



UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

AUG 21 2003

OFFICE OF THE
SECRETARY

IN RESPONSE REFER
TO FOIA-2003-013A
FOIA - (2003-0310)

Mr. J. A. Savage


Dear Mr. Savage:

I am responding to your letter of July 24, 2003, in which you appealed the denial dated July 10, 2003, from Carol Ann Reed of the U.S. Nuclear Regulatory Commission (NRC) to your Freedom of Information Act (FOIA) request (FOIA 2003-0310) for documents relating to the Differing Professional Opinion (DPO) authored by Mr. Ross Landsman. Ms. Reed's response denied the release of one record responsive to your June 9, 2003, FOIA request.

Acting on your appeal, I have carefully reviewed the record in this case and have determined that the document withheld from disclosure (the DPO authored by Mr. Landsman) was properly withheld under Exemption 5 of the FOIA. Accordingly, the initial decision to withhold the document is affirmed and your appeal is denied.

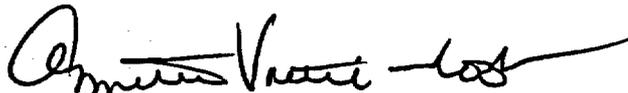
The purposes of the Exemption 5 deliberative process privilege are to encourage open, frank discussions on matters between subordinates and superiors; to protect against premature disclosure of proposed policies before they are finally adopted; and to protect against public confusion that might result from disclosure of reasons and rationales that were not in fact ultimately the grounds for an agency's action. Thompson, II v. Dept. of Navy, No. 95-347, 1997 WL 527344 (D.D.C. August 18, 1997); Russell v. Dept. of Air Force, 682 F. 2d 1045 (D.C. Cir. 1982). See also, Jordan v. Dep't of Justice, 591 F. 2d 753 (D.C. Cir. 1978). The DPO withheld under Exemption 5 in this matter constitutes an advisory opinion; the DPO identifies issues and suggestions from a member of staff to the Commission. Release of this information would tend to inhibit the open and frank expression of ideas essential to the deliberative process. Moreover, this DPO has not been resolved by the agency at this time. Accordingly, this DPO will continue to be withheld from public disclosure pursuant to Exemption 5 of the FOIA (5 U.S.C. 552 (b) (5)) and 10 C.F.R. 9.17 (a)(5) of the Commission's regulations.

Mr. J. A. Savage

-2-

This is a final agency action on these records. As stated in the FOIA (5 U.S.C. 552 (a)(4)(B)), judicial review of this decision is available in a district court of the United States in the district in which the agency records are situated, or in the district in which you reside or have your principal place of business, or in the District of Columbia.

Sincerely,

A handwritten signature in black ink, appearing to read "Annette Vietti-Cook", with a long horizontal flourish extending to the right.

Annette Vietti-Cook
Secretary of the Commission