

**United States Department of Energy
Office of Hearings and Appeals**

In the Matter of Rolf E. Carlson, PhD)		
)		
Filing Date: July 10, 2015)	Case No.:	PAA-15-0001
)		
_____)		

Issued: July 31, 2015

Decision and Order

On July 10, 2015, Rolf E. Carlson, PhD (Dr. Carlson) appealed a determination that he received from the Department of Energy’s (DOE) National Nuclear Security Administration (NNSA) on April 22, 2015.¹ On December 10, 2014, December 12, 2014, December 18, 2014, and December 19, 2014, Dr. Carlson requested that his Personnel Security File (PSF) be amended to include certain documents. He further inquired into the accuracy of certain information already included in his PSF. On April 22, 2015, NNSA issued a determination letter stating it would not grant Dr. Carlson’s request to amend his file and that the requests for accuracy were not valid. In his Appeal, Dr. Carlson challenges NNSA’s denial of his inquiries concerning the accuracy of three statements in his PSF.²

I. BACKGROUND

In December 2014, Dr. Carlson submitted four separate Privacy Act requests for amendments to his PSF, which were aggregated and responded to in an April 22, 2015, determination letter. After contacting the Office of Personnel and Facility Clearances (OPFC), NNSA denied all of Dr. Carlson’s requests. Determination Letter from Jane R. Summerson, Privacy Act Officer, NNSA, to Rolf E. Carlson, PhD (April 22, 2015). In his Appeal, Dr. Carlson challenged the following parts of the Determination Letter:

In Part 2 of the OPFC Response to my request dated December 10, 2014, the statement: “...Mr. Carlson is not requesting relevancy/accuracy [of] information

¹ Dr. Carlson originally filed an appeal on June 2, 2015. The Office of Hearings and Appeals (OHA) dismissed this appeal stating that it lacked jurisdiction to consider the unspecified procedural irregularities alleged. The dismissal letter gave Dr. Carlson 10 days to refile an appeal contesting the substantive components of the NNSA determination letter.

² Dr. Carlson also asserts that NNSA failed to follow the requirements of 10 C.F.R. § 1008.10(c)(2)(i) because the determination letter did not provide the System Manager’s name and title. The regulations do not grant OHA jurisdiction over this claim.

already existing in his PSF...” (letter from J. Summerson to the author, April 22, 2015) is incorrect because the letter from Dr. Rick Sauerman to Dr. Elvira G. Pascua-Lim, October 28, 2010, is existing information in the portion of my Personnel Security File (PSF) that is referenced by Control Number PA 11-00049-C.

In Part 2 of the OPFC Response to my request dated December 18, 2014, the statement: “...Mr. Carlson is not requesting relevancy/accuracy [of] information already existing in his PSF...” (letter from J. Summerson to the author, April 22, 2015) is incorrect because the letter from Dr. Rick Sauerman to Dr. Elvira G. Pascua-Lim, October 28, 2010, is existing information in the portion of my Personnel Security File (PSF) that is referenced by Control Number PA 11-00049-C.

In Part 2 of the OPFC Response to my request dated December 19, 2014, the statement: “...Mr. Carlson is not requesting relevancy/accuracy [of] information already existing in his PSF...” (letter from J. Summerson to the author, April 22, 2015) is incorrect because both September 13, 2010 Progress Notes from David N. Ewing, MD are existing information in the portion of my Personnel Security File (PSF) that is referenced by Control Number PA 11-00049-C.

Appeal Letter from Rolf E. Carlson, PhD to Director, OHA (July 2, 2015). In responding to Dr. Carlson’s inquiries for accuracy, NNSA cited 10 C.F.R. § 1008.6(a)(3)(i)-(ii) stating that because Dr. Carlson was requesting the “relevancy/accuracy of newly introduced information”, it did not consider these requests to be valid, and therefore denied them.

II. ANALYSIS

The Privacy Act permits “an individual to request amendment of a record pertaining to him.” 5 U.S.C. § 552a(d)(2). The DOE regulations implementing the Privacy Act allow requests for correction or amendments to also include inquiries concerning whether such information is “relevant or necessary to accomplish a purpose that DOE is required to accomplish” or “whether the information is accurate, relevant, timely, or complete as is reasonably necessary to assure fairness” when DOE is using the information to make a determination about the individual. 10 C.F.R. § 1008.6(a)(3)(i)-(ii). When denying an individual’s request for amendment, a Privacy Act Officer must include a citation to the appropriate section of the Act and regulations which supports the denial. 10 C.F.R. § 1008.10(c)(2)(ii).

In its Determination Letter, NNSA states that Dr. Carlson is inquiring about the accuracy of newly introduced information. We do not believe this to be an accurate reading of Dr. Carlson’s Privacy Act requests. In each of his four Privacy Act requests, Dr. Carlson seeks to amend his PSF with a certain document. Along with this request to amend, Dr. Carlson also inquires, pursuant to 10 C.F.R. § 1008.6(a)(3)(ii), if certain statements in his PSF are accurate, in light of the information contained in the document he wishes to amend his PSF to include. He is not, as the Determination Letter stated, questioning the accuracy of the new document he is introducing, but rather the accuracy of the information already contained in his PSF, which the newly

introduced document contradicts. We believe that Dr. Carlson's inquiries were valid under 10 C.F.R. § 1008.6(a)(3)(i)-(ii).

We contacted OPFC regarding its determination in this matter. OPFC informed OHA that the reason it denied Dr. Carlson's request to amend his PSF was because his security clearance was no longer being processed. Telephone Memorandum with Ron Oliver (July 15, 2015). The information in Dr. Carlson's PSF was collected for the purpose of processing his suspended security clearance. *Id.* Before the administrative process was completed, Dr. Carlson's employer withdrew its request to have Dr. Carlson receive a security clearance. *Id.* Had Dr. Carlson's employer still wanted him to receive a security clearance, or if Dr. Carlson was ever again investigated for a security clearance, he would have had the opportunity to refute any information in his PSF. *Id.* Because of these facts, amendment to his PSF at this time was not appropriate.

Although the Appeal only challenges NNSA's determination that Dr. Carlson was seeking the accuracy of newly introduced information, we believe that this inquiry is inextricably tied to the requests for amendments themselves. Based on the conversation with OPFC, we believe that the denial of Dr. Carlson's requests for amendment and accuracy were both appropriate pursuant to the criteria listed in 10 C.F.R. § 1008.10(e)(1)-(7). NNSA collected the challenged information in connection with a security clearance investigation. Because the request for a security clearance was rescinded by Dr. Carlson's employer, the challenged information is no longer relevant or necessary for the purpose for which it was collected. 10 C.F.R. § 1008.10(e)(3). Furthermore, the challenged information cannot unfairly result in a determination adverse to Dr. Carlson because Dr. Carlson would have an opportunity to refute the information if the security clearance investigation ever resumed. 10 C.F.R. § 1008.10(e)(4)-(5). Accordingly, we find that NNSA properly denied Dr. Carlson's request to amend or correct his PSF.

III. CONCLUSION

Based on the foregoing, we find that amendment or correction to Dr. Carlson's PSF to be inappropriate and deny Dr. Carlson's Appeal.

It Is Therefore Ordered That:

- (1) The Appeal filed on July 10, 2015, by Rolf E. Carlson, PhD, Case No. PAA-15-0001, 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.

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Poli A. Marmolejos
Director
Office of Hearings and Appeals

Date: July 31, 2015