



Department of Energy

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

AUG 04 2010

Mr. John Walker
Waveland Law Group LLC
55 West Wacker Drive, 14th Floor
Chicago, IL 60601

Dear Mr. Walker:

SUBJECT: U.S. DEPARTMENT OF ENERGY (DOE) OFFICE OF SCIENCE-CHICAGO OFFICE (SC-CH) FREEDOM OF INFORMATION ACT (FOIA) REQUEST NO. CH-2010-01806-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 subject FOIA request you are seeking "Permit application documents, and all other documents showing the surety, payment, or performance bonding, and all other insurance coverage submitted by or referenced by or relating to R.C. Wegman, the general contractor for construction of Fermilab Building MI-8 Wilson Street Entrance, Batavia, Illinois." You also indicated in your request that "Permit drawings need not be produced."

In response to your request, be advised that we have conducted a search of our office and DOE's Fermi Site Office at the FNAL site and have located no responsive records. We also requested that Fermi Research Alliance, LLC (FRA), the DOE contractor that operates FNAL, conduct a search for responsive records. FRA conducted a search and responded stating that the records they located 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.91 of Contract Number DE-AC02-07CH11359 between DOE and FRA for the management and operation of FNAL, records related to any procurement action by FRA for FNAL are contractor-owned records (see http://www.fra-hq.org/pdfs/FRA_Contract.pdf, pages 212-214). Records related to any procurement action include all of the types of documents you are seeking.



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Further, any such records that are in FNAL'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.

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.

Sincerely,



Miriam R. Legan
FOIA Officer

cc: M. Bollinger, FSO