



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

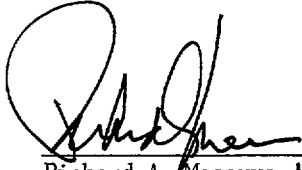
COMSECY-02-0015

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April 4, 2002

Approved with attached comments.

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

  
Richard A. Meserve 4/26/02

FROM: William D. Travers  
Executive Director for Operations



SUBJECT: WITHHOLDING SENSITIVE HOMELAND SECURITY  
INFORMATION FROM THE PUBLIC

This memorandum responds to the Staff Requirements Memorandum - COMSECY-01-0030, dated January 25, 2002, which requested the staff to revise the criteria for withholding information from the public and submit it for Commission approval.

Background

Since the events of September 11, the staff has re-examined existing policies on the dissemination of information routinely provided to the public. Once the agency decided to shutdown its web site in October of 2001, the staff began formulating a process for the review of information previously made publicly available that may be considered sensitive from the standpoint of potential terrorist activity.

The staff developed proposed interim criteria for use in deciding what information should not be released to the public and submitted it to the Commission on October 29, 2001. The Commission subsequently provided general comments and discussion and requested the staff to submit revised guidance and criteria, which are contained in this memorandum. We believe the attached guidance and criteria is consistent with Commission direction in the SRM.

We also believe that the guidance and criteria contained in this memorandum comport with the draft definition that the Office of Homeland Security has developed for Sensitive Homeland Security Information (SHSI). We will ensure this information remains consistent with any final OHS definition.

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## Chairman Meserve's comments on COMSECY-02-0015

I support the proposed criteria for withholding certain sensitive homeland security information that bears on security matters from the public, subject to the following comments.

The criteria that have been proposed by the staff are intended to cover information that might assist a terrorist in planning or undertaking an attack on an NRC-licensed facility, but which is not subject to protection as safeguards information under Section 147 of the Atomic Energy Act. For the reasons explained in my earlier vote on COMSECY-01-0030, I believe that this category of "sensitive non-safeguards" information should be narrowly confined. I reach this conclusion because of the importance of openness in maintaining public confidence in the agency and its decisions. I am also mindful that the legal authority to control this information is limited; such information is far more readily subject to release under FOIA, for example, than safeguards information. In light of these facts, I believe that the criteria achieve the objective of assuring that there are carefully defined limits for information in this sensitive non-safeguards category.

At the same time, however, I believe that the staff and the Commission have a parallel obligation to ensure that information falling within the bounds of safeguards information is carefully controlled and protected. I thus join with Commissioner McGaffigan in urging that the staff review our processes and procedures for controlling safeguards information to ensure that information falling into this category is clearly defined and then is carefully protected. ☑

The guidance also provides that information that is currently available to the public by way of ADAMs as of the issuance date of the guidance will not be systematically reviewed against the new criteria. Now that the staff has narrowed the categories of information that are subject to protection, it should be feasible to undertake a review of documents entered into ADAMs using word or phrase searches to ensure that sensitive information falling within the bounds of the criteria have been removed. This effort should reflect a conscientious search rather than a rigid document-by-document review.



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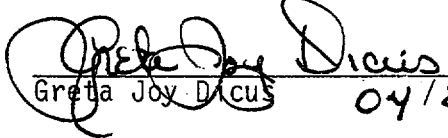
COMSECY-02-0015

DUE DATE: 04/18/02

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April 4, 2002

Approve with comment.

  
Greta Joy Dicus 04/22/02

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

FROM: William D. Travers  
Executive Director for Operations 

SUBJECT: WITHHOLDING SENSITIVE HOMELAND SECURITY  
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Commissioner Dicus' Comments on COMSECY-02-0015,  
"Withholding Sensitive Homeland Security Information From The Public"

I approve the guidance and criteria contained in COMSECY-02-0015. At this point, I believe that Commission approval of the guidance and criteria should be based on the extent to which the Commission believes that the guidance and criteria are reasonable. I believe they are reasonable.

I recognize that the Office of Homeland Security continues to further clarify the definition of "Sensitive Homeland Security Information." As a result, the staff will need to re-evaluate this guidance and these criteria once that definition has been finalized. Like many of the actions we are taking in the wake of September 11<sup>th</sup>, we should view this guidance and these criteria as part of a work-in-progress.

OGC should remain fully involved in the process to provide insight and consistency regarding use of the phrases and terminology such as "clearly would", "could be expected to", "could reasonably be foreseen to cause significant harm", and "clear and significant" as these terms may relate to our regulatory framework and release of information.

*gjd*  
04-22-02



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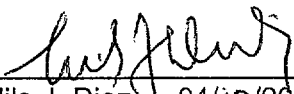
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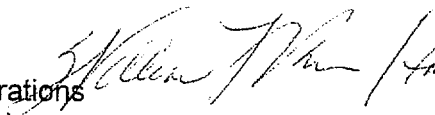
April 4, 2002

Approved with significant edits. See  
attached comments.

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

  
Nils J. Diaz 04/10/2002

FROM: William D. Travers  
Executive Director for Operations



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## COMMISSIONER DIAZ' COMMENTS ON COMSECY-02-0015

I continue to be strongly opposed to the creation of a new standard for releasing information by using a "clear and significant benefit" criterion. The agency is creating terminology that is not consistent with the "reasonable" and "adequate" terms used to ensure adequate protection of public health and safety, to promote the common defense and security, and to protect the environment. The term "clear and significant" establishes a very high threshold that will be difficult to meet and creates an unnecessary burden to implement. It could result in the release of information that should be reasonably withheld. I disagree with the statement in COMSECY-02-0015 which states that the guidance and criteria contained in the COMSECY comport with the draft definition that the Office of Homeland Security has developed for Sensitive Homeland Security Information. OHS uses "could be expected" terminology which is a significantly different criterion than "clear and significant."

The following changes should be made:

Page 4, items 1 and 2, "would clearly" should be changed to "could be expected to."

Page 4/5, item 3, "would be of clear and significant" should be changed to "could be expected to."

Page 5, item 4, "clearly would" should be changed to "could be expected to." *W*



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REQUEST REPLY BY 4/18/02

COMSECY-02-0015

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April 4, 2002

Approve with attached comment.

Edward McGaffigan

4/22/02

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

FROM: William D. Travers  
Executive Director for Operations

SUBJECT: WITHHOLDING SENSITIVE HOMELAND SECURITY  
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**Commissioner McGaffigan's comments on COMSECY-02-0015**

I approve the guidance and criteria for withholding sensitive homeland security information (SHSI). I believe that the criteria are appropriate, although they are not identical with the current draft definition which the Office of Homeland Security has under development and on which they plan to have a 180-day comment period. I believe that NRC should be advocating a tighter definition of SHSI in the Homeland Security Council Policy Coordinating Committee's deliberation on these issues and in the public comment period to follow.

Furthermore, NRC has a statutory basis for withholding the type of information meeting the proposed criteria in COMSECY-02-0015. This is an advantage for protecting sensitive security information that other agencies do not possess and that NRC may not have fully exercised. As I said in my vote on COMSECY-01-0030, I would support working with OGC, as OGC has suggested, to refine and expand existing criteria to protect information under section 147 of the Atomic Energy Act as safeguards information. I am convinced that the drafters of section 147 carefully struck the right balance between the public's right to know and the need to protect sensitive security information relating to commercial nuclear licensees. I believe that under expanded safeguards information guidelines, we may be able to withhold most, if not all, of the sensitive information described in COMSECY-02-0015. Moreover, it is timely to review our implementation of section 147 in any case. I believe that there may currently be some confusion among staff and licensees as to what constitutes safeguards information.

*EB*



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*Due: 4/13/02*

COMSECY-02-0015



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April 4, 2002

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

*Approval subject to the following  
comment: Staff should work with  
our licensees to explain how  
this new homeland security  
classification differs from the  
safeguards classification contained  
within our regulations.*

FROM: William D. Travers  
Executive Director for Operations

*William D. Travers*  
*[Signature]*  
*4/17/02*

SUBJECT: WITHHOLDING SENSITIVE HOMELAND SECURITY  
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