

FOIA-2001-0210

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

RESPONSE TYPE  FINAL  PARTIAL

REQUESTER

Stephen M. Kohn

DATE

SEP 21 2001

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  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  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.  
**H,I,J,**
- 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  Agency records subject to the request are enclosed.  
**I,J**
- 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)

The records identified on Appendix H are copyrighted and are, therefore, not being provided. Please contact the NRC Public Document Room at (301) 415-4737 if you wish to review the records.

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**

2001-0210

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

APPENDICES  
**J, K, L**

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
Dr. Frank J. Congel	Director, Office of Enforcement	Appendices J & K	✓		
Guy P. Caputo	Director, Office of Investigations	Appendix L	✓		

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 H  
RECORDS BEING RELEASED IN THEIR ENTIRETY  
(If copyrighted identify with \*)**

<b><u>NO.</u></b>	<b><u>DATE</u></b>	<b><u>DESCRIPTION/(PAGE COUNT)</u></b>
1.	11/06/99	* <u>Daily Herald Chicago</u> newspaper article entitled, "ComEd fined \$110,000 in case of worker who raised safety issues"; and <u>Business</u> article entitled, "ComEd gets slapped with \$110,000 fine." (1 page)
2.	11/06/99	* <u>Chicago Tribune</u> newspaper article entitled, "Agency fines ComEd \$110,000 over whistle-blower's treatment."

**APPENDIX I**  
**RECORDS BEING RELEASED IN THEIR ENTIRETY**  
**(If copyrighted identify with \*)**

<b><u>NO.</u></b>	<b><u>DATE</u></b>	<b><u>DESCRIPTION/(PAGE COUNT)</u></b>
1.	No date	ComEd Nuclear Operations Division Resource Guide entitled "Commit For Results." (92 pages)
2.	No date	Enclosure 2: Summary of Office of Investigation (OI) Report No. 3-1998-012. (1 page)
3.	10/29/99	Office of Enforcement Notification of Significant Enforcement Action - EA 98-518. (2 pages)

**APPENDIX J  
RECORDS BEING WITHHELD IN PART**

<u>NO.</u>	<u>DATE</u>	<u>DESCRIPTION</u>
1.	Undated	Enclosure 2 - Summary of Office of Investigation(OI) Report No. 3-1998-012. (1 page) <b>EX. 7C</b>
2.	Undated	Enclosure 2 - Summary of Pertinent Information - Zion Discrimination Case. (1 page) <b>EX. 7C</b>
3.	Undated	Staff note to F. Miraglia providing outline of case. <b>Withhold portions under Exemption 5, Deliberative Process as well as Attorney-Client Privilege</b> (3 pages)
4.	Undated	IA Worksheet, "Factors for the Sanction in Actions Against Individuals" <b>Withhold portions in accordance with Exemption 7(c).</b> (5 pages)
5.	Undated	Note to file documenting a briefing for the Commissioner's Assistants regarding Zion case. <b>Withhold portions in accordance with Exemption 5</b> (1 page).
6.	11/6/98	EA Request & Enforcement Strategy Form for Zion Generating Station, documents that staff disagreed with OI and a disagreement memo should be prepared (1 page). <b>Withhold portions under Exemption 5, Deliberative Process.</b>
7.	5/11/1999	EA Request & Enforcement Strategy Form for Zion Generating Station, documents decision to conduct a predecisional enforcement conference (1 page). <b>Withhold portions under Exemption 5, Deliberative Process.</b>
8.	7/7/1999	ComEd handout for predecisional enforcement conference. <b>Withhold portions in accordance with Exemption 7(c).</b> (17 pages)
9.	8/17/1999	E-mail from Stanley Rothstein to Richard Borchardt providing view of a certain OGC attorney as well as schedule issues. <b>Withhold portions under Exemption 5, Attorney-Client Privilege.</b> (1 page)
10.	1/4/2000	Letter from R. Borchardt to R. Krich forwarding redacted copy of OI Report 3-1998-012. OI report not included. <b>Withhold portions in accordance with Exemption 7(c).</b> (2 pages)
11.	2/3/2000	Letter from R. Krich to Director, Office of Enforcement, transmitting response to NOV and proposed civil penalty, including affidavit of J. Brons (dated 1/19/2000) (30 pages) <b>The affidavit contains information withheld in accordance with Exemption 7(c).</b>

12. Undated Draft unsigned letter to O. Kingsley from F. Miraglia, released, with attachments: Draft Order Imposing Civil Monetary Penalty, released, and Evaluation and Conclusion (withheld). (7 pages released, 2 pages withheld **EX. 5**)

**APPENDIX K  
RECORDS BEING WITHHELD IN THEIR ENTIRETY**

<u>NO.</u>	<u>DATE</u>	<u>DESCRIPTION</u>
1.	Undated	Review of OI/Staff Disagreement, appears to be OE Enforcement Specialist's opinion of the case. <i>Ex 5, Deliberative Process, and Ex. 7C.</i> (2 pages)
2..	Undated	OGC comments on proposed enforcement action. <i>Ex 5, Attorney-Client Privilege and Ex. 7C.</i> (17 pages)
3.	Undated	Comments on OI rebuttal, appear to be OE position and response to OI's rebuttal in preparation of a draft Commission paper. <i>Ex 5, Deliberative Process, and Ex 7C.</i> (2 pages)
4.	11/5/1998	E-mail between S. Chidakel and B. Berson discussing various legal aspects of case. <i>Ex 5, Attorney-Client Privilege</i> (2 pages)
5.	11/6/1998	E-mail between S. Chidakel and B. Berson providing followup of a point of discussion in 11/5/1998 e-mail. <i>Ex 5, Attorney-Client Privilege</i> (1 page)
6.	4/20/1999	Note from R. Borchardt to G. Caputo and L. Chandler forwarding draft Commission paper for comment. <i>Ex 5, Deliberative Process, and Ex. 7C.</i> (8 pages)
7.	7/20/1999	Electronic mail from B. Jorgensen transmitting a "Statement of Professional Opinion." Statement is attached. <i>Ex 5, Deliberative Process.</i> (4 pages)
8.	8/24/1999	Post-Enforcement Conference Coordination Meeting Agenda including "Pros and Cons" of the case. <i>Ex 5, Deliberative Process, and Ex. 7C.</i> (2 pages)
9.	8/24/1999	E-mail from Brent Clayton to Geoffrey Cant outlining the case with personal opinions included. <i>Ex 5, Deliberative Process, and Ex. 7C.</i> (2 pages)
10.	9/21/1999	Draft enforcement action package from J. Dyer to R. Borchardt for ComEd. <i>Ex 5, Deliberative Process, and Ex. 7C</i> (19 pages)
11.	3/16/2000	E-mail from J. Luehman to G. Cant discussing case theory and future standard. <i>Ex 5, Deliberative Process.</i> (1 page)
12.	4/20/2000	Mail routing slip, attaching electronic mail from C. Weil to G. Cant forwarding Region III draft Order Imposing Civil Penalty. <i>Ex 5, Deliberative Process.</i> (9 pages)

13. 5/24/2000 Draft unsigned letter from F. Miraglia to O. Kingsley, attaching draft Order Imposing Civil Monetary Penalty, OGC comments. *Ex 5, Attorney-Client Privilege.* (8 pages)

**APPENDIX L  
RECORDS BEING WITHHELD IN THEIR ENTIRETY**

<b><u>NO.</u></b>	<b><u>DATE</u></b>	<b><u>DESCRIPTION/(PAGE COUNT)/EXEMPTIONS</u></b>
FOR 3-98-012 1.	Undated	Comments on OI Rebuttal by D. Murphy, OI (2 pages) (EX. 5)
2.	Undated	Performance appraisal of individual. (15 pages) (EX. 7C)