



## Department of Energy

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

**JUN 24 2010**

Mr. Christopher McKenney  
[REDACTED]

Dear Mr. McKenney:

**SUBJECT: U.S. DEPARTMENT OF ENERGY (DOE) FREEDOM OF INFORMATION ACT (FOIA) REQUEST NO. #CH-2010-01518-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. We are in receipt of your subject FOIA request, which has been controlled the subject FOIA request number. In your request you are seeking copies of "any information pertaining to the employment via the Dupont Company at Argonne National Laboratory on behalf of [your] father David H. McKenney." You further stated that you wanted "any and all information with regard to employment at Argonne National Laboratory as employee of the Dupont Co. including assignments at Ames National Laboratories in Ames, Iowa during the period of February 1951 to May of 1952." This letter is in final response to your subject FOIA request.

In response to your request, be advised that the records you are requesting are not records in possession of DOE, so we contacted UChicago Argonne LLC (UCA), the DOE contractor that operates Argonne National Laboratory (ANL) and Iowa State University (ISU) the DOE contractor that operates Ames Laboratory, and requested that they conduct searches of ANL and Ames Laboratory, respectively, for responsive records. Because we had responded to your previous FOIA request #CH-2010-01015, wherein we had provided you with all radiation exposure records at ANL, we excluded radiation exposure records from the ANL search. After the searches were conducted, ISU and UCA responded as follows. ISU responded stating that they had searched dosimetry, personnel, and ISU payroll records and no records were located at Ames or ISU. UCA responded stating that the only records existing at ANL that are responsive to your request (other than the radiation exposure records previously disclosed to you) are 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 Clause I.98 of Contract Number DE-AC02-06CH11357 between DOE and UCA for the management and operation of ANL, employment-related records (other than personnel radiation exposure records) are contractor-owned records (see DOE/UCA prime contract at <http://www.anl.gov/contract/>). Therefore, any records that are in ANL's possession that are 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 records responsive to your request.



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Although there are no government records responsive to your FOIA request, because your request is being made to support an Energy Employees Occupational Illness Compensation Program Act (EEOICPA) claim, UCA may be willing to release certain contractor records directly to you. Should you wish to pursue a request for contractor-owned records from UCA, you may contact Mary Martin at ANL directly at 630-252-3721 or via e-mail at [mmartin@anl.gov](mailto:mmartin@anl.gov). Please understand that FOIA does not apply to a request for contractor-owned records and any decision to release the records is at ANL's discretion.

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 your request is being made to support an EEOICPA claim, we are not assessing fees for this request.

If you have any questions regarding this response, please contact me at (630) 252-2041 or via e-mail at [miriam.legan@ch.doe.gov](mailto:miriam.legan@ch.doe.gov).

Sincerely,



Miriam R. Legan  
Freedom of Information Act Officer

cc: N. Oetter, ASO  
J. Stricker, AMSO