

In response to a request for information under the Freedom of Information Act (FOIA), Mr. Pugh received five documents concerning the audit that the DOE conducted of MOX Services. After reviewing the five documents, Mr. Pugh found inaccuracies in two of them and, on October 24, 2014, filed a request under the Privacy Act to correct and amend those two documents. On December 2, 2014, he received an e-mail message from the NNSA stating that the documents he wished to amend “did not come from a Privacy Act system of records” and were “therefore not subject to correction or amendment under the Privacy Act.” E-mail from Karen Laney, Information Programs Specialist, Office of the General Counsel, NNSA, to Edward Pugh, December 2, 2014.

II. ANALYSIS

The DOE regulations implementing the Privacy Act require that when a Privacy Act Officer denies a request for correction or amendment of records, he or she must provide the requester with “[t]he reasons for the denial; including citation to the appropriate sections of the Act and this part.” 10 C.F.R. § 1008.10(c)(2)(ii). NNSA did provide Mr. Pugh with the reason for its denial of his request. However, NNSA did not include a citation to the appropriate sections of the Act and the DOE regulations in its determination, as required by those regulations.

The Privacy Act permits “an individual to request amendment of a record pertaining to him.” 5 U.S.C. § 552a(d)(2). The federal courts have held that the scope of amendment of records is coextensive with the scope of accessibility to records, which is limited to the requester’s “record or any information pertaining to him which is contained in” a system of records. *Smith v. U.S.*, 142 Fed. Appx. 209, 210 (5th Cir. 2005); *Baker v. Dep’t of the Navy*, 814 F.2d 1381 (9th Cir. 1987) (amendment remedy not applicable to document not accessible under the Privacy Act, but otherwise accessible). The DOE Privacy Act regulations provide that “[a]ny individual may . . . [r]equest that information about him or her *in a DOE system of records* be amended or corrected. . . .” 10 C.F.R. § 1008.6(a)(3) (emphasis added). The Privacy Act defines a “system of records” as “a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.” 5 U.S.C. § 552a(a)(5).

Because the applicable statute and regulations provide that only records contained in systems of records are subject to amendment and correction under the Privacy Act, the threshold question is whether the two documents that Mr. Pugh has requested to be amended and corrected reside in a system of records. The fact that the NNSA provided them to Mr. Pugh is not dispositive, as they were released pursuant to a request for information under the FOIA, not under the Privacy Act. A proper response to a request filed under the FOIA would release agency records responsive to the request, whether contained in a system of records or not.

To ascertain whether the two documents that Mr. Pugh wishes to correct and amend are records contained in a system of records, we sought details about them from the Savannah Site Office, the office that maintains those documents and identified them as responsive to Mr. Pugh’s FOIA request. The documents, portions of a draft audit report, contain the auditors’ assessment of MOX Services’ efforts to verify individual workers’ eligibility for LTTA payments, and include data pertaining to individual workers. January 21 Memorandum. In one document, Attachment 5 to the NNSA’s FOIA determination letter, the workers are not identified by name,

but each worker-specific data set is labeled with a unique marker, to distinguish it from other data sets. Nowhere in the document is there any means to associate any marker with any individual LTTA recipient. In the other document, Attachment 1, one page of worker-specific data bears both the worker's name and the unique marker. Nevertheless, no information has been retrieved from either document, or from any other portion of the draft audit report, by an individual's name or other identifier. January 21 Memorandum. Based on the information provided by the Savannah River Site Office and the statutory definition of "system of records," we find that the documents that Mr. Pugh wishes to correct and amend are not contained in a system of records.

III. CONCLUSION

Because the documents that Mr. Pugh wishes to correct and amend are not contained in a system of records, they are not subject to the correction and amendment provisions of the Privacy Act. Accordingly, we will deny Mr. Pugh's Appeal.

It Is Therefore Ordered That:

- (1) The Appeal filed by Edward Pugh on December 30, 2014, OHA Case No. FIA-14-0087, is hereby denied.
- (2) 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. § 552a(g)(1). 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.

Poli A. Marmolejos
Director
Office of Hearings and Appeals

Date: January 30, 2015