

L

Announcement to all employees

Please direct all replies to Carol Ann Reed (CAR2)

Subject: Freedom of Information Act

The purpose of this announcement is to notify employees of two changes to NRC's FOIA procedures. One is a result of the change of administrations and the other is a result of the terrorist attacks of September 11, 2001.

1. As a result of the change in administration, a new standard has been set for the defense of FOIA law suits by the Department of Justice.

The old standard: Attorney General Janet Reno's October 1993 policy stated that in order for DOJ to defend the withholding of information under one of the FOIA exemptions, there must be a finding that the **information was legally withholdable** and the agency reasonably foresaw that **discretionary disclosure of the information would be harmful**.

The new standard: Attorney General Ashcroft's October, 2001 policy states that DOJ will defend withholding of information if the use of a FOIA exemption is **on a sound legal footing, both factually and legally**.

Impact on NRC's FOIA process: "Forseeable harm statements" will no longer be required when office FOIA coordinators submit records to be withheld based on application of a FOIA exemption.

2. As a result of the events of September 11 2001, the Commission is reviewing it's policies on what constitutes sensitive security information. This review will have implications for what types of information should be withheld from public disclosure in ADAMS, on the Web, and in response to FOIA requests. The new criteria for withholding information have not yet been finalized.

Impact on NRC's FOIA process: When reviewing records, the staff should apply the FOIA exemptions the same way they were applied in the past. If information is withholdable because it is unclassified safeguards information, please note the current requirements of 10 CFR 73.21. As in the past, you should indicate in the margin of the record the section or sections of 10 CFR 73.21 under which the bracketed information falls. However, if the staff locates records that they believe contain information that may warrant closer scrutiny when the new security information criteria are finalized, they should list these records separately and provide a statement explaining the sensitivity of the information. If it is not apparent from the record itself, please note who originated the record (NRC or an outside entity) and whether it has previously been made publicly available. The FOIA/Privacy Act Team will hold these records for review by a knowledgeable subject matter expert once the Commission completes its policy review.

B/1