



## Department of Energy

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

MAR 16 2010

Mr. Timothy W. Miller  
Membership Development  
IBEW Local Union 347  
850 18<sup>th</sup> Street  
Des Moines, IA 50314

Dear Mr. Miller:

**SUBJECT: U.S. DEPARTMENT OF ENERGY (DOE) FREEDOM OF INFORMATION ACT (FOIA) REQUEST NO. CH-2010-01033-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 FOIA request submitted to Ames Laboratory (Ames), you were seeking "copies of certified payroll records for employees working on Award No. DE-AC02-07CH11358."

In response to your request, be advised that upon receipt of your request, DOE was not in possession or control of records responsive to your request. Iowa State University (ISU), the DOE contractor that operates Ames, also conducted a search for responsive records, and located only records that are contractor-owned, not agency-owned.

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.94 of Contract Number DE-AC02-07CH11358 between DOE and ISU for the management and operation of Ames, records related to any procurement action by ISU for Ames and employment-related records are contractor-owned records. Therefore, any records that are in Ames'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 records responsive to your request.

Although there are no government records responsive to your FOIA request, Ames may be willing to release certain contractor records directly to you. Should you wish to pursue a request for contractor-owned records from Ames, you may contact Mark Murphy of Ames directly at 515-294-2618 or via e-mail at [murphy@ameslab.gov](mailto:murphy@ameslab.gov). Please understand that FOIA does not apply to a request for contractor-owned records and any decision to release the records is at Ames' discretion.



Printed on Recycled Paper

MAR 16 2010

Mr. Timothy W. Miller

- 2 -

With respect to your subject FOIA 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 a "Commercial Use" 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.

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  
FOIA Officer

cc: J. Stricker, AMSO  
M. Murphy, Ames Laboratory