

From: William Michael FitzGibbon, Sr.
To: GWIA:TPoindex@[winston.com]
Date: 1/2/01 1:18PM
Subject: Re: Promised information

Sorry that I omitted the fact that I received the faxed info. Thanks.

>>> "Thomas Poindexter " <TPoindex@winston.com> 01/02 1:05 PM >>>
Thanks for the feedback....I appreciate the difficulty of your task and the balancing between addressing the allegor's issues and getting on with business....let me know if you need anything else....Please let me know when you have a rough issuance date for your report...take care....p.s....I assume that you also received the faxed procedures and e-mail excerpt???

T. C. Poindexter
Winston & Strawn
1400 L. St., N.W.
Washington, DC 20005
202-371-5748

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>>> "William Michael FitzGibbon, Sr." <WMF@nrc.gov> 01/02/01 08:12AM >>>
Tom, I hope you had a great holiday. Thank you for the response. One =
comment regarding the introductory statement. My investigation did not =
focus on MURR's refusal to re-hire the allegor

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In fact, that was not the =
allegor's primary concern. As I'm sure you are aware, the NRC desires a =
licensee work climate that is condusive to a safety conscience work =
environment. My inquiries were directed at determining 1) if the allegor =
was retaliated against for raising safety concerns regarding
and 2) if the allegor was the subject o

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The end result should be a determination as to whether or not =
there is a nexus between MURR's actions regarding the allegor and any =
protected activity on the allegor's part.=20

>>> "Thomas Poindexter " <TPoindex@winston.com> 12/28 3:40 PM >>>
Mike, attached is a memo with the requested information. I also will be =
faxing you a series of e-mail transmissions referred to in the memo. =
Please call, e-mail, or page with any questions...I hope you are having a =
good holiday season.

T. C. Poindexter
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Washington, DC 20005
202-371-5748

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E/6

Winston & Strawn

External
Memorandum

1400 L Street, N.W., Washington, DC 20005-3502
202-371-5700

35 W. Wacker Drive
Chicago, IL 60601-9703
312-558-5600

200 Park Avenue
New York, NY 10166-4193
212-294-6700

444 Flower Street
Los Angeles, CA 90071-
2911
213-615-1700

43 Rue du Rhone
1204 Geneva, Switzerland
41-22-317-75-75

21 Avenue Victor Hugo
75116 Paris, France
33-1-53-64-82-82

To: William Michael FitzGibbon
From: Thomas C. Poindexter
Date: December 26, 2000
Re: Response to Additional Inquiry

Mike:

I am providing the following introductory statement to you from Winston & Strawn as counsel to the University of Missouri regarding this matter. I believe that you should be aware of the firm's thoughts, in that, this matter appears to be taking on a life of its own. This use of the NRC by [redacted] does not appear to be fair to MURR and runs a significant risk, in our view, of completely skewing any hiring or re-hiring policies that may exist at the University.

As an introductory matter, please note that the activities currently under review by the Nuclear Regulatory Commission clearly do not involve a University action with a demonstrated nexus to any protected activity. The genesis disagreements between [redacted] and the University over his claimed [redacted] are not relevant here. In fact, current issues involve whether [redacted] will continue as a MURR employee or contractor and associated rights in this regard. Furthermore, we do not believe that there is any credible evidence that would demonstrate a continuing act of [redacted] differences of opinion.

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W & S does not believe that past activities indicate that [redacted] as prohibited by 10 C.F.R. 50.7. From a pure schedular perspective, the [redacted] issue was raised after any arguable adverse activities occurred regarding [redacted]. From that perspective, [redacted] was a logistical impossibility. Furthermore, W&S believes that MURR has reasonably demonstrated that certain MURR activities occurring subsequent to the [redacted] issue involve, at worst, potentially inartful wording. However, it is equally clear based on the interviews and clarifications to the record that that past MURR activities regarding [redacted] did not involve any [redacted]

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Equally important is the fact that MURR has made a reasonable showing that actions subsequent to the [redacted] issue, which occurred regarding [redacted] had a reasonable basis. Again, [redacted] appears to be seeking special treatment and appears to be attempting to obtain a result without demonstrating or documenting the basis for his request. Different minds may disagree regarding whether [redacted] should or should not have been re-hired, but it is clear from a legal perspective that the University does not have an obligation to re-hire anyone who retires. [redacted] does not possess any form of the inalienable rights as he appears to be claiming regarding his re-hiring at MURR.

It would be fair to state that current [redacted] related issues involve points of disagreement between MURR officials and [redacted] regarding his terms of engagement and continuing work with the university. In that vein, [redacted] appears to be trying to use the NRC as his arbiter of these issues in an inappropriate manner. We respectfully request that the NRC not inadvertently allow itself to become his re-employment terms negotiator. It continues to be the right of the University to hire or not hire any individual it pleases so long as the decision does not violate law. Issues involving employee hiring should not be "negotiated" by the NRC and as such, should be left to the administrative process and its associated appeals. The University must not be handcuffed into favorable special treatment of a former employee just because the individual has learned that raising a [redacted] concern can cast a cloud over all University actions with which he disagrees.

With the above considerations, please note the following response to your specific questions. The following responses have been reviewed and concurred with by appropriate MURR officials.

1. It initially appears that [redacted] will be performing activities similar to [redacted] yet they have or will have unescorted access. As such, please explain why [redacted] is not being treated differently and more importantly, unfairly.

Response:

Please note that the attached [redacted] e-mail from [redacted] refers to the "petition" for unescorted access for [redacted] for the [redacted] experiment [redacted]

It is noteworthy that [redacted] also provided a six point justification for why this access is necessary. We are unaware of any similar and documented justification by [redacted] or his spokespersons regarding his request for unescorted access. In summary, [redacted] requests have been in the form of demands and assumed rights. Upon his documented delineation of why unescorted (versus escorted) access is necessary (versus desired), MURR will provide a complete and thoughtful consideration of his request.

As an ancillary matter, [redacted] informs me that [redacted] will not receive full unescorted access. In that regard, there likely will be a granting of limited unescorted and escorted access depending on the activity. In this regard, note [redacted]

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response e-mail to [redacted] which states that "I believe that we can work something out, but it will be somewhat more complicated than simple 'unescorted access.'"

2. Please note the letter dated [redacted] which states, among other things, that "we can arrange for escorted access to be provided to either or both individuals," referring to [redacted] in part. Please explain why a decision has been made at this time which appears to preclude [redacted] from unescorted access. If such a decision has been made, it would appear to be premature and potentially inconsistent treatment.

Response:

Similar to the response to Issue 1, a decision has not yet been made regarding [redacted] level of access. However, it is significant that to date, [redacted] has not provided MURR with a written basis for his request for unescorted access. MURR does not believe that [redacted] should be treated special just because he is raising other issues. [redacted] has been informed more than once that a justification for the access level must be provided; a simple demand is not considered to be justification. MURR anticipates at this time that [redacted] also could be provided a level of access that may include limited unescorted access and some escorted access depending on the task. He will be provided the same level of consideration as any other requester.

3. Similar to the question above, please note why a [redacted] letter from [redacted] appears to pre-conclude that a decision has been made not to grant [redacted] unescorted access. Refer specifically to the statement, "Finally, I note what is probably a typographical error in your November 14, 2000 letter. In the last sentence you mentioned "unescorted access." What will be actually under discussion is "escorted access."

Response:

What [redacted] was referring to is the combination of "access" described above. A decision has not yet been made regarding [redacted] level of access. As previously noted, that decision cannot be made until [redacted] provides his justification for requesting access (at any level).

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