



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

RESPONSE TYPE  FINAL  PARTIAL

REQUESTER

Charles J. Fitzpatrick

DATE NOV 13 2002

PART I. -- INFORMATION RELEASED (See checked boxes)

- 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 A & B 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.
- 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 A & B Agency records subject to the request are enclosed.
- 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.
- This completes NRC's action on your request.

PART I.A -- FEES

- Fees
  - AMOUNT \*  You will be billed by NRC for the amount listed.  None. Minimum fee threshold not met.
  - \$ 136.02  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)

Some records subject to your request that were originated by the Department of Energy and the Office of Government Ethics have been forwarded to those agencies for review and direct response to you.

The actual fees for processing your request are:

Search (1.5 hrs. SES, 7 hrs. professional, 15 mins. clerical): \$421.06  
 Review (.5 hrs. SES, 5 hrs. professional, .5 hrs. clerical): 263.58  
 Duplication (31 pgs @\$.20 per page) 6.20  
 TOTAL: \$690.84

Since you paid fees in advance in the amount of \$826.86, you will receive a refund from the NRC Division of Accounting in the amount of \$136.02.

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**

FOIA/PA 2002-0360

NOV 13 2002

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

APPENDICES  
**B & C**

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
Joseph R. Gray	Associate General Counsel for Licensing and Regulations	Appendices B & C		XX	

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 A  
RECORDS BEING RELEASED IN THEIR ENTIRETY

NO.	DATE	<u>DESCRIPTION/(PAGE COUNT)</u>
1.	05/10/02	E-mail from John Linehan to C.W. Reamer re: Request to keep M. Virgilio up to date on NMSS position on OGE letter (1 page)
2.	05/13/02	E-mail from Rose Conn to C..W. Reamer re: Information needed to schedule meeting (1 page)
3.	05/14/02	E-mail from J. Szabo to J. Craig regarding Yucca Mountain meeting. (1 page)
4.	05/14/02	E-mail from J. Craig to addressees regarding Yucca Mountain meeting. (1 page)
5.	05/14/02	E-mail from Rose Conn to C.W. Reamer, E. William Brach, Jack Strosnider, Janet Schlueter, John Linehan, John Szabo, Trip Rothschild re: Scheduling meeting to discuss OGE letter (1 page)
6.	06/13/02	E-mail from J. Szabo to addressees regarding Draft OGC letter on Yucca Mountain. (1 page)

**APPENDIX B  
RECORDS BEING WITHHELD IN PART**

<u>NO.</u>	<u>DATE</u>	<u>DESCRIPTION/(PAGE COUNT)/EXEMPTIONS</u>
1	12/11/90	Letter from Trip Rothschild, OGC to an individual responding to request for clarification to permit post employment for an individual. (2 pages) <b>Exemption 6,</b>
2	03/12/91	Letter from Trip Rothschild, OGC to two individuals regarding post-employment restrictions of an individual. (5 pages) <b>Exemption 6</b>
3	11/17/93	Memorandum of Meeting held at OGE regarding post employment of an individual. (5 pages) <b>Exemption 5 &amp; 6,</b>
4.	02/06/96	Letter from Trip Rothschild, OGC to Robert Cobb, OGE requesting advice about barring an individual from participating in proceedings dealing with Yucca Mountain. (10 pages) <b>EX. 6</b>
5.	05/08/02	E-mail from J. Szabo to C. Reamer, subject: Yucca Mountain, (1 page), <b>release,</b> with attached undated, draft letter from M. Glynn to S. Beard and K. Cyr. (7 pages) <b>EX. 5</b>
6.	05/09/02	E-mail from J. Szabo to J.Schlueter, subject: Yucca Mountain advice from OGC. (1 page) <b>EX. 5</b>
7.	05/13/02	E-mail from J. Szabo to C. Reamer, subject: Yucca Mountain. (1 page) <b>EX. 5</b>
8.	05/10/02	E-mail from B. Reamer to J. Szabo regarding Yucca Mountain. (1 page) <b>EX. 5</b>

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

<u>NO.</u>	<u>DATE</u>	<u>DESCRIPTION/(PAGE COUNT)/EXEMPTIONS</u>
1.	Undated	Unsigned, draft letter with handwritten OGC notes from Marilyn Glynn, OGE, to Susan Beard, DOE, and Irwin Rothschild, NRC, on former employees who might represent private parties in the Yucca Mountain proceedings. (8 pages) <b>Exemption 5</b>
2.	05/08/2002	OGE Draft letter with OGC's changes from Marilyn Glynn, OGE to Susan Beard, DOE, and Karen Cyr, NRC, on former employees who might represent private parties in the Yucca Mountain proceedings. (7 pages) <b>Exemption 5</b>
3.	05/07/02	Unsigned, draft letter from Marilyn Glynn, OGE, to Susan Beard, DOE, and Irwin Rothschild, NRC, on former employees who might represent private parties in the Yucca Mountain proceedings, with 5/20/02 handwritten comments from Joe Gray, OGC to Trip Rothschild. (7 pages) <b>Exemption 5</b>
4.	05/08/2002	OGE Draft letter with OGC's changes from Marilyn Glynn, OGE to Susan Beard, DOE, and Karen Cyr, NRC, on former employees who might represent private parties in the Yucca Mountain proceedings with 5/21/02 handwritten comments from Joe Gray's, OGC, to T. Rothschild. (7 pages) <b>Exemption 5</b>
5.	05/09/02	E-mail from J. Linehan to C. Reamer and J. Schlueter regarding comments on OGE letter. (1 page) <b>EX. 5</b>
6.	05/30/2002	OGE Draft letter with OGC's changes from Marilyn Glynn, OGE to Susan Beard, DOE, and Karen Cyr, NRC, on former employees who might represent private parties in the Yucca Mountain proceedings (7 pages) <b>Exemption 5</b>
7.	05/31/02	E-mail from J. Schlueter to C. Reamer and J. Linehan, subject: TA Briefing by OGC on OGE letter. (1 page). <b>Exemption 5 &amp; 6</b>
8.	05/31/2002	E-mail from Marian Zobler, OCM, to Joseph Gray, OGC,

Catherine Holzle, OGC, Trip Rothschild, OGC, and John Szabo, OGC, on Chairman's Comments on OGE letter. (1 page) **Exemption 5**

9. 06/11/2002 E-mail from E.Neil Jensen, OGC, to Trip Rothschild, OGC, on Complications. (1 page) **Exemption 5**
10. 06/11/2002 OGE Draft letter Amended by NRC, from Marilyn Glynn, OGE, to Susan Beard, DOE, and Karen Cyr, NRC on former employees who might represent private parties in the Yucca Mountain proceedings (7 pages) **Exemption 5**
11. 06/12/02 E-mail from J. Szabo, OGC, to R. Thomas, OGE, subject: Draft OGE Letter on Yucca Mountain, with attached draft letter. (8 pages)**Exemption 5**
12. 06/13/2002 E-mail from Roger Davis, OCM, to Catherine Holzle, OGC, John Szabo, OGC, Joseph Gray, OGC, Margaret Doane OCM, Marian Zabler, OCM and Trip Rothschild, OGC on Chairman's comments on OGC letter. (1 page) **Exemption 5**