

August 13, 2003
DECISION AND ORDER
OF THE DEPARTMENT OF ENERGY

Appeal

Name of Petitioner: Nancy Denlinger
Date of Filing: June 10, 2003
Case Number: TFA-0033

On June 10, 2003, Nancy Denlinger filed an Appeal from a determination issued to her on May 6, 2003, by the Department of Energy's Ohio Field Office (Ohio). That determination was issued in response to a request for information that Ms. Denlinger 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. Ms. Denlinger asks that Ohio conduct an additional search for documents responsive to her request.

I. Background

On April 14, 2003, Ms. Denlinger filed a request for information in which she sought the medical and radiation exposure records of her deceased father, John A. Schumacher. *See* May 6, 2003 Determination Letter at 1. On May 6, 2003, Ohio issued a determination which stated it conducted a thorough search for all records responsive to Ms. Denlinger's request and no responsive records were located. *Id.* In its determination, Ohio stated that records may be in possession of the numerous companies for which Mr. Schumacher worked as a subcontractor, as indicated by Ms. Denlinger in her request. On June 10, 2003, Ms. Denlinger filed the present Appeal with the Office of Hearings and Appeals (OHA). In her Appeal, Ms. Denlinger challenges the adequacy of the search conducted by Ohio. *See* Appeal Letter. She asserts that Mr. Schumacher was "an employee of electrical contractors who did sub-contracting for the DOE at the Mound Plant in Miamisburg, Ohio in the late 60's or 70's." *Id.* Ms. Denlinger further asserts that during this time Mr. Schumacher was tested for radiation exposure and was required to wear protective clothing at work. *Id.* She asks that the OHA direct Ohio to conduct a new search for responsive documents.

II. Analysis

The FOIA requires that documents held by federal agencies generally be released to the public upon request. Following an appropriate request, agencies are required to search their records for responsive documents. 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., Hideca Petroleum Corp.*, 9 DOE ¶ 80,108 (1981); *Charles Varon*, 6 DOE ¶ 80,118 (1980). In cases such as

these, "[t]he issue is not whether any further 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) (emphasis in original).

To determine whether an agency's search was adequate, we must 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 reviewing the present Appeal, we contacted officials at Ohio to ascertain the extent of the search that had been performed and to determine whether any other documents responsive to Ms. Denlinger's request might reasonably be located. Upon receiving Ms. Denlinger's request for information, Ohio contacted the contractor, CH2M Hill, at the Mound Site in Miamisburg, Ohio. The contractor searched its records by name and Social Security Number and found no documents responsive to Ms. Denlinger's request. *See* Record of Telephone Conversation between Marian Wilcox, Ohio Field Office and Kimberly Jenkins-Chapman, OHA (August 6, 2003). In addition, Ohio contacted officials in the Office of Occupational Radiation Exposure at the Mound site. Officials in that office searched their database by name and Social Security Number and located no responsive records. *Id.* Also at the Mound site, officials searched the Radiation Exposure Intervention Reporting System, which contains radiation exposure records for all DOE facilities, as well as other paper files by name and Social Security Number. Again, no records regarding Mr. Schumacher were found. *Id.* Given the facts presented to us, we find that Ohio conducted an adequate search which was reasonably calculated to discover documents responsive to Ms. Denlinger's request. The information Ms. Denlinger seeks may nevertheless be in the possession of Mr. Schumacher's employers, as Ohio has pointed out, and therefore beyond the reach of the FOIA. Therefore, we must deny this Appeal.

It Is Therefore Ordered That:

- (1) The Appeal filed by Nancy Denlinger, OHA Case No. TFA-0033, on June 10, 2003, 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: August 13, 2003