UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
WESTERN DIVISION

CITIZENS AWARENESS NETWORK, INC., Plaintiff v. UNITED STATES OF AMERICA and UNITED STATES NUCLEAR REGULATORY COMMISSION, Defendants	Civil Action No. 04-30114-MAP Judge Michael A. Ponser

CITIZENS AWARENESS NETWORK'S COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AGAINST THE UNITED STATES NUCLEAR REGULATORY COMMISSION FOR RELEASE OF A DOCUMENT PURSUANT TO 5 U.S.C. § 552

NATURE OF ACTION

1. This is an action filed under the Freedom of Information Act ("FOIA"), 5 U.S.C. §552, for injunctive and other appropriate relief, and seeking disclosure and release of an agency record that the defendant United States Nuclear Regulatory Commission ["NRC"] improperly withheld from plaintiff Citizens Awareness Network, Inc. ["CAN"].

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(B). This court also has

jurisdiction over this action pursuant to 28 U.S.C. § 1331. Venue lies in this district under 5 U.S.C. § 552(a)(4)(B).

3. CAN is a non-profit environmental organization incorporated in the Commonwealth of Massachusetts and with principal place of business in Shelburne Falls, Massachusetts. CAN made a FOIA request of the NRC through Jonathan M. Block, Attorney at Law, Putney, Vermont. Attorney Block represents CAN in a pending case before the United States Court of Appeals for the First Circuit. Attorney Block made the request to get an NRC document relevant to the Court of Appeals case.

4. Defendant NRC is a federal agency with headquarters in Rockville, Maryland.

PLAINTIFF'S FOIA APPEAL

5. Counsel for CAN submitted a FOIA request (Req. No. 2004-0160) to the NRC via electronic mail on March 15, 2004. *See* copy of the initial request attached hereto as Exhibit 'A'.

6. By form letter dated April 15, 2004 the NRC denied CAN's FOIA request. Copy of NRC's Form 464 Denial of CAN's Initial FOIA Request (April 15, 2004), attached hereto as Exhibit 'B'.

7. CAN filed a timely appeal of the NRC's denial of CAN's FOIA request by letter of April 27, 2004 (docketed with the NRC on April 28, 2004). Copy of Cover Letter for Appeal attached hereto as Exhibit 'C'; Appeal attached hereto as Exhibit 'D'.

8. NRC replied to the appeal by letter from the NRC's Secretary Annette L. Vietti-Cook, stating that, "Without conceding that the NRC is bound by law to grant your appeal, I have decided to make a discretionary release of a portion of this document–the

portion dealing with section 189a." Ms. Vietti-Cook went on to state, "This is a final agency decision." Copy of Letter from Annette Vietti-Cook (May 11, 2004) attached hereto as Exhibit 'E'; copy of released portions and censored portions fo document attached hereto as Exhibit 'F'.

9. The NRC wrongfully withheld information under exemption 5, item 3 (attorney/client privilege). *Compare* CAN's FOIA Appeal, Exhibit 'D' attached hereto, *with* NRC's Letter Partially Granting CAN's FOIA Request, Exhibit 'E' attached hereto, and Document NRC Provided Under Partial Grant of FOIA Request, Exhbit 'F' attached hereto.

10. The NRC's wrongful withholding of part of the requested document was final agency action for purpose of this appeal. *See* Letter from Annette Vietti-Cook (May 11, 2004), Exhibit 'E' attached hereto, stating "This is a final agency decision."

11. The NRC's exercise of discretion in partially withholding the document at issue violates the FOIA..

12. In order to properly comply with the FOIA, the NRC must provide CAN with a copy of the entire document at issue.

RELIEF REQUESTED

WHEREFORE, plaintiff requests this Court offer the following relief on an expedited basis:

A. Provide for expeditious proceedings in this action;

B. Order the NRC to disclose the requested document to the court in its entirety for the Court's *in camera* inspection and review;

C. Upon completion of inspection and review, declare that the NRC violated the FOIA, and order further relief as follows:

1. Order the NRC to disclose the requested record in its entirety and make a complete copy available to plaintiff;

2. Award plaintiff costs and reasonable attorneys fees incurred in obtaining lawful release of the document at issue; and

3. Grant any other relief the Court deems equitable, just and proper under its authority to redress the statutory violation in this case.

Respectfully submitted:

CITIZENS AWARENESS NETWORK, INC.

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