June 2, 2009

Freedom of Information Act Officer
Office of Public Affairs/FOIA
NNSA/SC
P.O. Box 5400
Albuquerque, NM 87185-5400
Email: foiofficer@doeal.gov

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JUL 16 2009 09

via: electronic mail and U.S. mail

Re: Freedom of Information Act request regarding beryllium activities at LLNL

To Whom It May Concern:

This is a request under the Freedom of Information Act (FOIA).

I would like to formally request copies of all records concerning occupational exposures to beryllium at Lawrence Livermore National Laboratory (LLNL), since 2000. This request includes, but is not limited to, any records regarding the exposure of LLNL workers to beryllium at the laboratory; any records regarding the exposure of contract workers with GSE Construction to beryllium at LLNL; any records regarding notification of LLNL workers and the contract workers with GSE Construction of their possible exposure to beryllium; any records regarding LLNL's Chronic Beryllium Disease Prevention Program and current and former worker medical surveillance programs; any audits or investigations of beryllium operations and activities at LLNL; memoranda; agency publications; and correspondence, whether in hard copy or electronic form. Correspondence includes, but is not limited to, letters, notes, electronic mail messages (and attachments), and phone logs or notes.

Tri-Valley CAREs requests that the records it seeks be provided in hard copy and electronic formats. Tri-Valley CAREs would like to receive the requested records on a CD-ROM, provided this will not occasion a significant delay in the processing of this request.

In the event that access to any of the requested records is denied, please note that FOIA provides that "[a]ny reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under [FOIA]." 5 U.S.C. § 552(b). Tri-Valley CAREs therefore requests that it be provided with all non-exempt portions of the requested records that are reasonably segregable. Tri-Valley CAREs further requests that you describe the deleted material in detail and specify the statutory basis for the denial, as well as your reasons for believing that the alleged statutory justification applies in each instance.

Brook

FOIA - 2009 - 000581

Please separately state your reasons for not invoking your discretionary powers to release the requested documents in the public interest. Such statements will be helpful in deciding whether to appeal an adverse determination and in formulating arguments in case an appeal is taken. The agency's written justification might also help to avoid unnecessary litigation. Of course, Tri-Valley CAREs reserves its right to appeal the withholding or deletion of any information.

Tri-Valley CAREs requests a waiver of all fees for this FOIA request. Disclosure of the requested information to Tri-Valley CAREs is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in our commercial interest. Tri-Valley CAREs meets the fee waiver criteria set forth in 10 C.F.R. § 1004.9:

1. Whether the subject of the requested records concerns the "operations or activities of the government."

The National Nuclear Security Administration (NNSA) and its operations and activities—including occupational exposures to beryllium at LLNL—are operations and activities of the government.

2. Whether the disclosure is "likely to contribute" to an understanding of government operations or activities.

Further information regarding occupational exposures to beryllium at LLNL will contribute to an understanding of government operations and activities. This information concerns LLNL's handling of beryllium, a carcinogenic metal used in nuclear weapons work. Recently, a number of LLNL workers and contract workers with GSE Construction have been exposed to beryllium. Exposure to beryllium dust can lead to beryllium sensitivity and chronic beryllium disease, an incurable and potentially fatal respiratory disease; and, indeed, some LLNL workers and contract workers with GSE Construction have developed beryllium sensitivity or chronic beryllium disease. Disclosure of the requested records will contribute to an understanding of LLNL operations and activities that impact worker health and the adequacy of the laboratory's programs to protect worker health.

3. What contribution to an understanding by the general public will result from disclosure?

Tri-Valley CAREs uses information obtained through FOIA to help the general public and others understand the operations and activities of the government, specifically NNSA and its LLNL. Tri-Valley CAREs publishes a monthly newsletter, circulated free of charge to interested parties. Information obtained from FOIA requests is used in the newsletter to increase public understanding of NNSA operations and activities, and it is expected that information obtained through this request will be used in our newsletter.

In addition, Tri-Valley CAREs uses information derived from FOIA in its fact sheets, reports, and other materials that are distributed, like our newsletter, to the media, elected officials, regulatory agencies, other organizations, and the general public. Information is also available on the organization's web site at http://www.trivalleycares.org. Moreover, information provided by Tri-Valley CAREs is used regularly by local, regional, and national media.

Tri-Valley CAREs seeks these records in order to inform the public about important government operations and activities. Again, this information concerns occupational exposures to beryllium at LLNL, exposures that may lead to serious—and potentially fatal—health impacts. Among the incidents covered by this request is one in which LLNL waited five months to inform nearly 200 contract workers with GSE Construction of their exposure to beryllium during the retrofitting of a machine shop. Subsequent testing has found that some of these exposed contractors developed beryllium sensitivity. LLNL also allowed its own employees to continue working in the machine shop, despite two separate rounds of tests that revealed the presence of the toxic metal in the building. This is particularly troubling because continued exposure to beryllium after becoming sensitive to the metal increases the chances of developing chronic beryllium disease. In another incident, a worker who had previously tested positive for beryllium sensitivity was permitted to enter a building that had elevated beryllium levels. Through disclosure of the requested records—with subsequent analysis and dissemination by Tri-Valley CAREs—the public will gain an understanding of the impacts to worker health associated with nuclear weapons development activities at LLNL. The public will also gain a deeper understanding of the adequacy of LLNL's programs to protect worker health.

By obtaining these records, Tri-Valley CAREs will benefit the public and contribute to its understanding of our government's nuclear weapons operations and activities. This is the organization's mission, as laid out in its articles of incorporation and reflected by its status as a 501(c)(3) nonprofit organization.

4. Whether the disclosure is likely to contribute "significantly" to public understanding of government operations or activities.

Disclosure of the requested records will contribute significantly to public understanding of LLNL's unfortunate role in the exposure of both its employees and contractors to beryllium, some of whom have already developed beryllium sensitivity or chronic beryllium disease. The requested records will detail the extent of the problem, the sufficiency of LLNL's programs to protect worker health, and the adequacy of the laboratory's response, including possible negligence in failing to timely inform LLNL workers and the contract workers with GSE Construction of the presence of beryllium in the areas where they were working.

Additionally, Tri-Valley CAREs has the means (see #3 above) and the track record to be "likely to contribute 'significantly' to public understanding."

5. Whether the requester has a commercial interest that would be furthered by the requested disclosure.

This is not applicable in the case of Tri-Valley CAREs. As mentioned, Tri-Valley CAREs is a 501(c)(3) public benefit organization. We provide the information to the public free of charge.

6. Whether a commercial interest is "primary."

This is not applicable to Tri-Valley CAREs. We have no profit motive.

In light of the above, Tri-Valley CAREs requests a fee waiver for the disclosure of this information.

Access to the requested records should be granted within twenty (20) working days from the date of your receipt. Failure to respond in a timely manner shall be viewed as a denial of this request and Tri-Valley CAREs may immediately file an administrative appeal or seek judicial relief. Thank you in advance for your prompt reply.

Sincerely,

Robert Schwartz
Staff Attorney
Tri-Valley CAREs
2582 Old First Street
Livermore, CA 94551
Phone: (925) 443-7148
Fax: (925) 443-0177
rob@trivalleycares.org

FOIA 09-00216-K
Rec'd Jun 09 2009

Becknell, Carolyn

From: Rob Schwartz [rob@trivalleycares.org]
Sent: Tuesday, June 02, 2009 12:39 PM
To: (G) FOIA Services
Subject: Freedom of Information Act Request

Attachments: LLNL Beryllium Records.doc

LLNL Beryllium Records.doc (44...

To Whom It May Concern:

I have attached a Freedom of Information Act request. I am also sending the same request via U.S. mail. Please let me know if you have any questions or concerns. Thanks.

Sincerely,
Rob Schwartz

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Robert Schwartz
Staff Attorney
Tri-Valley CAREs
2582 Old First Street
Livermore, CA 94551
Phone: (925) 443-7148
Fax: (925) 443-0177
http://www.trivalleycares.org/

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Morris, Alexander

From: Laney, Karen [KLaney@doeal.gov]
Sent: Thursday, July 16, 2009 1:27 PM
To: Morris, Alexander
Cc: Johnston, Robyne; Becknell, Carolyn
Subject: Transfer FOIA 09-00216-K, Tri-Valley CAREs
Attachments: Tri-Valley CAREs request 6-9-09.pdf

Hi Chris.

Robyne Johnston, HS-1 spoke with Carolyn this morning about subject request. LSO/LLNL discussed the request with Robyne, and she notified us that she would have some responsive requests.

I am transferring the request to you for HS-1 to work; attached is a PDF copy. LASO/LLNL will continue to work their part of the request. **Please respond directly to the requester about any records HS-1 may provide.**

Thank you.

Karen Laney
Information Programs Specialist
Office of Public Affairs
Phone: (505) 845-5310
Fax: (505) 284-7573

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