

Mr. Dale J. Cook, FOIA Officer
 US ERDA, San Francisco Operations Office
 1333 Broadway
 Oakland, Ca. 94612

Rt. 12, Frederick, Md. 21701
 9/16/77

Dear Mr. Cook,

Your letter of September 12 begin with reference to my "last letter." The record shows it is of more than a month ago, of August 9. FOIA expects better performance.

Having reread my letter I believe it is apparent that some of your letter is repetitious and self-serving and some is evasive.

My third paragraph says you are not required to generate records and your third and longest one says the same thing in different words.

You are inaccurate in saying that I "have assumed Dr. Alvarez's work was political." The characterization is his own, as is the timing for added political influence and for other means of influencing public opinion, the explicit purpose of the ERDA funding.

I did not raise questions of the propriety of ERDA's funding of political work under FOIA. I did and do raise questions about this kind of expenditure of public moneys by ERDA, whether by Dr. Alvarez or any other person. I do have and continue to have the deepest misgivings about any sanctioning of his spending public moneys in this manner. I do question the right of his Director to authorize the spending of ERDA or public moneys in this manner.

I do not accept your claim that you have no control over the records of the lab that you authorize to spend funds you provide. I believe every record in any way related to such expenditures of public funds you provide should be available to you and through you to me or to anyone else requesting them.

What you actually say is that I and others provide money and regardless of relevance to ERDA's function and authority those to whom it dispenses my money can spend in any way they damned please. Your language is sweeter: "Laboratory scientists do have freedom within these areas to conduct research they believe desirable." I would still like to know how ERDA can torture political partisanship on the JFK assassination into anything having any reasonable association with Energy Research and Development. While you also state that "Verbal approval was granted by the Laboratory Director, Dr. Sessler, for the work to be performed and the results published using the contract resources" that this was within any rational concept of ERDA's authority is nowhere stated.

There is a constitutional provision for the public accountability of the expenditure of public funds. I do not believe ERDA can sign blue-sky contracts with those who politicize either science or ERDA contracts.

You admit ERDA funding of Dr. Alvarez' propaganda and publishing it. You admit a certain informality in the manner of all of this. I believe that from this expenditure or public funds and your admission that it was under Contract 48 all existing records, however described and wherever stored at within FOIA requests. I don't care if Dr. Alvarez has them in his basement, they are relevant and were paid for by my money and that of others. Not that I or others were consulted, even by representation. This kind of thing cannot have been legislated by our representatives.

It all looks everyso much worse because Dr. Alvarez sat on this for years and just by coincidence decided on publication at a time that coincides with my filing suit against ERDA.

I regard the letters I have received as a denial. This is my appeal from denial.

Sincerely,

Harold Weisberg



ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION

SAN FRANCISCO OPERATIONS OFFICE

1333 BROADWAY

OAKLAND, CALIFORNIA 94612

SEP 12 1977

Mr. Harold Weisberg
Route 12
Frederick, Maryland 21701

Dear Mr. Weisberg:

After reading your last letter, it seems to me that several points need to be cleared up with regard to your request for information and records.

We are sorry that a copy of 10 CFR Section 709.1 was not attached to our prior letter. A copy is enclosed with this letter.

As you know, the FOI Act applies only to actually existing government records in the possession of or under the control of ERDA according to ERDA contracts. As a result of his interest and work on the Kennedy assassination, Dr. Alvarez received many irate letters and in turn corresponded privately with many assassination buffs. This correspondence is not in possession of the government, is not considered to be government property, and is not under control of this agency according to any contract. They are, therefore, not available under the FOI Act. Our sentence "... all existing material that could be located which are available for release ..." was intended to show that other private documents of Dr. Alvarez's existed over which we have no control; and therefore could not be furnished to you.

As we noted earlier, while financial plans (written documentation) spell out agreed-upon general areas of Laboratory research, Laboratory scientists do have freedom within these areas to conduct research they believe desirable.

Since research activity is not planned in specific detail in advance, authorizing documentation is non-existent. Such is the case of Dr. Alvarez. Verbal approval was granted by the Laboratory Director, Dr. Sessler, for the work to be performed and the results published using contract resources.

Mr. Harold Weisberg

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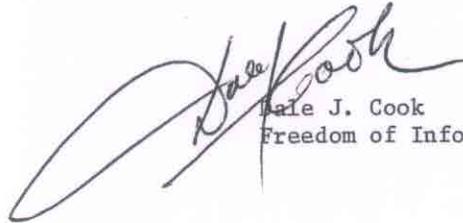
Dr. Alvarez's activities were not specified or identified in Contract 48 which, as I mentioned earlier, is the contract with the University of California to perform research and operate the Lawrence Berkeley Laboratory. In this instance, there is no specific contract or grant with Dr. Alvarez himself or with the Laboratory for the performance by him of a specific or proposed program of research and development as might be the case if ERDA were to obtain his services through a special research support agreement or grant.

We appreciate your interest and we have furnished you with copies of all existing records within our government control.

You have assumed Dr. Alvarez's work was political and in turn asked that ERDA defend or prove it authorized him to do such work. A discussion as to whether or not his work was political and the extent to which ERDA could or would have supported his work is not an item that can be furnished as a record within the FOI Act.

We sincerely hope the above explanation provides the answers to the points you raised.

Sincerely,



Dale J. Cook
Freedom of Information Officer

RULES AND REGULATIONS

Title 10—Energy

CHAPTER III—ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION

PART 709—PUBLIC RECORDS

of the Corporation between 8:45 a. m. and 5:30 p. m., except Saturdays, Sundays and official holidays, by telephoning the Office of Public Affairs of the Corporation at (202) 632-1854 during such hours or by writing the Corporation to the attention of the Vice President of Public Affairs. Although the Corporation will endeavor to grant an appointment at the time requested, some delay may be required at times because of the small size of the Corporation's staff. Persons desiring access to the public information files should seek an appointment at least twenty-four (24) hours in advance.

(b) Access to any records of the Corporation not otherwise made available by the Corporation to the public under the provisions of 5 U.S.C. 552(a) (1) and (2), or the duplication of such records by the Corporation, shall be granted only upon specific written request to the Corporation, addressed to the attention of the Vice President for Public Affairs, which shall be deemed not to have been received by the Corporation until actual receipt thereof by the Corporation's Office of Public Affairs. Such request shall to the maximum extent required under the law, accurately describe the records to which access to or duplication of is requested such as, by way of example only, the subject matter, format, date, and where pertinent, the country, project or person involved. Any such request which does not describe such records sufficiently enough to permit the staff of the Corporation to promptly locate such records shall be returned to the requester.

§ 706.32 Fees.

(a) The following schedule of fees representing direct costs shall be charged for services rendered by the Corporation under 5 U.S.C. 552(a) in furnishing information to members of the public:

Services

- (1) Searching for records, etc., \$15.00 per hour per person.
- (2) Other facilitative assistance, \$15.00 per hour per person.
- (3) Photocopy duplication, .20 per page.
- (4) Certification of a true copy, \$3.50.
- (5) Certified statement of negative results of a search, \$3.50.

(b) Notwithstanding the provisions of paragraph (a) of this section, the Vice President for Public Affairs may waive or reduce any fee otherwise due under paragraph (a) of this section for the preparation, release or distribution of any document, instrument, publication or class thereof, for which he determines that waiver or reduction of such fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public.

Issued in Washington, D.C. on February 14, 1975.

DAVID GREGG III,
Executive Vice President.

[FR Doc. 75-4837 Filed 2-18-75; 8:45 am]

eral Counsel, Energy Research and Development Administration.

Effective date: February 19, 1975.

ROBERT C. SEAMANS, Jr.,
Administrator.

Sec.	
709.1	Applicability.
709.2	Policy.
709.3	Definitions.
709.4	Statement of organization, functions, procedure, and substantial rules, final opinions, statement of policy, staff manuals and instructions.
709.5	Freedom of information officers.
709.6	Requesting records.
709.7	Handling of FOI requests.
709.8	Denial of records.
709.9	Matters exempt from disclosure.
709.10	Administrative appeal of initial denial of records.
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AUTHORITY: 5 U.S.C. 552 and sec. 105(a), Pub. L. 93-438.

§ 709.1 Applicability.

(a) This part implements section 552 of Title 5, United States Code, and prescribes rules governing the availability to the public of the records of the Energy Research and Development Administration (ERDA).

(b) This part only applies to requests which (1) reasonably describe records and (2) are made in accordance with this part.

(c) Under section 552 of Title 5 there is no obligation to compile or create a record solely for the purpose of satisfying a request for records.

(d) Nothing in this part shall inhibit the dissemination of scientific, technical, or other information in accordance with established ERDA policies or programs for such dissemination.

(e) Except where specifically noted otherwise, this part applies to all records whether they predate or postdate July 4, 1967.

(f) This part supersedes any other ERDA policy, rule, or regulation to the extent inconsistent with this part.

(g) This part shall be interpreted so as to be consistent with the "Privacy Act of 1974," Pub. L. 93-579.

§ 709.2 Policy.

(a) In implementing section 552 of Title 5, United States Code, it is the policy of ERDA to make records available to the public to the greatest extent possible in keeping with the spirit of that section. Therefore, all records of ERDA which are requested in accordance with this part shall be made available promptly, except those that ERDA specifically determines in accordance with this part (1) are exempt from disclosure under § 709.9, and (2) that disclosure is contrary to the public interest or will adversely affect the rights of any person.

The Energy Research and Development Administration (ERDA) was established by the Energy Reorganization Act of 1974, Pub. L. 93-438, 88 Stat. 1233, and the Act was made effective on January 19, 1975 by Executive Order 11834 dated January 15, 1975, which Executive Order was published on January 17, 1975, at 40 Fed. Reg. 2971.

Consistent with the establishment of ERDA, a new Chapter III of Title 10, Code of Federal Regulations, is established consisting at this time of Part 709, Public Records, which is set forth below.

On an interim basis, the rules and regulations of the Atomic Energy Commission contained in Chapter I of Title 10, Code of Federal Regulations (Parts 0 through 170 of Chapter I of Title 10, CFR, respectively), except Part 9 thereof, approved as of the effective date of the reorganization (January 19, 1975) including any proposed rules thereunder, are applicable to ERDA to the extent they are not inconsistent with applicable law, for all ERDA activities under the Energy Reorganization Act of 1974, the Federal Nonnuclear Energy Research and Development Act of 1974 (Pub. L. 93-577), and other applicable law.

Pursuant to the authority vested in me by section 105(a) of the Energy Reorganization Act of 1974, and pursuant to the provisions of section 552 of Title 5, United States Code, as amended by Pub. L. 93-502 (the Freedom of Information Act, as amended), Part 709 of Chapter III, Title 10, Code of Federal Regulations, which Part is entitled "Public Records" and implements for ERDA the Freedom of Information Act, including the 1974 amendments thereto is hereby issued.

Except as provided below, Part 709 is a statement of ERDA policies and procedures for implementing the Freedom of Information Act, as amended, and the relevant provisions of 5 U.S.C. 553 requiring notice of proposed rule making, opportunity for public participation and delay in effective date, are inapplicable.

On page 2714 of the FEDERAL REGISTER of January 15, 1975, there was published a notice of proposed rule making regarding a proposed uniform schedule of fees for document search and duplication. No comments have been received in response to that notice and no changes have been made to the charges proposed for searching and duplicating. These charges for document search and duplication are set forth in § 709.12 below.

While these regulations are effective February 19, 1975, the public is invited to submit comments thereon, provided they are received within 90 days of publication of these regulations. Any comments submitted should be in writing and submitted to the Office of the Gen-