



**Department of Energy**  
Richland Operations Office  
P.O. Box 550  
Richland, Washington 99352

CERTIFIED MAIL

June 17, 2016

Mr. Phillip Brian Isaacs  
[REDACTED]  
[REDACTED]

Dear Mr. Isaacs:

**FREEDOM OF INFORMATION ACT REQUEST (FOI 2016-00828)**

This letter is in reference to the electronic Freedom of Information Act (FOIA) request you submitted seeking copies of “communications of any kind between Mission Support Alliance, LLC (MSA) and the U.S. Department of Energy (DOE), Richland Operations Office (RL) concerning Enterprise Company employee appeals of the benefit received from the Hanford Multi-Employer Pension Plan, Hanford Operations and Engineering. The timeframe of interest is from October 1, 1996, to the present.”

DOE has identified the documents that are responsive to your request. However, the information sought in your request is not subject to FOIA because these documents are not agency records. The documents requested were not created or controlled by DOE, and do not qualify as an agency record for the reasons explained below.

The documents requested are located in MSA’s files and were provided to a DOE employee for informational purposes. Because these documents were provided to DOE, we must analyze and determine if the documents are agency records. Agency records are defined as documents that are either created or obtained by an agency, and are under agency control at the time of FOIA request submission. See *U.S. Department of Justice v. Tax Analysts*, 492 U.S. 136, 144-45 (1989). These documents were not created by DOE, but were obtained by DOE as a result of their transmission to a DOE employee. A federal agency’s exercise of control is based on the following four factors:

- (1) The intent of the document's creator to [either] retain or relinquish control over the records;
- (2) the ability of the agency to use and dispose of the record as it sees fit;
- (3) the extent to which agency personnel have read or relied upon the document; and
- (4) the degree to which the document was integrated into the agency's record system or files.

See: *Judicial Watch, Inc. v. Federal Housing Finance Agency*, 744 F. Supp. 2d 228 (D.C. Cir., 2010); *Burka v. U.S. Dep't of Health & Human Servs.*, 87 F. 3d 508, 318 U.S. App. D.C. 274 (D.C. Cir., 1996).

As stated above, the documents in question were provided to DOE for informational purposes only. The documents were not provided to DOE as part of any contractual requirement, and DOE did not rely on them to determine whether MSA is in compliance with its contract, or for any other reason. DOE does not have an obligation to reply or respond and does not utilize the information or rely on it for any decision-making process. In addition, we have confirmed the emails have not been integrated into RL's record system or files. Therefore, applying the factors above, we have determined the records are not agency records.

In addition, these documents are not agency records under the terms of DOE's contract with MSA. Under 48 CFR 970.5204-3(b)(1), which is included in MSA's contract as the ownership of records clause, employment-related records, such as records concerning salary and employee benefits, are considered property of the contractor and are not considered agency records.

As stated in my letter to you dated April 28, 2016, for the purposes of assessment of any fees, we have determined that your request falls within Section 1004.9(b)(4), ("all other requestors") of our FOIA regulations; see 10 CFR 1004.9(b)(4). You are entitled to two (2) free hours of search time and 100 pages of duplication at no cost. In a telephone conversation with me on April 22, 2016, you requested this office provide you with an estimate of costs if search time exceeds the first two free hours and 100 pages of duplication. The two hours of search time has been exhausted and we estimate four hours (at the average rate of \$42/hour plus 16%) to complete the search for any records responsive to your request in the possession of RL's Procurement Services Division. This amount does not include an estimate for duplication costs at \$.05/page. If you wish the search to continue, please provide this office with an assurance to pay the estimated processing fees. If I do not receive a response from you within 10 days, no further agency action will be taken on your request.

The undersigned individual is responsible for this determination. You have the right to appeal to the Office of Hearings and Appeals, as provided in 10 CFR 1004.8. Your appeal shall be filed within 30 days after receipt of this letter. You may submit your appeal by e-mail to [OHA.filings@hq.doe.gov](mailto:OHA.filings@hq.doe.gov), including the phrase "Freedom of Information Appeal" in the subject line. Alternatively, any such appeal may be made in writing to the following address: Director, Office of Hearings and Appeals (HG-1), U.S. Department of Energy, L'Enfant Plaza Building, 1000 Independence Avenue SW, Washington, D.C. 20585-1615. Should you choose to appeal, please provide this office with a copy of your e-mail or letter.

Mr. Phillip Brian Isaacs

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June 17, 2016

If you have any questions regarding your request, please contact me at our address above or on (509) 376-6288.

Sincerely,

-Original Signed By-

Dorothy Riehle  
Freedom of Information Act Officer  
Office of Communications  
and External Affairs

OCE:DCR