

UNITED STATES  
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

COMSECY-01-0030

October 29, 2001

REQUEST REPLY BY: 11/6/01

~~NOTE: SENSITIVE  
INFORMATION -- LIMITED  
TO NRC UNLESS THE  
COMMISSION DETERMINES  
OTHERWISE~~

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

FROM: William D. Travers  
Executive Director for Operations

SUBJECT: GUIDANCE TO THE STAFF ON RELEASE OF INFORMATION TO THE  
PUBLIC

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dis. of kernel in fact*  
*Carl J. Paparella for*  
*John J. Meserve*  
*Jan 2, 2002*  
*See attached*  
*Comments*

As requested, attached for your review is a copy of a draft network announcement and criteria for the staff to use in making discretionary releases of information to the public. The guidance is to be used in the interim, until a long-term, permanent policy is developed.

SECY, please track.

Attachment: As stated

cc:  
SECY  
OGC  
OCA  
OPA  
CFO

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NRC UNLESS THE  
COMMISSION DETERMINES  
OTHERWISE~~

*A/2*

## COMMENTS OF CHAIRMAN MESERVE ON COMSECY-01-0030

I support the staff's efforts to develop guidance for the release of information to the public in the aftermath of the events of September 11. It is my view, however, that the guidance is too general and may result in the needless withholding of information that either is of no use to terrorists or is already widely available to the public through other sources. ✓  
Therefore, the guidance should be extensively revised before its issuance.

The events of September 11 have reminded us of the need for vigilance to deter a terrorist attack. It is appropriate in this context for the NRC to examine the policies governing the discretionary release of information to the public so as to ensure that such information does not needlessly provide assistance to a terrorist in undertaking an attack on a nuclear target. In establishing the policy governing such releases, however, the NRC should be mindful of the costs that arise from the denial of information to the public.

The NRC has appropriately identified a performance goal of increasing public confidence. One important means of achieving this goal is by ensuring that information about NRC's activities is readily available. The unfortunate reality is that a failure by the NRC to be fully forthcoming can breed a corrosive suspicion that the NRC is hiding relevant information for improper purposes or is concealing imprudent decisions. A failure to be open thus can have significant costs in terms of public confidence. We should not undertake the withholding of information lightly.<sup>1</sup>

In light of this fact, decisions governing the discretionary withholding of information from the public should be guided by certain overarching principles:

1. Information should be considered for withholding only if the release of the information could provide a clear and significant benefit to a terrorist in a potential attack. Information of a general nature or that is of marginal relevance should not be withheld. ✓

2. The NRC should not withhold information that is already currently widely available to the public. For example, there is no point in withholding information as to the specific location of a facility (Criterion 2) because this information is already widely known and is readily available from non-NRC sources. Attempting to withhold information that is known to the public would serve no purpose other than to breed suspicion. ✓

3. Any decision to withhold information should be guided by a balancing of the costs and benefits of withholding. Although it is possible that Emergency Plans (Criterion 1) might include information of interest to a terrorist, the need for such information by the ✓

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<sup>1</sup> Of course, the NRC must continue to comply with the Freedom of Information Act in any event. Staff must continue to release information that is the subject to a FOIA request unless a specific exemption applies. There should be no implication that a policy governing the discretionary disclosure of information alters the standards governing FOIA compliance.

public may require that it continue to be publicly accessible. Similarly, information such as to the quantities of nuclear material that are authorized to be possessed (Criterion 6) may be used for legitimate purposes and at the same time be of no use to a terrorist. For example, information concerning the types and quantities of material at a SDMP site may be of interest to the public, but pose no security concerns. Access to this type of information should not be unnecessarily restricted. ✓

4. Any withholding of information should be narrow. Thus, rather than withholding an entire Final Safety Analysis Report (Criterion 1), it may be appropriate to hold back only certain sections containing information meeting the high threshold for withholding. ✓

5. Alternative means should be provided for the release of relevant information on important public subjects in a fashion that would not provide significant assistance to a terrorist. For example, while the specific construction details of a security barrier at a facility might be withheld because of the benefit of such information to a terrorist, generalized information about the existence of barriers might be disclosed. The staff should be prepared to redact details or to rewrite important documents to eliminate sensitive information. ✓

Because of the significance of decisions regarding the withholding of information, staff should develop a process that will involve management review of withholding decisions so as to ensure that the principles are applied in a sensible and uniform manner. Similarly, guidance should be developed as to how information that meets the stringent limits for non-disclosure is to be protected. The staff should also develop a process for licensees to use to identify and submit documents that contain information that the staff would not release to the public under the guidelines. ✓

The application of these principles will require extensive revision of the guidance. Because additional considerations may become apparent as the staff proceeds, the revised guidance should be provided to the Commission for approval before it is put into effect. ✓