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

FROM: William D. Travers, EDO

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, we have re-examined our policies on the dissemination of information routinely provided to the public. Once the agency decided to shutdown our 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 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 is contained in this memorandum. We believe the attached guidance is consistent with Commission direction in the SRM.

We also believe that the criteria 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 guidance remains consistent with any final OHS definition.

General Discussion:

The criteria have been developed to assist the staff in making decisions on when to withhold certain documents from the public, which includes not posting them to the NRC web site or making them available in the ADAMS public library.

B-82

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 in NRC records will be withheld only if its release could provide a clear and significant benefit to an adversary in a potential attack. 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, guidance and criteria will be issued to the staff which contain the following instructions on availability of documents:

- Information that is currently widely available to the public via ADAMS as of the issuance date of this guidance should not be systematically reviewed against the criteria;
- However, 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 issuance date of this guidance will be reviewed against the criteria.

Because documents in the PDR are widely available through other sources (GPO, NTIS, local libraries, etc.), we do not intend to have the PDR staff review requests for archived documents. If the technical staff identifies individual documents that contain sensitive information, the PDR staff will no longer make them available. This may require removing a document in its entirety, such as an archived FSAR that is stored on microfiche, even though only several pages are considered sensitive. Licensees who submit more current updates to FSARs on CD-ROM can more easily separate sensitive material from that which is non-sensitive. Additionally, because NRC does not control archival collections external to the agency, documents may continue to be made publicly available through other sources.

Any decision by the staff 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.

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 we 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.

Records captured by Freedom of Information Act (FOIA) requests are 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. In October, 2001, the Attorney General 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:

Program offices will be responsible for assigning certain staff to act as points of contact for the identification of SHSI. The staff will be issued specific guidance and training materials concerning the identification, control, and protection of SHSI. Pending the development of revised Management Directives and office-level guidance documents, the staff will continue to use the approaches set forth in this memorandum.

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.

Agency and office-level procedures will contain a process for final disposition where differences of opinion exist among the staff regarding release of information.

We will work with licensees to enable them to identify and mark their documents that meet the criteria for SHSI so that their information can be appropriately controlled and protected when received by NRC staff.

Recommendation:

We recommend the Commission approve the guidance contained in this memorandum. 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 may need to be revised accordingly.

The major program offices will work with OCIO and others to integrate the identification and control of SHSI into the routine activities performed by the agency.

CRITERIA TO BE USED WHEN DECIDING WHETHER TO WITHHOLD INFORMATION FROM THE PUBLIC

- Information currently widely available to the public via ADAMS as of the issuance date of this guidance should not be systematically reviewed against these criteria. If 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.

- However, 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 issuance date of this guidance should be reviewed against these criteria.

The NRC staff should always withhold information such as proprietary, privacy, safeguards or classified information. In addition, staff should limit 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 may include portions of Final Safety Analysis Reports (FSARs), Individual Plant Examination (IPE) material, 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. Construction details of specific facilities, such as wall thicknesses or specific barrier dimensions, detailed diagrams, schematics, or cutaways of specific plant designs where such information would be of clear and significant benefit to a terrorist in a potential attack. Where appropriate, general descriptions instead of exact 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