



Department of Energy

Office of Science
Chicago Office
9800 South Cass Avenue
Argonne, Illinois 60439

JAN 22 2010

Mr. Felipe Franchini



Dear Mr. Franchini:

SUBJECT: U.S. DEPARTMENT OF ENERGY (DOE) FREEDOM OF INFORMATION ACT (FOIA) REQUEST NO. #CH-2010-00588-F

I am the authorizing official responsible for making the determination required by Section 1004.5(b) of DOE regulations found at 10 CFR Part 1004, implementing the FOIA, 5 U.S.C. 552. This letter is in final response to your subject FOIA request.

In your original request, you were seeking the following:

- "All radiation reports, monitoring results and other information relating to a radiation source that was found to be leaking Cesium radiation in building 366 in a room known as the ATLAS module assembly room.
- All information related to dates of erection and the levels of contamination of the ZEUS project which contained depleted uranium, including radiation results from monitoring before and after dismantle.
- Detailed information of monitoring results from the lead contaminated bricks that came out of the bunker which contained the experiment, these bricks were originally stored in the building 366 high bay area, then stored in the annex and finally removed from the annex to a storage area somewhere else in the lab, there was monitoring of this activity while waste management decontaminated these lead bricks, and also while a mop up operation took place of this contaminated area.
- A complete list of Material Safety Data Sheets of all hazardous substances as well as all hazardous chemicals used in building 366 during my employment.
- The results of the investigation into illegal possession of items after my office was searched on June 6, 2008.
- Information as to who owns Argonne National Lab.



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- A complete copy of my personnel file.
- A copy of the video taken during Robert Rosner and others addressing the lab in relation to ISM on July 19, 2007.
- A copy of a report related to the dumping of black paint (DISKOR) into the storm sewer some time in 2002.”

In your subsequent e-mail to me dated January 13, 2010, you narrowed your request to only the information in the fifth bullet above.

In response to your request, be advised that we have conducted a search of our office and the Argonne Site Office and have located no responsive records. We also requested that UChicago Argonne, LLC (UCA), the DOE contractor that operates Argonne National Laboratory (ANL), conduct a search for responsive records. UCA responded stating that any records they could locate would be contractor-owned, not agency-owned records.

Be advised that only agency records maintained by the federal government are subject to FOIA. “Agency records” have been defined as documents which are either generated or acquired by an agency, and are under agency control at the time of FOIA request submission. See *Department of Justice v. Tax Analysts*, 492 U.S. 136, 144-45 (1989). Under Contract Number DE-AC02-06CH11357 between DOE and UCA for the management and operation of ANL, specifically Clause I.98(b)(1) (see attached), employment-related records, including records related to “employee related investigations” of UCA employees at ANL are contractor-owned records. Therefore, any records that are in ANL’s possession and not in the possession and control of DOE are specifically contractor-owned records not subject to the FOIA. See *H & J Tool & Die Co.*, 27 DOE ¶ 80,255 (2000). Accordingly, DOE has no agency records responsive to your request.

You are advised of your right to appeal the adequacy of our search for your requested information within 30 days of receipt of this letter by writing to the Director, Office of Hearings and Appeals, United States Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585. Both the request and envelope should be clearly marked “Freedom of Information Appeal.” Judicial review will be available thereafter in the district in which your concern is located or has its principal place of business, where the records are located, or in the District of Columbia.

You have been categorized as an “Other” requester, and as such, you are subject to fee assessment for search time and duplication costs. However, because fees associated with this request are not substantial enough to meet the \$15.00 minimum threshold under FOIA, we are not assessing fees for this request.

Mr. Felipe Franchini

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If you have any questions regarding this response, or if at any time you wish to open a new request for any of the other information in your original request, please contact me at (630) 252-2041 or via e-mail at miriam.legan@ch.doe.gov.

Sincerely,

A handwritten signature in black ink that reads "Miriam R. Legan". The signature is written in a cursive style with a large initial "M".

Miriam R. Legan
FOIA Officer

Enclosure:
As Stated

cc: J. Kasproicz, ASO