsive documents that were later found);<sup>1</sup> *Butler, Vines and Babb, P.L.L.C.*, 25 DOE ¶ 80,152 (Dec. 13, 1995) (Case No. VFA-0098) (remanding where there was “a reasonable possibility” that responsive documents existed at an unsearched location).

We contacted the ORO to request additional information so that we could evaluate its search. From our inquiry we learned that since Ms. Hyde’s request indicated that Mr. Hutchison worked at the K-25 facility for JA Jones and Stone & Webster, the ORO sent an information request to the Bechtel Jacobs Company and the DOE’s Records Holding Area.<sup>2</sup> The Bechtel Jacobs Company is the DOE’s prime or operating contractor at the former K-25 facility (now named the East Tennessee Technology Park). If the DOE has records from JA Jones and Stone & Webster, they would be at the Records Holding Area. E-mails from Linda G. Chapman, Legal Assistant, FOIA/Privacy Act Office, ORO, to David M. Petrush, Attorney-Examiner, OHA, April 9, 11, 24 and 25, 2008.

The Bechtel Jacobs Company and the DOE Records Holding Area each searched its medical, personnel, radiation exposure, and industrial hygiene records for Mr. Hutchison’s name, birth date, and social security number. The Bechtel Jacobs Company found no responsive files. The DOE Records Holding Area found Mr. Hutchison’s employment card, and the ORO provided a copy to Ms. Hyde with its determination letter. *Id.*

The ORO stated that the files most likely to have information responsive to Ms. Hyde’s request were searched. We agree. For this reason, we find that the ORO conducted a search that was reasonably calculated to uncover all relevant documents, and was therefore adequate. Therefore, we will deny Ms. Hyde’s Appeal, except as discussed below.<sup>3</sup>

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<sup>1</sup> OHA decisions issued after November 19, 1996, may be accessed at <http://www.oha.doe.gov/foia1.asp>.

<sup>2</sup> Since the request that Ms. Hyde’s attorney submitted also indicated that Mr. Hutchison worked at the Y-12 facility, the ORO forwarded Ms. Hyde’s request to the National Nuclear Security Administration (NNSA), which now maintains records from the Y-12 facility. The NNSA will issue Ms. Hyde a separate determination.

<sup>3</sup> In the appeal letter, Ms. Hyde’s attorney requests a hearing before an administrative law judge. Because the DOE’s FOIA regulations do not contain a provision for a hearing before an administrative law judge, we deny Ms. Hyde’s request.

In the appeal letter, Ms. Hyde's attorney stated that the autopsy protocol shows Mr. Hutchison's name spelled as Hutcherson and Hutchenson. Appeal Letter. Although Ms. Hyde's attorney faxed the autopsy protocol to the ORO on the same day that he submitted Ms. Hyde's FOIA request, he did not specifically point out that the autopsy protocol apparently shows two alternate spellings of Mr. Hutchison's name until he filed Ms. Hyde's Appeal. Moreover, because the autopsy protocol's blurry text is extremely difficult to read, it is understandable that the ORO failed to realize that it contains alternate spellings. Therefore, we find that the ORO's failure to identify the two alternate spellings does not affect the adequacy of its search.

However, the ORO stated that, as a courtesy to Ms. Hyde, it is willing to conduct searches for information under the names Delmer Hutcherson and Delmer Hutchenson. E-mail from Amy L. Rothrock, FOIA Officer, ORO, to David M. Petrush, Attorney-Examiner, OHA, Apr. 23, 2008. Therefore, we will remand this case to the ORO so it may conduct those searches and issue Ms. Hyde a new determination.

It Is Therefore Ordered That:

- (1) The Appeal that Dorothy K. Hyde filed on April 7, 2008, OHA Case No. TFA-0252, is granted as set forth in Paragraph (2) below, and is denied in all other respects.
- (2) This matter is remanded to the Oak Ridge Office to search for files under the names Delmer Hutcherson and Delmer Hutchenson.
- (3) 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.

Poli A. Marmolejos  
Director  
Office of Hearings and Appeals

Date: May 1, 2008