



*We Never Take Your Business For Granted!*

**FOI/WPA REQUEST**

Case No. 2008-0008A  
Date Rec'd 7-16-08  
Specialist Brown  
Related Case 2008-0231

Washington, DC  
(202) 857 - DEPO

June 19, 2008

**Via Certified Mail**

Mr. Timothy Hagan  
Director, Office of Administration  
FOIA/Privacy Act Officer  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

Baltimore, MD  
(410) 685 - DEPO

Greenbelt, MD  
(301) 345 - DEPO

Re: FOIA/PA 2008-0231 Appeal

Dear Mr. Hagan:

Alexandria, VA  
(703) 684 - DEPO

Please allow this letter to serve as an appeal in the above-referenced matter. For the reasons set forth below, Capital Reporting Company ("Capital") believes that the position of Freedom of Information Act and Privacy Act Officer Russell A. Nichols is erroneous.

Tysons Corner, VA  
(703) 684 - DEPO

By letter dated April 16, 2008, Capital sought information from the U.S. Nuclear Regulatory Commission (the "Agency") pursuant to the Freedom of Information Act. (Exhibit #1.) Specifically, Capital requested a copy of the most recent RFP for RFQ No. ASB 04-232. By letter dated June 5, 2008, that request was denied by Officer Nichols, citing 5 U.S.C. § 522(b)(3), commonly referred to as Exemption 3. In particular, Mr. Nichols noted that 41 U.S.C. 253b (m)(1) prohibited the Agency from disclosing the information Capital requested.

Philadelphia, PA  
(215) 236 - DEPO

New York, NY  
(212) 337 - DEPO

In this instance, the Agency asserts that the information sought is a "proposal in the possession or control of the executive agency [and] may not be made available to any person under section 522 of Title 5." 41 U.S.C. 253b (m)(1). However, the Agency's determination fails to consider 41 U.S.C. 253b (m)(2) which provides that the above referenced restriction does not apply to "any proposal that is set forth or incorporated by reference in a contract entered into between the agency and the contractor that submitted the proposal." 41 U.S.C. 253b (m)(2). Capital's request falls squarely within this statutory provision and, as such, the requested information should be disclosed.

San Francisco, CA  
(415) 499 - DEPO

San Rafael, CA  
(415) 499 - DEPO

Moreover, it has long been settled in the District of Columbia that once an agency decides to withhold information, the Freedom of Information Act requires a reasonable and specific justification for its withholding. Mead Data Central, Inc. v. Department of the Air Force, 566 F.2d 242 (D.C. Cir. 1977). Here, the Agency, through Officer Nichols, merely stated that the disclosure of the requested information was prohibited by 41 U.S.C. 253b (m)(1) without any further explanation. This does not provide a sufficient justification for the withholding.

Oakland, CA  
(415) 499 - DEPO

Toll Free  
(866) 448 - DEPO

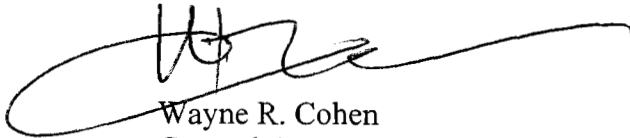


**CAPITAL**  
REPORTING COMPANY

*We Never Take Your Business For Granted!*

For the reasons set forth above, Capital respectfully requests that its appeal be granted and a copy of the most recent RFP for RFQ No. ASB 04-232 be released to Capital.

Very truly yours,



Wayne R. Cohen  
General Counsel

WRC/jd  
Enclosure

---

# Exhibit 1

---



We Never Take Your Business For Granted!

FOIA/PA REQUEST

Case No.: 2008-021  
Date Rec'd: 5-2-08  
Specialist: Sheppard  
Related Case: \_\_\_\_\_

Washington, DC  
(202) 857 - DEPO

April 16, 2008

**Via Certified & 1<sup>st</sup> Class Mail**

Baltimore, MD  
(410) 685 - DEPO

Reginald Sheppard  
Nuclear Regulatory Commission  
11545 Rockville Pike  
Rockville, MD 20852

Greenbelt, MD  
(301) 345 - DEPO

Re: Freedom of Information Act  
FOIA/PA 2008-0187 RFQ ASB 04-232

Alexandria, VA  
(703) 684 - DEPO

Dear Mr. Sheppard,

James Cavanaugh has instructed us to contact you in this matter, if you are not the correct person, please contact me.

Tysons Corner, VA  
(703) 684 - DEPO

By this letter I am hereby requesting under the Freedom of Information Act (FOIA) a copy of the latest RFP for the above referenced RFQ number. If there are any costs associated with the production of this, please contact me at 202-857-3376 or by email at [kwilliams@capitalreportingcompany.com](mailto:kwilliams@capitalreportingcompany.com) and I will arrange for payment.

Philadelphia, PA  
(215) 236 - DEPO

Again, I appreciate your consideration and I look forward to hearing from you soon.

New York, NY  
(212) 337 - DEPO

Best Wishes,

Kristen Williams  
Assistant Director of  
Marketing & Operations

San Francisco, CA  
(415) 499 - DEPO

San Rafael, CA  
(415) 499 - DEPO

KW/ag

Oakland, CA  
(415) 499 - DEPO