DECISION AND ORDER

OF THE DEPARTMENT OF ENERGY

December 22, 2009

Appeal

Name of Petitioner: Glen W. Bowers

Date of Filing: December 2, 2009

Case Number: TFA-0341

This Decision concerns an Appeal that was filed by Glen W. Bowers in response to a determination that was issued to him by the Department of Energy's (DOE) Office of Science, Chicago Office (hereinafter referred to as "SC-CH"). In that determination, SC-CH responded to a request for documents that Mr. Bowers submitted under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as implemented by the Department of Energy (DOE) in 10 C.F.R. Part 1004. [1] This Appeal, if granted, would require that we remand this matter to SC-CH for another search. [2]

In his FOIA request, Mr. Bowers sought access to John W. Bowers' employment records, including his "Q" clearance number, location of job sites, names of projects on which he worked, any advanced training that he received, medical records including all radiation exposure records, special awards, photographs, and newsletters. In its response, SC-CH stated that it had been unable to locate any documents that were responsive to Mr. Bowers' request. In his Appeal, Mr. Bowers challenges the adequacy of SC-CH's search.

We have stated on numerous occasions that a FOIA request deserves a thorough and conscientious search for responsive documents, and we have not hesitated to remand a case where it is evident that the search conducted was in fact inadequate. *See, e.g., Butler, Vines and Babb, P.L.L.C.*, Case No. VFA-0098 (1995). The FOIA, however, requires that a search be reasonable, not exhaustive. "[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. Department of State*, 779 F.2d 1378, 1384-85 (8th Cir. 1985); *accord, Weisberg v. Department of Justice*, 745 F.2d 1476, 1485 (D.C. Cir. 1984).

1/ The FOIA generally requires that documents held by federal agencies be released to the public upon request.

2/ Decisions issued by the Office of Hearings and Appeals (OHA) are available on the OHA website located at http://www.oha.doe.gov . The text of a cited decision may be accessed by entering the case number of the decision in the search engine located at http://www.oha.doe.gov/search.htm .

In order to determine whether the search conducted was adequate, we contacted SC-CH. We were informed that the search included SC-CH, Ames Laboratory, Argonne National laboratory, Brookhaven National Laboratory, Fermi National Accelerator Laboratory, Lawrence Berkeley National Laboratory, and Princeton Plasma Physics Laboratory. Personnel Security files were searched at SC-CH, and personnel, medical and dosimetry files were searched at SC-CH and all of the Laboratories mentioned above. Both manual and electronic searches were performed. *See* December 9, 2009 e-mail from Miriam Legan, SC-CH FOIA Officer, to Robert B. Palmer, Senior Staff Attorney, OHA. Mr. Bowers has not suggested, and we have been unable to discover, any other location in which responsive documents could reasonably be expected to be located. Based on the information before us, we conclude that the search for responsive documents was reasonably calculated to uncover the sought materials, and was therefore adequate.

It Is Therefore Ordered That:

(1) The Freedom of Information Act Appeal filed by Glen W. Bowers, Case Number TFA-0341, 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.

Poli A. Marmolejos
Director
Office of Hearings and Appeals

Date: December 22, 2009