



# RESPONSE TO FREEDOM OF INFORMATION ACT (FOIA) / PRIVACY ACT (PA) REQUEST

2000-0081

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RESPONSE TYPE  FINAL  PARTIAL

REQUESTER

Howard Crystal

DATE APR 18 2000

### PART I. -- INFORMATION RELEASED

- No additional agency records subject to the request have been located.
- Requested records are available through another public distribution program. See Comments section.
- APPENDICES **A** Agency records subject to the request that are identified in the listed appendices are already available for public inspection and copying at the NRC Public Document Room.
- APPENDICES **B** Agency records subject to the request that are identified in the listed appendices are being made available for public inspection and copying at the NRC Public Document Room.
- Enclosed is information on how you may obtain access to and the charges for copying records located at the NRC Public Document Room, 2120 L Street, NW, Washington, DC.
- APPENDICES **A,B** Agency records subject to the request are enclosed.
- Records subject to the request that contain information originated by or of interest to another Federal agency have been referred to that agency (see comments section) for a disclosure determination and direct response to you.
- We are continuing to process your request.
- See Comments.

### PART I.A -- FEES

- AMOUNT \*  You will be billed by NRC for the amount listed.  None. Minimum fee threshold not met.
- \$  You will receive a refund for the amount listed.  Fees waived.

\* See comments for details

### PART I.B -- INFORMATION NOT LOCATED OR WITHHELD FROM DISCLOSURE

- No agency records subject to the request have been located.
- Certain information in the requested records is being withheld from disclosure pursuant to the exemptions described in and for the reasons stated in Part II.
- This determination may be appealed within 30 days by writing to the FOIA/PA Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Clearly state on the envelope and in the letter that it is a "FOIA/PA Appeal."

### PART I.C COMMENTS (Use attached Comments continuation page if required)

SIGNATURE - FREEDOM OF INFORMATION ACT AND PRIVACY ACT OFFICER

*Carol Ann Reed*  
Carol Ann Reed

**RESPONSE TO FREEDOM OF INFORMATION ACT (FOIA) / PRIVACY ACT (PA) REQUEST**

2000-0081

APR 18 2000

**PART II.A -- APPLICABLE EXEMPTIONS**

APPENDICES

**B**

Records subject to the request that are described in the enclosed Appendices are being withheld in their entirety or in part under the Exemption No.(s) of the PA and/or the FOIA as indicated below (5 U.S.C. 552a and/or 5 U.S.C. 552(b)).

- Exemption 1: The withheld information is properly classified pursuant to Executive Order 12958.
- Exemption 2: The withheld information relates solely to the internal personnel rules and procedures of NRC.
- Exemption 3: The withheld information is specifically exempted from public disclosure by statute indicated.
  - Sections 141-145 of the Atomic Energy Act, which prohibits the disclosure of Restricted Data or Formerly Restricted Data (42 U.S.C. 2161-2165).
  - Section 147 of the Atomic Energy Act, which prohibits the disclosure of Unclassified Safeguards Information (42 U.S.C. 2167).
  - 41 U.S.C., Section 253(b), subsection (m)(1), prohibits the disclosure of contractor proposals in the possession and control of an executive agency to any person under section 552 of Title 5, U.S.C. (the FOIA), except when incorporated into the contract between the agency and the submitter of the proposal.
- Exemption 4: The withheld information is a trade secret or commercial or financial information that is being withheld for the reason(s) indicated.
  - The information is considered to be confidential business (proprietary) information.
  - The information is considered to be proprietary because it concerns a licensee's or applicant's physical protection or material control and accounting program for special nuclear material pursuant to 10 CFR 2.790(d)(1).
  - The information was submitted by a foreign source and received in confidence pursuant to 10 CFR 2.790(d)(2).
- Exemption 5: The withheld information consists of interagency or intraagency records that are not available through discovery during litigation. Applicable privileges:
  - Deliberative process: Disclosure of predecisional information would tend to inhibit the open and frank exchange of ideas essential to the deliberative process. Where records are withheld in their entirety, the facts are inextricably intertwined with the predecisional information. There also are no reasonably segregable factual portions because the release of the facts would permit an indirect inquiry into the predecisional process of the agency.
  - Attorney work-product privilege. (Documents prepared by an attorney in contemplation of litigation)
  - Attorney-client privilege. (Confidential communications between an attorney and his/her client)
- Exemption 6: The withheld information is exempted from public disclosure because its disclosure would result in a clearly unwarranted invasion of personal privacy.
- Exemption 7: The withheld information consists of records compiled for law enforcement purposes and is being withheld for the reason(s) indicated.
  - (A) Disclosure could reasonably be expected to interfere with an enforcement proceeding (e.g., it would reveal the scope, direction, and focus of enforcement efforts, and thus could possibly allow recipients to take action to shield potential wrongdoing or a violation of NRC requirements from investigators).
  - (C) Disclosure would constitute an unwarranted invasion of personal privacy.
  - (D) The information consists of names of individuals and other information the disclosure of which could reasonably be expected to reveal identities of confidential sources.
  - (E) Disclosure would reveal techniques and procedures for law enforcement investigations or prosecutions, or guidelines that could reasonably be expected to risk circumvention of the law.
  - (F) Disclosure could reasonably be expected to endanger the life or physical safety of an individual.
- OTHER (Specify)

**PART II.B -- DENYING OFFICIALS**

Pursuant to 10 CFR 9.25(g), 9.25(h), and/or 9.65(b) of the U.S. Nuclear Regulatory Commission regulations, it has been determined that the information withheld is exempt from production or disclosure, and that its production or disclosure is contrary to the public interest. The person responsible for the denial are those officials identified below as denying officials and the FOIA/PA Officer for any denials that may be appealed to the Executive Director for Operations (EDO).

DENYING OFFICIAL	TITLE/OFFICE	RECORDS DENIED	APPELLATE OFFICIAL		
			EDO	SECY	IG
Joseph R. Gray	Associate General Counsel for Licensing and Regulations	Appendix B		<input checked="" type="checkbox"/>	

Appeal must be made in writing within 30 days of receipt of this response. Appeals should be mailed to the FOIA/Privacy Act Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, for action by the appropriate appellate official(s). You should clearly state on the envelope and letter that it is a "FOIA/PA Appeal."

**APPENDIX A  
RECORDS ALREADY AVAILABLE AT THE PDR**

<u>NO.</u>	<u>DATE</u>	<u>ACCESSION NUMBER</u>	<u>DESCRIPTION/(PAGE COUNT)</u>
1.	1/5/00	ML003675112	Memorandum to Chairman Meserve et al., from A Vietti-Cook, Subject: Non-Sunshine Discussions (1 page)
2.	1/13/00	ML003675117	Memorandum to the File from A Vietti-Cook, Subject: Staff Requirements - COMSECY-00-0001 Non-Sunshine Act Discussions (1 page)

**APPENDIX B  
RECORDS BEING WITHHELD IN PART**

<b><u>NO.</u></b>	<b><u>DATE</u></b>	<b><u>DESCRIPTION/(PAGE COUNT)/EXEMPTIONS</u></b>
1.	9/10/99	E-Mail from P Crane to C Holzle et al., Subject: Procedures for Non-Sunshine Discussions (2 pages) <b>EX. 5 ATTORNEY-WORK PRODUCT</b>



UNITED STATES  
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

COMSECY-00-0001

January 5, 2000

MEMORANDUM TO: Chairman Meserve  
Commissioner Dicus  
Commissioner Diaz  
Commissioner McGaffigan  
Commissioner Merrifield

FROM: Annette Vietti-Cook, Secretary /RA/

SUBJECT: NON-SUNSHINE ACT DISCUSSIONS

In the Federal Register Notice dated May 4, 1999, which indicated that the Commission intended to implement a final rule issued in 1985 regarding Non-Sunshine Act discussions among three or more Commissioners, the Commission stated that it would maintain a record of the date and subject of, and participants in, any scheduled Non-Sunshine Act discussions. It also indicated that after a six-month period, the Commission would revisit the usefulness of the record-keeping practice. To assist in the record-keeping process SECY developed a simple short form to capture the required information. During the six-month period with implementation beginning July 1, the Commission held two non-Sunshine Act discussions (Hurricane Preparedness Issues (9/15/99) and Media Streaming (9/22/99)). Unless these types of discussions increase dramatically, record-keeping would not be a burden for SECY staff to maintain.

Although record-keeping clearly adds to the formality of these types of meetings which may detract from the intent of the Commission in holding such discussions, it could also prove a useful historical record of these discussions. On balance, I recommend that the Commission continue the current practice for recording Non-Sunshine Act discussions.

SECY please track.

cc: OGC  
CIO  
CFO  
EDO

ML003675112

A/1



UNITED STATES  
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

January 13, 2000

MEMORANDUM TO THE FILE

FROM: Annette L. Vietti-Cook, Secretary /s/

SUBJECT: STAFF REQUIREMENTS - COMSECY-00-0001 - NON-SUNSHINE ACT DISCUSSIONS

The Commission has approved the recommendation that the Office of the Secretary would continue the current practice to keep records for Non-Sunshine Act discussions.

cc: Chairman Meserve  
Commissioner Dicus  
Commissioner Diaz  
Commissioner McGaffigan  
Commissioner Merrifield  
EDO  
OGC  
CIO  
CFO  
OCA  
OIG  
PDR  
DCS

ML003675117

A/2

**From:** Peter Crane, *06860*  
**To:** Catherine Holzle, John Cordes, Sandy Joosten, T...  
**Date:** Fri, Sep 10, 1999 10:19 AM  
**Subject:** Procedures for non-Sunshine Act discussions

*SEC9*

*EX5  
attty  
w...  
prod...*

Attached is a draft form for keeping records of non-Sunshine Act discussions.



*B11*

## Record of Non-Sunshine Act Discussions

**Caution to Participants:** As the Commission explained in its Federal Register notices announcing its intention to implement its 1985 rule change regarding the Sunshine Act, non-Sunshine Act discussions among three or more Commissioners are appropriate and legally permissible only when discussions are preliminary, informal, informational, or "big picture." If such a discussion begins to focus on discrete proposals or issues, such as to cause or be likely to cause individual participating members to form reasonably firm positions regarding matters pending or likely to arise before the agency, the discussion should be halted, and continued only in the context of a Sunshine Act meeting, scheduled in accordance with the requirements of that statute.

Date:

Time begun:

Time ended:

Persons present:

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Topic(s) discussed:

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