

Bill Bach
Comments
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MEMORANDUM FOR: Chairman Meserve
Commissioner Dicus
Commissioner Diaz
Commissioner McGaffigan
Commissioner Merrifield

FROM: William D. Travers, EDO

SUBJECT: RELEASE OF INFORMATION TO 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 releasing information to the public and submit it for Commission approval.

Background

Since the events of September 11, we have had to re-examine our policies on the dissemination of information routinely provided to the public. Once the agency decided to shutdown the web site in October of 2001, we 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.

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

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

We also believe that the general discussion and criteria are consistent with Commission direction in the SRM.

General Discussion:

The criteria have been developed to assist the staff in making decisions on whether to release certain documents to the public, which includes posting them to the web and to the PARS public library in ADAMS.

B-74

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This guidance reflects a practical approach to screening documents with the intent of ensuring that we do not release information that can be misused against NRC-regulated activities and facilities. The criteria may be adjusted in the future based on our experience using them. To the extent uncertainties exist about whether a particular document should be made publicly available, senior office management will make the final decision.

Information will be considered for withholding only if its release could provide a clear and significant benefit to a terrorist in a potential attack. There needs to be a narrow and clear nexus to aiding a potential terrorist in any information we withhold, and the information must be that which is generated by the NRC or our licensees. Information of a general nature or of marginal relevance will not be withheld.

Guidance on Availability of Documents

In accordance with Commission direction in the SRM, the staff will be issued guidance and criteria which concerns the availability of documents such that:

- Information that is currently widely available to the public via ADAMS as of the date of this guidance should not be systematically reviewed against the criteria;
- Documents that were on the NRC external web page, the public library of ADAMS, or in the public document room, but were withdrawn in response to 9/11 events, will be reviewed against the criteria before being released again; and
- All new documents generated after the date of this guidance will be reviewed against the criteria.

The public document room staff will continue to screen all requests for information against this criteria and will provide those of concern to the staff for review. [Bill noted the same issues regarding practicality and budget/resource impacts that came up during the Scatolini discussion]

Any decision to withhold information will be guided by balancing the costs and benefits of withholding. If the outcome of balancing of the costs and benefits of withholding the information is uncertain, the information will be released. [Bill questions how this will be accomplished-do we need to develop criteria for this]

Staff will consider providing alternate means for the release of relevant information on important public subjects in a fashion that would not provide significant assistance to a terrorist, i.e. by redacting details or rewriting important documents to eliminate sensitive information.

The web site will be rebuilt by applying the attached criteria to posted information. We are aware that external organizations have material on their web sites that may be considered

sensitive under the criteria, and will be dealing with this on a case-by-case basis. We will continue to satisfy our legal obligations to make certain information publicly available.

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Freedom of Information Act (FOIA) material is subject to specific laws and statutes. We will continue to handle and process all FOIA requests in the same manner as before, but will separately identify documents that fall within the attached criteria. The Attorney General recently issued a new policy indicating that the Department of Justice will defend agency decisions to withhold records that rest on a sound factual and legal footing.

Review Process for Incorporating Criteria:

Program offices will be responsible for training certain staff in identifying and controlling SHSI. Guidance will be issued to the staff which will include the identification of SHSI and training materials will be developed to explain this category of information, and to set forth proper protection and control procedures. [Bill notes that this should state that this will happen after SHSI definition is finalized]

The review process for SHSI will be incorporated into existing procedures for document management and control that are similar to those already existing for proprietary and other types of protected information.

Office procedures will contain a process for final disposition at the senior office management level where differences of opinion exist among the staff regarding release of information.

We will request that licensees identify and mark their documents that meet the criteria for SHSI so that they can be appropriately controlled and protected when received by NRC staff. Bill asks what about information that meets the criteria in the enclosure-I think he points out the need for us to specify the relationship of "our criteria" to SHSI.

Recommendations:

We plan to issue this guidance to the staff once Commission approval is received. When the final definition for Sensitive Homeland Security Information is issued by the Office of Homeland Security, our guidance will be reviewed and ~~may need to be~~ revised as necessary to be consistent with SHSI definition accordingly. We may also seek to re-examine this guidance if a decision is made by the Commission to involve stakeholders in our comprehensive review of the agency's safeguards and security regulations.

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CRITERIA TO BE USED WHEN DECIDING WHETHER TO RELEASE INFORMATION TO THE PUBLIC

- Information currently widely available to the public via ADAMS as of the date of this guidance should not be systematically reviewed against these criteria. In those rare instances when such a document is found to contain sensitive information, it should be carefully reviewed against these criteria while considering the [cost of its removal] from the public domain. Bill notes that we need definition and guidance here.
- Documents that were on the NRC external web page, the public library of ADAMS, or in the public document room, but were withdrawn in response to 9/11 events, should be reviewed against these criteria before being released again.
- Similarly, all new documents generated after the date of this guidance should be reviewed against these criteria.

The NRC staff should withhold information properly determined to be exempt from disclosure, such as classified, proprietary, privacy or safeguards information. In addition, staff should consider limiting public release of information if it contains one or more elements from the following criteria:

1. Plant-specific information, generated by NRC or our licensees, that would clearly aid in planning an assault on a facility. An example might be drawings depicting the location of certain safety equipment within plant buildings. Examples would include portions of Final Safety Analysis Reports (FSARs), Plant Information Books, Individual Plant Examination for External Event (IPEEE) material, risk-informed inspection notebooks, and other risk and facility vulnerability information.
2. Physical vulnerabilities or weaknesses of nuclear facilities which would clearly be useful to terrorists, such as site-specific security measures, access controls, or personnel clearance procedures.
3. Bill notes that he agrees with criteria 3 and 5, but that they are not consistent with the final guidance given to NMSS with regard to the PFS SER and EIS. Are we going beyond Commission intent? Construction details of specific facilities, such as wall thicknesses or specific barrier dimensions, detailed diagrams, schematics, or cutaways of specific plant designs. Where appropriate, general descriptions instead of exact

} PFS info was already widely available at a time before Commission decision

numbers (i.e. "several feet, several inches, layers of concrete") should be used for general public information.

4. Information which clearly would be useful to defeat or breach key barriers at nuclear facilities.
5. Information in any type of document (e.g. plant status report, press release) that provides the current status or configuration of systems and equipment that could be used to determine facility vulnerabilities if used by an adversary. This does not include general conditions such as 100 percent power or shutdown.

General categories of information that may now be released:

- Performance indicators and inspection findings
- OSRE findings that have been corrected
- Plant status report (minus "reasons and comments" column)
- Specific locations of licensed facilities