



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

2002-0256

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RESPONSE TYPE FINAL PARTIAL

REQUESTER

Sean Moulton / Cheryl Gregory

DATE

JUN 19 2003

PART I. - INFORMATION RELEASED

- No additional agency records subject to the request have been located.
- Requested records are available through another public distribution program. See Comments section.
- APPENDICES G** 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 E, F** 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 E, F** 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.
- See Comments.

PART I.A - 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)

The record identified on Appendix G is publicly available in NRC's Public Electronic Reading Room at <http://www.nrc.gov/NRC/ADAMS/index.html>. If you need assistance in obtaining the record please contact the NRC's Public Document Room (PDR) at 301-415-4737 or 1-800-397-4209, or by e-mail to pdr@nrc.gov.

SIGNATURE - FREEDOM OF INFORMATION ACT AND PRIVACY ACT OFFICER

Carol Ann Reed

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

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PART II.A – APPLICABLE EXEMPTIONS

APPENDICES
F, H

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
Sandy M. Joosten	Executive Assistant, Office of the Secretary	F-1; H: 1-20		✓	
Martin J. Virgilio	Director, Office of Nuclear Material Safety and Safeguards	F-2	✓		

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 E
RECORDS BEING RELEASED IN THEIR ENTIRETY
(If copyrighted identify with *)**

<u>NO.</u>	<u>DATE</u>	<u>DESCRIPTION/(PAGE COUNT)</u>
1.	11/07/01	E-mail NRR INFOREVIEW to E. Hayden, OPA, Re: Fwd Availability of performance indicators (1 page)
2.	11/13/01	E-mail M. Landau, EDO, to A. Madison, NSIR, et al., Re: Fwd: DOE pulls nuclear info from web site w/att 11/13/01 e-mail F. Goldberg, CIO, to M. Landau, EDO, w/att 11/13/01 e-mail A. Levin, OCM, to OCIO Sr Mgmt (3 pages)
3.	12/05/01	Memorandum from William Travers to Commission on Update on Staff Actions Regarding Release of Information to the Public. (5 pages)
4.	01/31/02	E-mail M. Landau, EDO, to A. Silvius, NSIR, et al., Re: Meeting summary (1 page)
5.	02/27/02	Draft Memo from W. Travers to OCM re: Release of Information to the Public (5 pages)
6.	02/27/02	E-mail M. Landau, EDO, to D. Engel, OGC, Re: Draft memo on release of info to public (6 pages)
7.	03/00/02	DRAFT: Memo to the Commission from Travers re: "Withholding Sensitive Homeland Security Information from the Public" with handwritten notes. (6 pages)

**APPENDIX F
RECORDS BEING WITHHELD IN PART**

<u>NO.</u>	<u>DATE</u>	<u>DESCRIPTION/(PAGE COUNT)/EXEMPTIONS</u>
1.	01/17/02	E-mail from Rick Croteau to Alan Levin, et al. Re drat SRM on COMSECY-01-0030 with 2.5 lines redacted (Ex 5)
2.	04/15/02	Email from G. Millman to E. Schultz re: "NMSS review of RGs for Sensitive Information. (2 pages) EX 5

**APPENDIX G
RECORDS ALREADY PUBLICLY AVAILABLE**

<u>NO.</u>	<u>DATE</u>	<u>ACCESSION NUMBER</u>	<u>DESCRIPTION/(PAGE COUNT)</u>
1.	05/28/02	ML021480390	Memo to W. Travers from A. Vietti-Cook re: "Staff Requirements - COMSECY-02-0015 - Withholding Sensitive Homeland Security Information from the Public" (2 pages)

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

<u>NO.</u>	<u>DATE</u>	<u>DESCRIPTION/(PAGE COUNT)/EXEMPTIONS</u>
1.	11/13/01	Chairman Meserve's vote on Corr-01-0181, Letter to Congressman Markey concerning the temporary shutdown of NRC's website. (3 pages) [Ex. 5]
2.	03/08/02	Chairman Meserve's vote on Corr-02-0003, Letter to Jim Miller concerns restoration of unlimited access to the NRC's Sealed Source and Device Registration world wide web site. (3 pages) [Ex. 5]
3.	03/21/02	Chairman Meserve's vote on Corr-02-0057, Letter to Dan Salter, HGP, Inc., concerns NRC's decision to restore the daily plant status reports and plant event reports to the agency's web site. (3 pages) [Ex. 5]
4.	11/09/01	Email from Marian Zobler to Jeanne Shoemaker, concerns Corr-01-0181. (1 page) [Ex. 5]
5.	11/02/01	Note to Comr McGaffigan from Mitzi Young and Jeff Sharkey and vote regarding Corr-01-0181, ltr to Congressman Markey concerning the temporary shutdown of NRC's website. (4 pages) [Ex. 5]
6.	03/04/02	Notes from Jeff Sharkey to SECY and undated note from Commisisoner McGaffigan regarding 02/05/02 ltr to Chrm Meserve from Dan Salter, checking on status of NRC's decision whether to provide public access to the Daily Plant Status Report and Daily Event Reports removed from the NRC's website in the wake of September 11. (5 pages) [Ex. 5]
7.	03/11/02	Note to Comr McGaffigan from Scott Moore, undated notes from Janet Schlueter, Comr McGaffigan, and Scott Moore, and vote regarding Corr-02-0003, Ltr to Jim Miller concerning restoration of unlimited access to the NRC's Sealed Source and Device Registration website. (4 pages) [Ex. 5]
8.	03/18/02	Note to Comr McGaffigan from Jeff Sharkey and Kathryn Winsberg and vote regarding Corr-02-0057, Letter to Dan Salter, HGP, Inc., concerns NRC's decision to restore the daily plant status reports and plant event reports the agency's website. (3 pages) [Ex. 5]

APPENDIX H - continued
RECORDS BEING WITHHELD IN THEIR ENTIRETY

<u>NO.</u>	<u>DATE</u>	<u>DESCRIPTION/(PAGE COUNT)/EXEMPTIONS</u>
9.	Undated	Note to Comr McGaffigan from Janet Schlueter concerns comments on COMSECY-01-0030 Guidance to the staff on release of information to the public. 01/08/01 note to Kathryn Winsberg from Janet Schlueter with instructions to review document. (2 pages) [Ex. 5]
10.	11/06/01	Comr Jeffrey Merrifield's vote regarding Corr-01-0181, Letter to Representative Markey concerning the temporary shutdown of NRC's website. (2 pages) [Ex. 5]
11.	03/12/02	Comr Merrifield's vote regarding Corr-02-0003, Letter to Jim Miller concerning restoration of unlimited access to the NRC's Sealed Source and Device Registration worldwide website. (4 pages) [Ex. 5]
12.	03/20/02	Comr Merrifield's vote regarding Corr-02-0057, Letter Dan Sulter, HGP, Inc., concerning NRC's decision to restore the daily plant status reports and plan event reports to the agency's website. (2 pages) [Ex. 5]
13.	11/05/01	Comr Greta Dicus' vote on Corr-01-0181. (4 pages) [Ex. 5]
14.	03/12/02	Comr Dicus' vote on Corr-02-0003. (1 page) [Ex. 5]
15.	03/26/02	Comr Dicus' vote on Corr-02-0057. (1 page) [Ex. 5]
16.	11/01/01	Comr Greta Dicus' office routing Slip for Corr-01-0181. (1 page) [Ex. 5]
17.	03/12/02	Comr Dicus' office routing Slip for Corr-02-0003. (1 page) [Ex. 5]
18.	03/13/02	Comr Dicus' office routing Slip for Corr-02-0057. (1 page) [Ex. 5]
19.	01/10/02	Email from Cindy Jones to Multiple Addresses concerning Corr-02-0003. (1 page) [Ex. 5]
20.	04/18/02	Memorandum form Annette Vietti-Cook, SECY to William Travers, EDO concerns Review of Commission documents for the NRC external web site. (2 pages) [Ex. 5]