



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

RESPONSE TYPE FINAL PARTIAL

REQUESTER

James Riccio

DATE

JAN 21 2003

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 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 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.
- \$ 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)

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 2003-0032

JAN 21 2003

PART II.A – APPLICABLE EXEMPTIONS

APPENDICES

M

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	App. M/1-13, M/15-16, M/18-25, M/27-48, M/51-53		X	
Samuel J. Collins	Director, Office of Nuclear Reactor Regulation	M/14 & M/49	X		
Ashok Thadani	Director, Office of Nuclear Regulatory Research	M/17	X		
Sandra Joosten	Executive Assistant, Office of the Secretary	M/26 & M/50			

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 M
RECORDS BEING WITHHELD IN THEIR ENTIRETY**

<u>NO.</u>	<u>DATE</u>	<u>DESCRIPTION/(PAGE COUNT)/EXEMPTIONS</u>
1.	Undated	Handwritten note from Brian Kildee, OGC to Don Hassell, OGC attaching draft to Advanced Gas Reactor Technology Assessment and Fuel Evaluation. (2 pages) Exemption 5, Deliberative Process.
2.	Undated	Handwritten note from Brian Kildee, OGC to Don Hassell, OGC attaching draft to Advance Gas Reactor Technology Framework and Fuel Evaluation. (2 pages) Exemption 5, Deliberative Process
3.	Undated	Question/Answer from the Commission on Licensing Modular Reactor. (1 page) Exemption 5, Deliberative Process
4.	Undated	Draft Memorandum to Joseph Gray, OGC from Gerri Fehst, OGC on Annual Fees Applicable to a Pebble Bed Modular Reactor Facility. (4 versions) (10 pages) Exemption 5, Deliberative Process
5.	Undated	Industry Comments and Suggestions for the Part 52 Update Rulemaking prepared by Geary Mizuno, OGC. (2 pages) Exemption 5 Deliberative Process
6.	Undated	Draft Memorandum to Joseph Gray, OGC from Gerri Fehst, OGC on Annual Fees Applicable to a Pebble Bed Modular Reactor Facility.(2 versions, 1 with handwritten notes from Gerri Fehst) (3 pages) Exemption 5, Deliberative Process
7.	Undated	Draft Memorandum to Joseph Gray, OGC from Gerri Fehst, OGC on Annual Fees Applicable to a Pebble Bed Modular Reactor Facility. (6 pages) Exemption 5, Deliberative Process
8.	Undated	Question and Answer from the Commission on Part 140 and Section 170 of the Atomic Energy Act. (1 page) Exemption 5 Deliberative Process
9.	Undated	OGC Resource Estimates for FLIRA Paper. (8 pages) Exemption 5, Deliberative Process

10. Undated OGC Resource Estimates for FLIRA Secy Paper. (2 versions) (10 pages) **Exemption 5, Deliberative Process**
11. 09/07/92 OGC Status: Disposition Table for 10 CFR Part 52 Update Rulemaking (5 pages) **Exemption 5, Deliberative Process**
12. 04/06/00 OGC/GSM (Geary Mizuno) Draft chart on various sections of 10 CFR with subject, rule, current language, statue, change to rule, new wording. (3 pages) **Exemption 5, Deliberative Process**
13. 01/23/01 Preliminary List of Issues on Implementation of Parts 50 and 52 for Licensing of New Nuclear Power Plants prepared by Geary Mizuno. (3 pages) **Exemption 5, Deliberative Process**
14. 02/02/01 E-mail from Geary Mizuno, OGC to Jerry Wilson, NRR and Robert Wood, NRR on Pebble Bed Reactor. (2 pages) **Exemption 5, Deliberative Process and Attorney-Client Privilege.**
15. 02/21/01 Note from Kathryn Barber, OGC to Janice Moore, OGC on Issues Associated with Early Review of Site Suitability. (20 pages) **Exemption 5, Deliberative Process.**
16. 02/26/01 Draft Memo to Commission on Preliminary Plan for Pre-application Activities on the PBMR. (10 pages) **Exemption 5, Deliberative Process**
17. 03/02/01 Note from Brian Kildee, OGC to Thomas King, RES on Constraints on DOE Funding Support in Pre-Application Environment (PBMR). (2 pages) **Exemption 5, Deliberative Process and Attorney-Client Privilege.**
18. 03/08/01 E-mail from Joseph Gray, OGC to Marjorie Nordlinger, OGC on Price Anderson and Pebble Bed Modules. (1 page) **Exemption 5, Deliberative Process**
19. 04/02/01 Draft NRC Antitrust Review Authority as Applicable to a Pebble Bed Modular Reactor Facility. (4 pages) **Exemption 5, Deliberative Process.**
20. 04/27/01 Memorandum from Marjorie Nordlinger, OGC to Joseph

Gray, OGC on Definition of a Facility for Purposes of the Price-Anderson Act. (8 pages) **Exemption 5, Deliberative Process.**

21. 04/28/01 Draft Backup Chairman Response on Pebble Bed Modular Reactor Licensing prepared by Geary Mizuno, OGC. (2 pages) **Exemption 5, Deliberative Process**
22. 04/30/01 Draft Backup Chairman Response on Pebble Bed Modular Reactor Licensing prepared by Geary Mizuno, OGC. (2 pages) **Exemption 5, Deliberative Process**
23. 05/08/01 Note from Angela Coggins, Antonio Fernandez and Leo Slaggie, OGC to Janice Moore, OGC on NEPA and the Necessary Alternatives Discussion required to Potential Upcoming Applications for Nuclear Power Reactor Construction Permits. (14 pages) **Exemption 5, Deliberative Process**
24. 05/22/01 Question and Answer on regulations to permit a grouping of modules, each in itself a nuclear reactor, to be considered as a single facility, prepared by Trip Rothschild, OGC. (1 page) **Exemption 5, Deliberative Process**
25. 06/28/01 Question and Answer on Price Anderson Act prepared by Trip Rothschild. (1 page) **Exemption 5, Deliberative Process.**
26. 07/03/01 Memorandum to the Commission from Karen Cyr, OGC on Prelicensing Antitrust Review of Applicants for Merchant Plants. (4 pages) **Exemption 5, Deliberative Process, Attorney-Client Privilege.**
27. 07/11/01 Note from Joseph Gray, OGC to Trip Rothschild and Cathy Holzle, OGC enclosing a analysis work related to future reactor licensing and regulatory issues prepared by Geary Mizuno, OGC. (9 pages) **Exemption 5, Deliberative Process**
28. 08/09/01 Future Reactor Issues prepared by Geary Mizuno, OGC. (9 pages) **Exemption 5, Deliberative Process**
29. 08/14/01 Future Reactor Issues #48 Resolution, prepared by Susan Uttal, OGC. (1 page) **Exemption 5, Deliberative Process**

30. 08/29/01 Note from E.Neil Jensen, OGC to Joseph Gray, OGC on Whether Tables S-3 and S-4 Apply to Non-Light Water Reactors (in Particular, to the PBMR). (3 pages) **Exemption 5, Deliberative Process**
31. 08/31/01 The Pebble Bed Modular Reactor Facility and the Waste Confidence Proceeding prepared by Francis Cameron, OGC. (5 pages) **Exemption 5, Deliberative Process**
32. 08/31/01 E-mail from Trip Rothschild, OGC to Gerri Fehst, OGC on Insert section 6101 of OBRA. (1 page) **Exemption 5, Deliberative Process**
33. 09/06/01 Draft Memorandum from Charles Cortinovis and Geary Mizuno, OGC to Karen Cyr, OGC on 10 CFR 52.25 and Related Provisions. (10 pages) **Exemption 5, Deliberative Process**
34. 09/06/01 Draft Memorandum from Geary Mizuno, OGC to Karen Cyr, OGC on Issues Associated with Licensing of Multiple Nuclear Power Plant Reactor Modules Co-Located at a Single Site. (20 pages) **Exemption 5, Deliberative Process**
35. 09/06/01 E-mail from Janice Moore, OGC to Stephen Burns, Lawrence Chandler, Karen Cyr, Joseph Gray and Geary Mizuno, OGC on Part 52 Issues. (1 page) **Exemption 5, Deliberative Process**
36. 09/07/01 E-mail from Geary Mizuno, OGC to Grace Kim, Janice Moore, Karen Cyr, Lawrence Chandler, Stephen Burns and Trip Rothschild, OGC attaching a Memorandum from Grace Kim, OGC to Joseph Gray, OGC, dated Sept. 10, 2001 on Questions 004, 005, 006 and 009 Relating to Early Site Permits. (6 pages) **Exemption 5, Deliberative Process**
37. 09/14/01 Draft Memorandum from Geary Mizuno, OGC to Karen Cyr, OGC on Issues Associated with Licensing of Multiple Nuclear Power Plant Reactor Modules Co-Located at a Single Site. (23 pages) **Exemption 5, Deliberative Process**
38. 09/15/01 Joseph Gray, OGC comments on The Pebble Bed Modular Reactor Facility and the Waste Confidence Proceeding prepared by Francis Cameron, OGC. (5 pages) **Exemption**

5, Deliberative Process

39. 09/15/01 Joseph Gray, OGC comments on 8/31 Draft of Memorandum from Gerri Fehst, OGC to Joseph Gray, OGC on Annual Fees Applicable to a Pebble Bed Modular Reactor Facility. (3 pages) **Exemption 5, Deliberative Process**
40. 09/15/01 Joseph Gray, OGC comments on Question and Answer on 10 CFR Part 140 prepared by Marjorie Nordlinger, OGC. (1 page) **Exemption 5, Deliberative Process**
41. 09/18/01 Joseph Gray, OGC comments on Draft Memorandum from Gerri Fehst, OGC to Joseph Gray on Annual Fees Applicable to a Pebble Bed Modular Reactor Facility. (3 pages) **Exemption 5, Deliberative Process**
42. 09/20/01 Memorandum from Gerri Fehst, OGC to Joseph Gray, OGC on Annual Fees Applicable to a Pebble Bed Modular Reactor Facility. **Exemption 5, Deliberative Process.**
43. 09/25/01 Draft Memorandum from Geary Mizuno, OGC to Karen Cyr, OGC on Issues Associated with Licensing of Multiple Nuclear Power Plant Reactor Modules Co-Located at a Single Site. (23 pages) **Exemption 5, Deliberative Process.**
44. 09/26/01 Draft paper on Annual Fees, submitted by Gerri Fehst, OGC (4 pages) **Exemption 5, Deliberative Process**
45. 09/27/01 Draft paper on Annual Fees, submitted by Gerri Fehst, OGC (5 pages) **Exemption 5, Deliberative Process**
46. 09/28/01 Draft paper from Gerri Fehst, OGC on Annual Fees with written comments from Joseph Gray, OGC to Trip Rothschild, OGC. (4 pages) **Exemption 5, Deliberative Process**
47. 10/03/01 E-mail from Trip Rothschild, OGC to Geraldine Fehst, OGC on Last paragraph. (4 pages) **Exemption 5, Deliberative Process**
48. 10/03/01 Draft paper from Gerri Fehst, OGC on Annual Fees with written comments from Joseph Gray, OGC. (5 pages) **Exemption 5, Deliberative Process**

49. 10/12/01 E-mail from Amy Cabbage, NRR to Francis Cameron, OGC with attachments on Exelon white papers. (38 pages) **Exemption 5, Deliberative Process and Attorney-Client Privilege.**
50. 10/16/01 Memorandum from Karen Cyr, OGC to the Commission on Status of Proposed Policy Statement on Pre-licensing Antitrust Review of Applicants for Merchant Plants. (3 pages) **Exemption 5, Deliberative Process, Attorney-Client Privilege.**
51. 11/01/01 Draft Memorandum from Geary Mizuno, OGC to Karen Cyr, OGC on Issues Associated with Licensing of Multiple Nuclear Power Plant Reactor Modules Co-Located at a Single Site. (24 pages) **Exemption 5, Deliberative Process,**
52. 11/27/01 E-mail from Jeanette Helfrich to Marjorie Nordlinger, OGC on Statement of Administration Policy on Price-Anderson. (3 pages) **Exemption 5, Deliberative Process**
53. 04/16/02 E-mail from Lawrence Chandler, OGC to Janice Moore, OGC on Reactor Arena Budget. (1 page) **Exemption 5, Deliberative Process**