

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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ANTOINETTE BONSIGNORE,  
16075 NE 85th Street, # 214  
Redmond, WA 98052

Plaintiff,

v.

U.S. DEPARTMENT OF HEALTH AND HUMAN  
SERVICES,  
National Institute for Occupational Safety and Health  
Centers for Disease Control and Prevention  
395 E Street, SW  
Suite 9200  
Washington, DC 20201

Defendant.

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Civil Case No. \_\_\_\_\_

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

1. This action is brought under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, to compel the production of records from the Department of Health and Human Services (“HHS”).

2. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.

**PARTIES**

3. Plaintiff Antoinette Bonsignore is the Special Exposure Cohort (“SEC”) Designated Representative for the Linde Ceramics SEC Petitioner Class.

4. Defendant HHS is an agency of the United States. HHS, through one of its divisions, the National Institute for Occupational Safety and Health (“NIOSH”), which is part of HHS’s

Centers for Disease Control and Prevention (“CDC”), has possession of and control over the records that plaintiff seeks.

## STATEMENT OF FACTS

### Regulatory Background

5. Under the Energy Employees Occupational Illness Compensation Program Act of 2000 (the “Act”), 42 U.S.C. §§ 7384-7385 (2006), individuals who worked on federal nuclear weapons programs and subsequently developed radiation-related health conditions may seek compensation for their illnesses.

6. The Act establishes Special Exposure Cohorts—classes of employees who worked at specified nuclear production or test sites during specified time periods—whose members are presumptively entitled to compensation under the Act. The Act delegates authority to the HHS Secretary to add classes of employees as additional SECs, upon petition.

7. NIOSH is charged with administering the petition process. HHS regulations set forth the procedures by which individuals may petition NIOSH to add classes of employees as SECs. *See* 42 C.F.R. §§ 83.6 – 83.19.

8. To be eligible for “full evaluation” by NIOSH, a petition to add a class of employees as an SEC must first satisfy specified informational requirements. *See* 42 C.F.R. § 83.10. If NIOSH’s Office of Compensation Analysis and Support (“OCAS”) determines that a petition does not satisfy the informational requirements, it notifies the petitioner that the petition is unsatisfactory and therefore will not receive a full evaluation. *See* 42 C.F.R. § 83.11(a).

9. When OCAS determines that a petition is unsatisfactory and will not receive a full evaluation, the petitioner may seek an administrative review of OCAS’s determination. *See* 42 C.F.R. § 83.11(c). The NIOSH Director appoints a three-person panel to review the OCAS

determination. 42 C.F.R. § 83.11(d). The panel prepares review summary findings, and the NIOSH Director makes “a final decision as to whether the petition satisfies the requirements.” 42 C.F.R. § 83.11(d).

### **Factual Background**

10. Plaintiff, by letter dated March 19, 2008, petitioned NIOSH to designate a class of workers of the Linde Ceramics Facility in Tonawanda, New York, as an SEC for the dates of employment of November 1, 1947 through December 31, 1953. OCAS assigned the petition tracking number SEC00106.

11. On April 30, 2008, OCAS informed plaintiff that Petition SEC00106 did not meet all of the requirements needed to qualify for a full evaluation.

12. Pursuant to 42 C.F.R. § 83.11(c), plaintiff timely sought review of this determination by requesting in writing a review of OCAS’s determination that Petition SEC00106 did not qualify for a full evaluation.

13. Pursuant to 42 C.F.R. § 83.11(d), Dr. Christine M. Branche, Acting Director of NIOSH, appointed a panel of three HHS personnel to review OCAS’s determination concerning Petition SEC00106. That panel presented its review summary findings to Dr. Branche on or about August 1, 2008, and found that Petition SEC00106 did not qualify as a Special Exposure Cohort.

14. By letter dated August 14, 2008, from Dr. Branche to plaintiff, Dr. Branche stated that “[i]n their review summary, the panel stated that OCAS carefully considered each of the petition bases and provided detailed responses to each point to demonstrate the rationale for denying the petition request,” and that “the panel supported the OCAS conclusion that the petition does not qualify as a Special Exposure Cohort.” Dr. Branche further stated that “[b]ased

on the panel review,” she had “determined” that Petition SEC00106 did not qualify for a full evaluation.

### **Plaintiff’s FOIA Request**

15. On September 2, 2008, plaintiff submitted a request under FOIA for the review summary findings of the three-person panel appointed by Dr. Branche.

16. By letter dated October 21, 2008, a CDC FOIA officer notified plaintiff that the requested records would not be released because they constituted “predecisional internal communications” under 5 U.S.C. § 552(b)(5) and HHS regulation 45 C.F.R. § 5.66(a).

17. Plaintiff timely appealed the denial of her FOIA request by letter dated November 21, 2008.

18. By letter dated January 30, 2009, plaintiff received an acknowledgment of receipt of her administrative appeal.

19. More than twenty working days have passed since defendant acknowledged receipt of plaintiff’s November 21, 2008 appeal. Plaintiff has not received a substantive response to her appeal, and no documents in response to her request have been furnished. *See* 5 U.S.C. § 552(a)(6)(A)(ii), (C)(i).

### **CLAIMS FOR RELIEF**

20. Plaintiff has a statutory right to disclosure of the records requested in her September 2, 2008 request, and there is no legal basis for defendant’s refusal to disclose them.

**WHEREFORE**, plaintiff prays that this Court:

- (1) Declare that defendant’s failure to disclose the records requested by plaintiff is unlawful;
- (2) Order defendant to make the requested records available to plaintiff;

- (3) Award plaintiff her costs and reasonable attorney fees in this action; and
- (4) Grant such further relief as the Court may deem just and proper.

Respectfully submitted,



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October 28, 2009