

January 16, 2001

Mr. Jim Harrell
General Manager - East Coast
Numerical Applications, Inc.
1210 SE Maynard Road
Suite 202
Cary, NC 27511

IN RESPONSE REFER
TO FOIA/PA 2001-001A
(FOIA/PA 2000-0351)

Dear Mr. Harrell:

I am responding to your letter of October 19, 2000, in which you appealed Ms. Carol Ann Reed's response of October 10, 2000, to your Freedom of Information Act (FOIA) request (FOIA-2000-0351). Ms. Reed's response denied release of the source code for the RADTRAD computer code.

Acting on your appeal, I have carefully reviewed the record in this case and have determined that the source code will continue to be withheld from public disclosure pursuant to Exemption 2 of the FOIA (5 U.S.C. 552(b)(2)) and 10 CFR 9.17(a)(2) of the Commission's regulations because releasing it would circumvent agency regulations.

In response to your concern, Exemption 2 of the FOIA is not used solely to protect internal personnel rules and procedures. An additional category of information covered by Exemption 2 includes documents of a more substantial nature and used for predominantly internal purposes, the disclosure of which would risk the circumvention of a statute or agency regulation. Windels, Marx, Davies & Ives. v Dept of Commerce, 576 F. Supp. 405, 411-414 (D.D.C. 1983) (protecting computer program used by regulatory agency under Exemption 2).

The RADTRAD code, including its source code are used predominantly by NRC for internal agency purposes because the code is an essential part of the agency's regulatory program. Specifically, the code is used by NRC staff to independently confirm licensee safety analyses in accordance with 10 CFR Part 100. NRC only releases the RADTRAD code, including its source code, to interested members of the public for a fee, and requires the code recipient to sign a code release agreement which among other terms, prohibits further distribution of the code without NRC's permission. Recipients of the code are required under the code release agreement to report errors to the NRC so that errors can be corrected. Uncontrolled release of the RADTRAD code would compromise the NRC's ability to independently confirm licensee safety analyses and to promulgate error corrections to users, and could expose the agency to liability for uncorrected errors in RADTRAD that result in safety problems. Accordingly, uncontrolled access to the code by licensees regulated by NRC would create a significant risk that agency regulatory efforts will be thwarted as the agency's ability to perform independent confirmatory safety analyses would be undermined.

Mr. Harrell

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For the remainder of your October 19, 2000, letter, please note that a FOIA request must describe records or documents sought. FOIA neither requires an agency to answer questions or to create documents or opinions in response to an individual's request for information. Hudgins v. I.R.S., 620 F. Supp. 19, 21 (D.D.C. 1985).

This is a final agency decision. As set forth in the FOIA (5 U.S.C. 552(a)(4)(B)), judicial review of this decision is available in a district court in the United States or in the district in which you reside or have your principal place of business or in the District of Columbia.

Sincerely,

/RA/

Carl J. Paperiello, Deputy Executive
Director for Materials, Research and
State Programs

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