

BLUE RIDGE ENVIRONMENTAL DEFENSE LEAGUE

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July 13, 2001

FOIA/Privacy Act Officer
U.S. Nuclear Regulatory Commission
Mail Stop T-6 D8
Washington, DC 20555-0001
Facsimile: 301-415-5130

FOIA REQUEST
Case No: 2001-018A
Date Recd: 7-16-2001
Action Off: Brown
Related Cases: (2001-0243)

Dear FOIA Officer:

This is a Freedom of Information Act Appeal.

On behalf of the Blue Ridge Environmental Defense League, I am appealing the Nuclear Regulatory Commission's (NRC) June 14, 2001 Final Response to FOIA 2001-0243 regarding the Office of International Program's *Weekly FSU Status Meetings*. The appeal is being made on two counts:

- improper use of Exemption 5.
- insufficient search.

Insufficient Search.

The original FOIA request specified ALL summaries of *Weekly FSU Status Meeting(s)*, and then identified 5 meetings for which no documents were requested. Therefore, the response should have addressed all meetings before September 7, 2000 and all meetings after November 29, 2000. The NRC final response only contained 6 heavily redacted documents prior to September 7, 2000.

BREDL is requesting that a search be conducted for all meetings that occurred after November 29, 2000. If there were no meetings after this time, an answer to that effect would be sufficient.

Improper Use of Exemption 5.

Six meetings summaries were provided to BREDL in which the entire text except generic headings and list of attendees was redacted under Exemption 5 of FOIA, in this case the "deliberative process" rule:

"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..."

Basis for appeal:

1. NRC meeting summaries are routinely released to the public and are intended to be written for public dissemination. For example, see the NRC's Mixed Oxide Fuel web site in which more than 10 meeting summaries are provided.
2. Five different *Weekly FSU Status Meeting* summaries (defined as the only meeting summaries not being requested in the original FOIA) were made publicly available on the NRC's ADAMS library system in March 2001. Therefore, NRC established a precedent in which *Weekly FSU Status Meeting* summaries were released in their entirety to the public domain, and this information was available outside of litigation.

It appears that only when those summaries that were not placed in ADAMS were requested through FOIA did the NRC consider this standard meeting format and content to be "deliberative in nature."

3. Attached to this FAX is the November 29, 2000 meeting summary (dated November 30, 2000). There is no evidence that the information in this document (or the other four that are in BREDL's possession because they were considered public documents) has or will inhibit NRC staff from a "frank exchange of ideas essential to the deliberative process."
4. The facts in the five publicly available weekly summaries are not inextricably intertwined. At a minimum, NRC must provide the factual information that was requested through FOIA.

BREDL requests that the NRC rule that records were withheld through the improper application of Exemption 5 and that all records be provided in their entirety.

Please contact me if you have any questions regarding this appeal. This appeal is also being sent via U.S. Postal Service 1st Class mail.

Sincerely,



Don Moniak
Community Organizer
Blue Ridge Environmental Defense League

Attached:

- November 30 summary of November 29, 2001 meeting
- June 14, 2001 Final Response Cover Letter and Item #1 dated August 25, 2000.

Freedom of Information Act Appeal

Attachment

November 30, 2000

NOTE TO: Janice Dunn Lee, Director
Office of International Programs

FROM: Elizabeth L. Doroshuk /RA/
Office of International Programs

SUBJECT: MEETING SUMMARY - WEEKLY FSU STATUS MEETING, NOVEMBER 29,
2000

Purpose:

The purpose of this note is to document the results of the weekly FSU Status Meeting, held on Wednesday, November 29, 2000. A list of attendees is included as an Attachment.

Discussion:

Janice Dunn Lee began the meeting by noting that recently she held a discussion with Warren Stern, US Department of State (DOS), about the need for an independent review and assessment of the Ukrainian regulator's capability to support licensing Rovno 2/Khmelnytsky 4. One alternative they discussed might be to provide funds to Riskaudit and Sciencetech for developing a scoping report that could be used by the European Bank for Reconstruction and Development (EBRD) in consideration of a loan for R4/K2 construction completion. The matter is still considered "unresolved," she said.

Janice then asked the group to focus its attention on the annual meetings to be held with GAN here at the NRC next week. Gordon Fowler provided the group with a draft memo to the Commissioners highlighting the arrangements that have been made, and anticipated topics of discussion. He noted that Mr. Gutsalov, First Deputy Director, GAN is expected to request more inspection related assistance activities next year. Janice emphasized that it will be important to include NRC senior staff representatives who have responsibility for implementing each of the program activities in next week's meetings. For example, Mike Weber should be invited to the MOX and Core Conversion project discussions, and Jon Johnson may want to participate in the Licensing and Inspection Program discussions. Recognizing that the responsibility for implementing nuclear safety assistance activities in Russia is divided not only among various NRC program offices, but also among several U.S. Government agencies, Janice suggested that all of the NRC's nuclear safety assistance activities in Russia, regardless of which agency has the lead, should be addressed in the Memorandum of Meeting (MOM) that will be finalized as a result of next week's meetings.

The group also discussed plans for the proposed interagency roundtable discussion with Mr. Gutsalov to be held on Thursday, December 7, 2000. It was recognized that the roundtable will provide a unique opportunity for senior U.S. Government officials to explore the implications of

the legislation recently proposed in the Russian Duma (Parliament) which would transfer GAN's licensing authority to Minatom. The legislation could have far-reaching implications for the safe conduct of nuclear activities in Russia, and therefore for U.S. nuclear assistance to Russia. It is also recognized, though not all agree, that the interagency discussions that would take place during the roundtable could highlight potential program changes that might be expected as a result of the transfer of responsibility, and may in fact help lay the groundwork for policy considerations in the new administration.

Donna-Marie continued the meeting briefly mentioning a recent verbal request from SUJB of the Czech Republic for help and advice in responding to Austrian criticisms of the Temelin startup. Janice cautioned that the matter is probably best handled between the two governments themselves.

Jack mentioned that he is planning to debrief Janice on the results of the meeting he attended in Kiev to discuss the status of the SIP program. One general conclusion reached during the meeting, he said, was that regulatory issues may need to be addressed sooner than expected.

Jack also mentioned that he is developing FY 2002 budget projections for FTE usage in implementing FSU nuclear safety assistance activities. He reminded the group that it is still necessary to go through the formal budgeting process to develop estimates for these resource needs, though not as controversial as it was several years ago.

Before adjourning, Janice asked the group members to develop a list of possible questions that could be raised during the roundtable discussion with GAN next week.

the legislation recently proposed in the Russian Duma (Parliament) which would transfer GAN's licensing authority to Minatom. The legislation could have far-reaching implications for the safe conduct of nuclear activities in Russia, and therefore for U.S. nuclear assistance to Russia. It is hoped that the interagency discussions that could take place during the roundtable would highlight potential program changes that might be expected as a result of the transfer of responsibility, and may in fact help lay the groundwork for policy considerations in the new administration.

Donna-Marie continued the meeting briefly mentioning a recent verbal request from SUJB of the Czech Republic for help and advice in responding to Austrian criticisms of the Temelin startup. Janice cautioned that the matter is probably best handled between the two governments themselves.

Jack mentioned that he is planning to debrief Janice on the results of the meeting he attended in Kiev to discuss the status of the SIP program. One general conclusion reached during the meeting, he said, was that regulatory issues may need to be addressed sooner than expected.

Jack also mentioned that he is developing FY 2002 budget projections for FTE usage in implementing FSU nuclear safety assistance activities. He reminded the group that it is still necessary to go through the formal budgeting process to develop estimates for these resource needs, though not as controversial as it was several years ago.

Before adjourning, Janice asked the group members to develop a list of possible questions that could be raised during the roundtable discussion with GAN next week.

Attachment: List of Attendees

DISTRIBUTION:

OIP r/f

DOCUMENT NAME: C:\fsuweeklysummary#11.wpd

*concurrent

OFFICE:	OIP/A	OIP/A	OIP/A	OIP/A
NAME:	*EDoroshuk	MCarter	DMPerez	GFowler
DATE:	12/5/00	12/7/00	12/7/00	12/8/00

OFFICE:	OIP/A	OIP/DD	OIP/D
NAME:	*JRamsey	*RHauber	*JDunnLee
DATE:	12/7/00	12/11/00	12/11/00

WEEKLY FSU MEETING

NOVEMBER 29, 2000

LIST OF ATTENDEES

1. Gordon Fowler
2. Donna-Marie Perez
3. Jack Ramsey
4. Mary Carter
5. Janice Dunn Lee
6. Beth Doroshuk

ATTACHMENT

From: donmoniak@earthlink.net
To: foia@nrc.gov
Date sent: Fri, 27 Apr 2001 22:31:45 -0400
Subject: FOIA Request: "WEEKLY FSU STATUS MEETING" Summaries
Copies to: donmoniak@earthlink.net
Priority: normal

April 27, 2001

FOIA/Privacy Act Officer
U.S. Nuclear Regulatory Commission
Mail Stop T-6 D8
Washington, DC 20555-0001
Facsimile: 301-415-5130

Dear FOIA Officer:

This is a Freedom of Information Act Request.

On behalf of the Blue Ridge Environmental Defense League, I am requesting the following information:

1. A copy of all meeting summaries for Office of International Programs "WEEKLY FSU STATUS MEETING"(s) with the exception of the following meetings:

- a. September 7, 2000 meeting (10/18/00 Summary--file attached for NRC FOIA reference)
- b. October 4, 2000 meeting (10/19/00 Summary)
- c. October 18, 2000 meeting (10/23/00 Summary)
- d. November 7, 2000 meeting (11/30/00 Summary)
- e. November 29, 2000 meeting (11/30/00 Summary)

Since the summary for the September 7, 2000 meeting has a document name of :
C:\fsuweeklysummary#7.wpd , there should be *at least* 6 meeting summaries for meetings held prior to September 7, 2000. BREDL has no way of determining how often meetings were held after November 29, but assumes it was not the last meeting and that summaries should be available for the period December 1, 2000 to April 27, 2001.

There should be no fees for this request, as the meeting summaries are in easily retrievable and well-organized formats at the Office of International Programs; the average length of the documents are only about 5 pages and there should not be more than 15-20 documents.

To reduce costs to NRC and help it better meet paper reduction regulations, BREDL is willing to accept the following responses:

- a. Directly email electronic copies of files to donmoniak@earthlink.net;
- b. Placing the documents directly on the NRC OIP Web Site; and/or
- c. Provide ADAMS identification numbers so BREDL can retrieve the documents from the ADAMS library.

Sincerely,

Don Moniak

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Don Moniak
Organizer, Aiken Office
Blue Ridge Environmental Defense League
P.O. Box 3487
Aiken, SC 29802-3487
(803) 644-6953
Fax: (803) 644-7369
donmoniak@earthlink.net

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

2001-0243

JUN 14 2001

APPENDICES
A

PART II.A -- APPLICABLE EXEMPTIONS

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
Janice Dunn Lee	Director, Office of International Programs	Appendix A	✓		

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."

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5.4

August 25, 2000

NOTE TO: Janice Dunn Lee, Director
Office of International Programs

FROM: Elizabeth L. Doroshuk
Office of International Programs

SUBJECT: MEETING SUMMARY - WEEKLY FSU STATUS MEETING, AUGUST 17, 2000

Purpose:

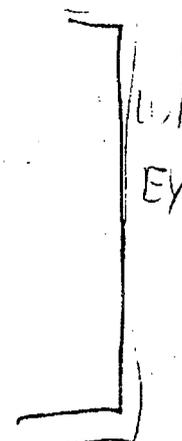
The purpose of this note is to document the results of the weekly FSU Status Meeting, held on Thursday, August 17, 2000. A list of attendees is included as an Attachment.

clear

EX5

A/)

EX. 5



Attachment: List of Attendees

DISTRIBUTION via/ADAMS:

OIP r/f

DOCUMENT NAME: G:\eld\Commission Papers\fsuweeklysummary#6.wpd

OFFICE:	OIP/A	OIP/A	OIP/A	OIP/A
NAME:	EDoroshuk	MCarter	DMPerez	GFowler
DATE:	8/ /00	8/ /00	8/ /00	8/ /00

OFFICE:	OIP/DD	OIP/D
NAME:	RHauber	JDunnLee
DATE:	8/ /00	8/ /00

WEEKLY FSU MEETING

August 17, 2000

LIST OF ATTENDEES

1. Gordon Fowler
2. Donna-Marie Perez
3. Jack Ramsey
4. Beth Doroshuk

ATTACHMENT