



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

Approved subject to the
attached comments.

[Signature]
Jeffrey S. Merrifield

11/6/01 Date

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

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

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

A/b

COMMISSIONER MERRIFIELD'S COMMENTS ON COMSECY-01-0030

I approve issuing the draft guidance on release of information to the public subject to the following comments. The draft guidance does not include several factors that should be considered in making a determination about whether to release certain information. The guidance is applicable to screening information subject to "discretionary" release to the public. That focus is too narrow. All information needs to be screened for sensitivity in a consistent manner, whether it is part of a discretionary release, or a release required to comply with legal requirements. Also, the guidance on release does not discuss any other consideration besides the sensitivity of the information. To ensure that all sensitive information is effectively protected, the staff needs in one document, guidance on both how to identify whether a document is sensitive and how to appropriately handle it from that point forward. The draft criteria only provide guidance to the staff on how to identify whether information contained within a document subject to discretionary release is sensitive. It does not address how to ultimately decide whether a document can or should be withheld. Therefore, the guidance needs to be rewritten.

The guidance needs to reflect an understanding that under previous document handling procedures, volumes of information drafted by the NRC and our licensees and stakeholders were placed on publicly accessible databases including ADAMS, and the NRC external website. These documents were released in advance of public meetings, during the course of adjudications or rulemakings, etc. Our "sensitivity" criteria, unlike other narrow criterion applicable to FOIA, may encompass significant numbers of documents. We cannot suggest to the staff, as I believe the draft guidance does, that we are now considering not releasing on a discretionary basis any document that contains "sensitive" information. That suggestion may have unwarranted and extreme repercussions on our ability to meet our strategic goals of effectively and efficiently conducting rulemakings, adjudications, and ensuring that stakeholders provide comments in a timely and effective manner. The Commission cannot forget that it has a number of important initiatives that the staff has been working diligently to complete that could become seriously and unnecessarily delayed with improper, overly broad guidance in this area.

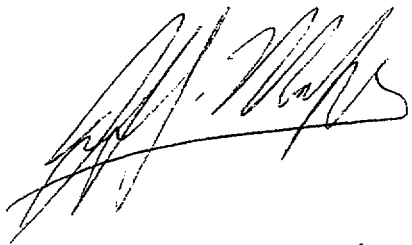
For these reasons, I suggest rewriting the guidance in the following manner. First, the guidance should advise the staff to screen all incoming and outgoing documents for sensitivity for security reasons, using the criteria in the guidance and Commissioner Diaz's added criterion. Second, if the document contains sensitive information, the staff needs to determine the repercussions of withholding the entire document. Among its considerations, the staff should question whether release is required by law or regulation, or needed to meet our strategic goals, including efficiently communicating with and informing the public, other stakeholders, States, Tribal or local communities. For example, when determining whether to withhold Emergency Plans (EP's), as the guidance suggests, the staff needs to consider whether emergency response and planning will be hampered if all of this information is suddenly not available to the public. Third, the guidance should advise the staff that if the information in the document is necessary for meeting legal requirements, or agency goals, or would be of interest to the public, but contains sensitive information, how can the staff handle it to effectuate necessary communications and at the same time protect sensitive information.

When providing guidance on protecting sensitive information, the staff should be advised to consider selectively redacting information, rewriting documents to eliminate sensitive information, requiring protective orders or using other methods of ensuring limited release including making some documents only available for inspection. In attempting to limit release of sensitive information, the staff should be cautioned to avoid providing information to one group of interested stakeholders, and not providing it to other interested stakeholders.

I also believe, that at this early stage of developing criteria for release, to ensure adequate

protection and consistency, if the staff believes that sensitive information should be released, that decision should be made at the office director level. The office director should coordinate release with other offices, including the Office of the General Counsel, and determine, depending on the level of sensitivity whether to coordinate release with the Commissioners' offices, using informal or formal means, as appropriate.

I want to emphasize that the staff must be reminded that it will need to weigh many factors, including the absolute need to take all necessary precautions to ensure that information is not easily accessible to those who might misuse it, the public's interest in the information, and the agency's interest in facilitating timely and effective communications with stakeholders.

A handwritten signature in black ink, appearing to be "D. J. M. [unclear]", written in a cursive style.

11/12/01