

From: [Filings, OHA](#)
To: [Phil Rutherford](#); [ogis@nara.gov](#); [Morris, Alexander](#); [Yenerall, Ben \(Joseph\)](#); [Sulier, Karen](#); [Cruz, Anthony](#); [White, William](#); [Harms, Timothy](#); [Robertson, Candice](#); [Secretary](#); [Mengers, Joshua \(EMCBC\)](#); [Meyer, Carrie](#); [FOIA-Central](#); [FOIAOIG](#); [IGHOTLINE](#); [Bacon, Jennifer](#); [O'donnell, Jordan \(CONTR\)](#)
Subject: RE: [EXTERNAL] RE: Freedom of Information Act (FOIA) Appeal, Request No. HQ-2024-01160-F, OHA Case No. FIA-24-0050
Date: Tuesday, September 10, 2024 5:11:46 AM

Mr. Rutherford,

As stated in the September 5, 2024, decision:

This is a final order of the Department of Energy from which any aggrieved party may seek judicial review pursuant to the provisions of 5 U.S.C. § 522(a)(4)(B). Judicial review may be sought in the district in which the requester resides or has a principal place of business, or in which the agency records are situated, or in the District of Columbia.

Docket Section
Office of Hearings and Appeals
Department of Energy
OHA.Filings@hq.doe.gov



From: Phil Rutherford <email@philrutherford.com>
Sent: Sunday, September 8, 2024 8:36 PM
To: Filings, OHA <oha.filings@hq.doe.gov>; ogis@nara.gov; Morris, Alexander <alexander.morris@hq.doe.gov>; Yenerall, Ben (Joseph) <ben.yenerall@hq.doe.gov>; Sulier, Karen <karen.sulier@hq.doe.gov>; Cruz, Anthony <anthony.cruz@hq.doe.gov>; White, William <william.white@em.doe.gov>; Harms, Timothy <Timothy.Harms@em.doe.gov>; Robertson, Candice <candice.robertson@em.doe.gov>; Secretary <the.secretary@hq.doe.gov>; Mengers, Joshua (EMCBC) <joshua.mengers@emcbc.doe.gov>; Meyer, Carrie <Carrie.Meyer@em.doe.gov>; FOIA-Central <foia-central@hq.doe.gov>; FOIAOIG <foiaoig@hq.doe.gov>; IGHOTLINE <ighotline@hq.doe.gov>; Bacon, Jennifer <jennifer.bacon@hq.doe.gov>; O'donnell, Jordan (CONTR) <jordan.o'donnell@hq.doe.gov>
Subject: [EXTERNAL] RE: Freedom of Information Act (FOIA) Appeal, Request No. HQ-2024-01160-F, OHA Case No. FIA-24-0050

Dear Director Marmolejos,

I was hesitant to waste my time replying to OHA's cursory review and denial of FIA-24-0050, as my prediction in my appeal that it would be fruitless, appears to be correct.

OHA did an admirable job ...

- responding in a timely manner. A two-day response indicated the extent of the in-depth review that my appeal received.
- “cutting and pasting” the specifics of my FOIA request HQ-2024-01160-F, and
- “cutting and pasting” some of my statements in appeal FIA-24-0050.

OHA however determined that the information I provided did not ...

- contain a concise statement of the grounds upon which it is brought, or
- contain a description of the relief sought, or
- provide a discussion of all relevant authorities

Concise Statement

My statement in the appeal that DOE has (1) re-defined low-level radioactive waste, (2) falsified waste shipping records, and (3) covered-up an OIG investigation, should be a concise statement of DOE’s transgressions. Supporting evidence, and relevant authorities and analysis of these separate acts are provided in the [online URL links](#) provided in the whistleblower attachment to the appeal. The extensive online material documented how ...

- DOE violated established federal decommissioning standards, past DOE decisions and actions, and a California Executive Order, when it sent both decommissioned waste and radiologically clean waste to a low-level radioactive waste disposal site.
- DOE falsified waste shipping records as demonstrated in two complaints to DOE management and to DOE OIG (23-0160-C). The lack of response by all DOE management before the FOI request speaks volumes for DOE communications.
- DOE OIG and DOE FOIA stone-walled my twenty-month attempt to get specific responses to the allegations of OIG Complaint 23-0160-C and specific requests of FOIA Request HQ-2024-01160-F. Notwithstanding the approximately thirty redacted email communications provided by the OIG FOIA Office, none provided any responses to the allegations, but focused on electronic paper shuffling of FOIA requests in general, with no meaningful information.

Relief Sought

Even though my appeal may not have explicitly “sought relief”, the reason for the appeal to your Office was ... please help me break the blatant cover-up!!! The objective of the Freedom of Information Act was to make federal government operations more open and transparent to the public. My experience is that DOE will fight to its last breath to hide

what it recognizes as embarrassing and possibly criminal behavior.

Challenge

Nowhere in OIG's May 31, 2024, supplemental response does it provide the basis (i.e., the evidence) for OIG's decision on approximately July 25, 2023, that, "*no further action was warranted*" for complaint 23-0160-C. Therefore, I am "*challenging*" that OIG's response is totally non-responsive. Given the voluminous evidence that I provide, vs. the zero evidence that DOE provides, any future litigation would be short-lived. I am "*challenging*" that the FOIA Office, in response to HQ-2024-01160-F, has failed to facilitate production of meaningful documented evidence of OIG's and EM's investigation of complaint 23-0160-C.

The most pertinent record that OIG provided along with its May 27, 2024, response letter was its March 16, 2023, request to EM that EM respond to the 23-0160-C complaint. That apparently is the extent of OIG's "*investigation*," hardly an independent third-party review! OIG has had EM's response in its possession for 14 months. On or before March 16, 2024, OIG requested EM's approval to release EM's complaint response. Six months later, this EM document has yet to be provided. The FOIA Office claims that this EM complaint response is being "*processed*." I guess that is a euphemism for redacted.

Closing

Director Marmolejos, please quit hiding behind the pedantic technicalities of your denial. I challenge you to demonstrate that you or your staff have opened, read, and understand any of the supporting online material of my original complaints in my appeal. Your denial of course does not mention any of the specifics of the allegations because you have not read them and don't care. Since you have chosen not to include other DOE management on distribution for your denial, I am including it below, together with my appeal.

I note you refer to the Office of Government Information Services (OGIS) as mediation services. I have therefore included them on distribution for this email. They can weigh-in as they see fit.

Finally, I note that your email address was not on your various communications. Doubtless, Mr. Yenerall will forward this response to you.

Appeal FIA-24-0050:

[https://philrutherford.com/SSFL/dae_building_demolition/FOIA/2024-08-31 Letter to Office of Hearings and Appeals.pdf](https://philrutherford.com/SSFL/dae_building_demolition/FOIA/2024-08-31_Letter_to_Office_of_Hearings_and_Appeals.pdf)

Denial of Appeal FIA-24-0050:

[https://philrutherford.com/SSFL/dae_building_demolition/FOIA/2024-09-05 FIA-24-0050 Decision.pdf](https://philrutherford.com/SSFL/dae_building_demolition/FOIA/2024-09-05_FIA-24-0050_Decision.pdf)

Sincerely,

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From: Filings, OHA <oha.filings@hq.doe.gov>
Sent: Thursday, September 5, 2024 12:47 PM
To: email@philrutherford.com
Cc: Sulier, Karen <karen.sulier@hq.doe.gov>; Yenerall, Ben (Joseph) <ben.yenerall@hq.doe.gov>; Morris, Alexander <alexander.morris@hq.doe.gov>
Subject: Freedom of Information Act (FOIA) Appeal, Request No. HQ-2024-01160-F, OHA Case No. FIA-24-0050

Dear Mr. Rutherford:

The Department of Energy (DOE) has considered the Freedom of Information Appeal that was filed on September 3, 2024. As the enclosed Decision and Order indicates, the DOE has determined that the Appeal, Case No. FIA-24-0050, be denied.

If you have any questions regarding this Decision and Order, please contact Ben Yenerall, General Attorney, at the Office of Hearings and Appeals, by electronic mail message at ben.yenerall@hq.doe.gov or by telephone number 240-246-5597.

Docket Section
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