

## The National Security Archive

The George Washington University  
Gelman Library, Suite 701  
2130 H Street, N.W.  
Washington, D.C. 20037

Phone: 202/994-7000  
Fax: 202/994-7005  
nsarchive@gwu.edu  
www.nsarchive.org

January 8, 2003

Carol Ann Reed  
FOIA/PA Officer  
Nuclear Regulatory Commission  
Washington, D.C. 20555

~~FOIA REQUEST~~  
Case No: 2003-0117  
Date Rec'd: 1-8-03  
Action Of: Rec'd  
Folios: 1

Re: Request under the FOIA, in reply please refer to Archive # 20030030NRC001

To Ms. Reed:

Pursuant to the Freedom of Information Act (FOIA), I hereby request disclosure of the following images for inspection and possible copying:

All records, including but not limited to guidance or directives, memoranda, training materials, or legal analyses, concerning the March 19, 2002 memorandum issued by White House Chief of Staff Andrew Card to the heads of all federal departments and agencies regarding records containing information about Weapons of Mass Destruction (WMD). Attached with this memo was a supporting memorandum by the US Justice Department and Information Security Oversight Office.

If you regard any of these documents as potentially exempt from the FOIA's disclosure requirements, I request that you nonetheless exercise your discretion to disclose them. As the FOIA requires, please release all reasonably segregable nonexempt portions of documents. To permit me to reach an intelligent and informed decision whether or not to file an administrative appeal of any denied material, please describe any withheld records (or portions thereof) and explain the basis for your exemption claims.

As you know, the National Security Archive qualifies for waiver of search and review fees as a representative of the news media. This request is made as part of a scholarly and news research project and not for commercial use. For details on the Archive's research and publication activities, please see our Web site at the address above. Please notify me before incurring photocopying costs over \$100.

To expedite the release of the requested documents, please disclose them on an interim basis as they become available to you, without waiting until all the documents have been processed. If you have any questions regarding the identity of the records, their location, the scope of the request or any other matters, please call me at (202) 994-7045 or e-mail me at wferro@gwu.edu. I look forward to receiving your response within the twenty-day statutory time period.

Sincerely,

  
for Will Ferroggiaro  
Director, Freedom of Information Project

B/1



# The National Security Archive

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Gelman Library, Suite 701  
2130 H Street, NW  
Washington, DC 20037

Phone: 202/994-7000  
Fax: 202/994-7005  
nsarchiv@gwu.edu  
<http://www.nsarchive.org>

## FAX COVER SHEET

Date: January 8, 2003

To: Carol Ann Reed – FOIA/PA Officer

Organization: Nuclear Regulatory Commission

From: The National Security Archive

Number of pages (including cover sheet) 2

If there is a problem with this transmission, please call us at  
202-994-7000 as soon as possible.

Message: FOIA Request Attached.

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

2003-0117

1

RESPONSE  
TYPE ☐ FINAL ☒ PARTIAL

REQUESTER

Will Ferroggiaro

DATE

APR 18 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** 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**  
**A,B** 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)**

Additional records subject to your request have been referred to the U.S. Department of Energy for their review and direct response to you.

SIGNATURE - FREEDOM OF INFORMATION ACT AND PRIVACY ACT OFFICER

Carol Ann Reed

NRC FORM 464 Part II (6-1998)	U.S. NUCLEAR REGULATORY COMMISSION	FOIA/PA  2003-0117	DATE  APR 18 2003
<b>RESPONSE TO FREEDOM OF INFORMATION ACT (FOIA) / PRIVACY ACT (PA) REQUEST</b>			

**PART II.A – APPLICABLE EXEMPTIONS**

**APPENDICES**  
**B**

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	APPELATE OFFICIAL		
			EDO	SECY	IG
Roy P. Zimmerman	Director, Office of Nuclear Security and Incident Response	Appendix B	<input checked="" type="checkbox"/>		

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 A  
RECORDS BEING RELEASED IN THEIR ENTIRETY**

<b><u>NO.</u></b>	<b><u>DATE</u></b>	<b><u>DESCRIPTION/(PAGE COUNT)</u></b>
1.	Undated	Summary of 4/16 Meeting on Information Review for SHSI (1 page)
2.	3/21/02	Office of the Secretary, Correspondence Control Ticket (1 page)
3.	3/21/02	Office of the Secretary, Correspondence Control Ticket (1 page)
4.	4/24/02	E-mail from M Landau to R Zimmerman, Subject: Response to Andrew Card (1 page)
5.	3/19/02	EDO Principal Correspondence Control (1 page)
6.	3/19/02	EDO Principal Correspondence Control with enclosures (6 pages)
7.	6/14/02	Commissioner Merrifield's vote on COR: 02-0124 (1 page)
8.	6/13/02	Commissioner Diaz Action Items (1 page)
9.	6/13/02	Commissioner Diaz's vote on CORR: 02-0124 (1 page)
10.	6/11/02	Commissioner Dicus's vote on CORR: 02-0124 (4 pages)
11.	6/10/02	Chairman Meserve's vote on CORR: 02-0124 (3 pages)
12.	6/21/02	Letter to J Fenzel, Office of Homeland Security from R Meserve (2 pages)
13.	Undated	Draft Letter to J Fenzel, Office of Homeland Security from R Meserve (5 pages)

**APPENDIX B  
RECORDS WITHHELD IN PART**

<b><u>NO.</u></b>	<b><u>DATE</u></b>	<b><u>DESCRIPTION/(PAGE COUNT)/EXEMPTIONS</u></b>
1.	4/22/02	E-Mail from M Landau to M Weber, Subject: Status of SHSI and Andrew Card Response (1 page) Exemptions 2 and 5

### Summary of 4/16 meeting on Information Review for SHSI

After some discussion, it was agreed that we should be alert to the content of all documents for SHSI, rather than focusing on individual documents named in Management Directive 3.4 ("Lynn's Table")

We agreed a security information/education program should be aimed at all NRC employees. The education program would, at a minimum, be directed toward three levels of access to SHSI... all employees who may come across SHSI in the normal work routine, employees who are originators of documents making the determination of public/non-public access (and those who process such documents into ADAMS), and SHSI reviewers who will be "advisors" in the office for those with questions about which information should be withheld.

Wayne Burnside will develop a draft "determination" guide which will contain basic education about all levels of protected information as well as SHSI. NRR, NMSS and RES reps (Reckley, Sturz, Delligatti, Millman) will provide him with examples of documents they encounter, or specific sections or wording in such documents, that may constitute SHSI. We agreed as many examples as possible should be provided to clarify what constitutes SHSI to the staff.

The SHSI control process will be factored into the review process that already exists for proprietary, safeguards, and other protected information to ensure documents are marked correctly and placed in the correct public/non-public library of ADAMS.

NRR and NMSS also need to begin identifying certain types of information that are important to stakeholder involvement (i.e. licensing actions) that could be redacted or re-written to omit SHSI.

Once the determination guide is developed, the new office (NSIR) will begin to develop a "rollout" for the security information/education initiative.

11

**OFFICE OF THE SECRETARY  
CORRESPONDENCE CONTROL TICKET**

*Date Printed: Mar 21, 2002 16:37*

**PAPER NUMBER:** LTR-02-0205  
**ACTION OFFICE:** EDO

**LOGGING DATE:** 03/21/2002

**AUTHOR:** Andrew Card  
**AFFILIATION:** WH  
**ADDRESSEE:** Agency Heads

**SUBJECT:** Action to safeguard information regarding weapons of mass destruction and other sensitive documents related to Homeland Security

**ACTION:** Appropriate  
**DISTRIBUTION:** Advance copies to: Chairman, Comrs, OGC, EDO....RF

**LETTER DATE:** 03/19/2002

**ACKNOWLEDGED** No  
**SPECIAL HANDLING:**

**NOTES:** Response requested no later than 90 days from the date of this memorandum.....

**FILE LOCATION:** Adams

**DATE DUE:**

**DATE SIGNED:**

A/2

EDO --G20020166



**OFFICE OF THE SECRETARY  
CORRESPONDENCE CONTROL TICKET**

*Date Printed: Mar 22, 2002 11:20*

---

<b>PAPER NUMBER:</b>	<b>LTR-02-0205</b>	<b>LOGGING DATE:</b> 03/21/2002
<b>ACTION OFFICE:</b>	<b>EDO</b>	
<b>AUTHOR:</b>	Andrew Card	
<b>AFFILIATION:</b>	WH	
<b>ADDRESSEE:</b>	Agency Heads	
<b>SUBJECT:</b>	Action to safeguard information regarding weapons of mass destruction and other sensitive documents related to Homeland Security	
<b>ACTION:</b>	Signature of Chairman	
<b>DISTRIBUTION:</b>	Advance copies to: Chairman, Comrs, OGC, EDO....RF	
<b>LETTER DATE:</b>	03/19/2002	
<b>ACKNOWLEDGED</b>	No	
<b>SPECIAL HANDLING:</b>		
<b>NOTES:</b>	COMMISSION CORRESPONDENCE	
<b>FILE LOCATION:</b>	Adams	
<b>DATE DUE:</b>	06/05/2002	<b>DATE SIGNED:</b>

A/3

**From:** Mindy Landau, EDO  
**To:** Roy Zimmerman, NSIR  
**Date:** 4/24/02 2:54PM  
**Subject:** Response to Andrew Card

Roy, reference my earlier e-mail to you on the response to Andrew Card asking agencies to safeguard information regarding weapons of mass destruction, including radiological weapons. The green ticket was assigned to the EDO's office, but since Wayne Burnside in InfoSec is handling the response, we are transferring the green ticket to NSIR. The response, to be signed by the Chairman, is due May 29.

Mindy

**CC:** A. Lynn Silvious; Debra Engel; Patricia Norry; Patricia Tressler; Wayne Burnside

A/4

EDO Principal Correspondence Control

FROM:

DUE: 05/29/02

MLO20840361

EDO CONTROL: G20020166

DOC DT: 03/19/02

FINAL REPLY:

Andrew H. Card, Jr.  
The White House

TO:

Agency Heads

FOR SIGNATURE OF :

\*\* GRN \*\*

CRC NO: 02-0205

Chairman Meserve

DESC:

ROUTING:

Action to Safeguard Information Regarding Weapons  
of Mass Destruction and Other Sensitive Documents  
Related to Homeland Security (Due: 6/17/02)

Travers  
Paperiello  
Kane  
Norry  
Craig  
Burns/Cyr  
Springer, ADM  
Reiter, CIO  
Wessman, IRO  
Virgilio, NMSS  
Collins, NRR  
Schum, OEDO  
Davis, NMSS

DATE: 03/22/02

ASSIGNED TO:

CONTACT:

~~EDO~~ NSIR

~~Landau~~ Zimmerman

SPECIAL INSTRUCTIONS OR REMARKS:

A/5

AC

## EDO Principal Correspondence Control

FROM: DUE: 05/29/02

EDO CONTROL: G20020166

DOC DT: 03/19/02

FINAL REPLY:

Andrew H. Card, Jr.  
The White House

TO:

Agency Heads

FOR SIGNATURE OF :

\*\* GRN \*\*

CRC NO: 02-0205

Travers, EDO

DESC:

Action to Safeguard Information Regarding Weapons  
of Mass Destruction and Other Sensitive Documents  
Related to Homeland Security (Due: 6/17/02)

ROUTING:

Travers  
Paperiello  
Kane  
Norry  
Craig  
Burns/Cyr  
Springer, ADM  
Reiter, CIO  
Wessman, IRO  
Virgilio, NMSS  
Collins, NRR  
Schum, OEDO  
Davis, NMSS

DATE: 03/22/02

ASSIGNED TO:

CONTACT:

EDO

Landau

SPECIAL INSTRUCTIONS OR REMARKS:

Copies: Tom Martin  
Valeria Wilson  
Tim Hagan

INFOSSEC

Provide support to

Ministry.

Tom

A/4

ML020840361

E-RIDS: SEC401

Template: GECY-017

**From:** Cathy Jaegers  
**To:** Janet Lepre; Mindy Landau  
**Date:** Tue, Mar 26, 2002 8:19 AM  
**Subject:** ADAMS Action Green Ticket for EDO - G20020166

Accession No. ML020840361

White House Memo re Action to Safeguard Information Regarding Weapons of Mass Destruction and Other Sensitive Documents Related to Homeland Security

**CC:** Karen Cyr; RidsAdmMailCenter; RidsIroMailCenter; RidsNmssOd; RidsNrrOd; RidsOcio; Stephen Burns

WAYNE  
BURNSIDE  
Art 28

*Publicly available information related to WMD*

- NARA
- PDR
- FOIA

*Core we assured that NRC protects  
WMD information*



**THE WHITE HOUSE  
WASHINGTON**

March 19, 2002

**MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND  
AGENCIES**

**FROM:**

**ANDREW H. CARD, JR.**  
Assistant to the President and Chief of Staff

*- Suggest Murky  
- Deal out about  
OHS meeting  
- quantify problem  
per Murky*

**SUBJECT:**

**Action to Safeguard Information Regarding Weapons of Mass  
Sensitive Documents Related to Homeland Security**

As noted in many discussions during the past several months, you and your department or agency have an obligation to safeguard Government records regarding weapons of mass destruction. Weapons of mass destruction include chemical, biological, radiological, and nuclear weapons. Government information, regardless of its age, that could reasonably be expected to assist in the development or use of weapons of mass destruction, including information about the current locations of stockpiles of nuclear materials that could be exploited for use in such weapons, should not be disclosed inappropriately.

I asked the Acting Director of the Information Security Oversight Office and the Co-Directors of the Justice Department's Office of Information and Privacy to prepare guidance for reviewing Government information in your department or agency regarding weapons of mass destruction, as well as other information that could be misused to harm the security of our Nation and the safety of our people. Their guidance is attached, and it should be distributed to appropriate officials within your department or agency, together with this memorandum, to assist in your undertaking an immediate reexamination of current measures for identifying and safeguarding all such information at your department or agency.

All departments and agencies should review their records management procedures and, where appropriate, their holdings of documents to ensure that they are acting in accordance with the attached guidance. They should report the completion, or status, of their review to my office through the Office of Homeland Security no later than 90 days from the date of this memorandum.

If agency officials need assistance in determining the classification status of records related to the development or use of weapons of mass destruction, they should contact the Information Security Oversight Office, at 202-219-5250. For assistance in determining the classification of nuclear and radiological weapons classified under the Atomic Energy Act,

they should contact the Department of Energy's Office of Security, at 202-586-3345. If they need assistance in applying exemptions of the Freedom of Information Act (FOIA) to sensitive but unclassified information, they should contact the Justice Department's Office of Information and Privacy (OIP), at 202-514-3642, or consult OIP's FOIA Web site at [www.usdoj.gov/04foia/index/html](http://www.usdoj.gov/04foia/index/html) [sic].

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**Information Security Oversight Office  
National Archives and Records Administration  
700 Pennsylvania Avenue, NW  
Washington, DC 20408**

March 19, 2002

**MEMORANDUM FOR DEPARTMENTS AND AGENCIES**

**FROM:**

**LAURA L.S. KIMBERLY**  
Acting Director  
Information Security Oversight Office

**RICHARD L. HUFF**  
**DANIEL J. METCALFE**  
Co-Directors  
Office of Information and Privacy  
Department of Justice

**SUBJECT:**

**Safeguarding Information Regarding Weapons of Mass Destruction and Other  
Sensitive Records Related to Homeland Security**

At the request of the Assistant to the President and Chief of Staff, we have prepared this memorandum to provide guidance for reviewing Government information regarding weapons of mass destruction, as well as other information that could be misused to harm the security of our nation or threaten public safety. It is appropriate that all federal departments and agencies consider the need to safeguard such information on an ongoing basis and also upon receipt of any request for records containing such information that is made under the Freedom of Information Act (FOIA), 5 U.S.C. § 552 (2000). Consistent with existing law and policy, the appropriate steps for safeguarding such information will vary according to the sensitivity of the information involved and whether the information currently is classified.

**I. Classified Information**

- If the information currently is classified and is equal to or less than 25 years old, it should remain classified in accordance with Executive Order 12958, Sec. 1.5 and Sec. 1.6. Although classified information generally must be declassified within 10 years of

its original classification, classification or reclassification may be extended for up to 25 years in the case of information that could reasonably be expected to "reveal information that would assist in the development or use of weapons of mass destruction." Id., Sec. 1.6(d)(2).

- If the information is more than 25 years old and is still classified, it should remain classified in accordance with Executive Order 12958, Sec. 3.4(b)(2), which authorizes agency heads to exempt from automatic declassification any "specific information, the release of which should be expected to ... reveal information that would assist in the development or use of weapons of mass destruction." (Agencies should note that the automatic declassification date for any classified information over 25 years old that involves the equities of more than one agency was extended under April 2003 by Executive Order 13142. Agencies have until then to exempt such information from automatic declassification under any one of the pertinent exemption categories in Executive Order 12958, Sec. 3.4(b).)

In this regard, agencies should note that Department of Defense (DOD) information that involves the equities of more than one DOD component is considered to have multi-agency equities. Information maintained by the Defense Technical Information Center (DTIC) or the National Archives and Records Administration (NARA) also is deemed to have multi-agency equities, i.e., those pertaining to DTIC or NARA and those pertaining to the component agency or agencies that created the information.

## II. Previously Unclassified or Declassified Information

*NRC is covered via RD*

- If the information, regardless of age, never was classified and never was disclosed to the public under proper authority, but it could reasonably be expected to assist in the development or use of weapons of mass destruction, it should be classified in accordance with Executive Order 12958, Part 1, subject to the provisions of Sec. 1.8(d) if the information has been the subject of an access demand (or Sec 6.1(a) if the information concerns nuclear or radiological weapons).
- If such sensitive information, regardless of age, was classified and subsequently was declassified, but it never was disclosed to the public under proper authority, it should be reclassified in accordance with Executive Order 12958, Part 1, subject to the provisions of Sec. 1.8(d) if the information has been the subject of an access demand (or Sec 6.1(a) if the information concerns nuclear or radiological weapons).

*① For NRC must inform us via RD. For other open info would be NSI.*

## III. Sensitive But Unclassified Information

In addition to information that could reasonably be expected to assist in the development or use of weapons of mass destruction, which should be classified or reclassified as described in Parts I and II above, departments and agencies maintain and control sensitive information related to America's homeland security that might not meet one or more of the standards for classification set forth in Part 1 of Executive Order 12958. The need to protect such sensitive information from inappropriate disclosure should be carefully considered, on a case-by-case basis, together with the benefits that result from the open and efficient exchange of scientific, technical, and like information.

*② NRC contemplated in 1981 that we couldn't classify everything related to nuclear info, since we couldn't make a national security policy. Hence Section 1.8 of E.O. 12958.*

*③ Other info may have been RD or NSI and will be copied as NSI.*

All departments and agencies should ensure that in taking necessary and appropriate actions



to safeguard sensitive but unclassified information related to America's homeland security, they process any Freedom of Information Act request for records containing such information in accordance with the Attorney General's FOIA Memorandum of October 12, 2001, by giving full and careful consideration to all applicable FOIA exemptions. See *FOIA Post*, "New Attorney General FOIA Memorandum Issued" (posted 10/15/01) (found at [www.usdoj.gov/oip/foiapost/2001foiapost19.htm](http://www.usdoj.gov/oip/foiapost/2001foiapost19.htm)), which discusses and provides electronic links to further guidance on the authority available under Exemption 2 of the FOIA, 5 U.S.C. § 552 (b)(2), for the protection of sensitive critical infrastructure information. In the case of information that is voluntarily submitted to the Government from the private sector, such information may readily fall within the protection of Exemption 4 of the FOIA, 5 U.S.C. § 552 (b)(4).

As the accompanying memorandum from the Assistant to the President and Chief of Staff indicates, federal departments and agencies should not hesitate to consult with the Office of Information and Privacy, either with general anticipatory questions or on a case-by-case basis as particular matters arise, regarding any FOIA-related homeland security issue. Likewise, they should consult with the Information Security Oversight Office on any matter pertaining to the classification, declassification, or reclassification of information regarding the development or use of weapons of mass destruction, or with the Department of Energy's Office of Security if the information concerns nuclear or radiological weapons.

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HTML from hardcopy original by FAS

Justice Department version: <http://www.usdoj.gov/oip/foiapost/2002foiapost10.htm>

*The reason NRC has exempted NSI from 10 year  
exemption via the X2, "weapons of mass destruction"  
is because it such information related to  
facilitates WMD technology is more than 25  
years old.*  
JISPD

**CORR: 02-0124**

*Merrifield*  
**CORR: 02-0124**

## COMMISSION CORRESPONDENCE

### Correspondence Response Sheet

**Date:** *June 7, 2002*

*Conc-- subject re  
edits of Chairman  
Meserve.*

**To:** *Chairman Meserve  
Commissioner Dicus  
Commissioner Diaz  
Commissioner McGaffigan  
Commissioner Merrifield ✓*

**From:** *Annette Vietti-Cook, Secretary*

*[Signature]*  
*6/14/02*

**Subject:** *Letter to John Fenzel, OHS, concerns actions that NRC has taken to protect information regarding weapons of mass destruction and other documents that may be considered sensitive in the context of homeland security*

**ACTION:** *Please comment/concur and respond to the Office of the Secretary by:*

**Time:** *NOON*

**Day:** *Monday*

**Date:** *June 17, 2002*

**Comment:** *RESPONSE DUE TO OHS NLT WEDNESDAY,  
JUNE 19, 2002*

**Contact:** *Wayne Burnside, NSIR/EDO  
415-3211*

**Entered in STARS Tracking System** ☒ **Yes** ☐ **No**

*A17*

COMMISSIONER DIAZ ACTION ITEMS

SUBJECT: CORR-02-0124 -Letter to John Fenzel, OHS,  
Concerns Actions that NRC Has Taken to  
Protect Information Regarding Weapons of  
Mass Destruction and Other Documents That  
May be Considered Sensitive in the Context of  
Homeland Security (attachment is "OUO")

RECEIVED: 06-07-02

DUE: 06-17-02 (noon)

MLO TO TA <i>gmy</i>	DATE: 6.10.2
TA TO MLO	DATE: —
MLO TO CMR	DATE: 6.13.2
CMR TO SECY	DATE: 6.17.2

NOTES: Recommend concurrence with  
chairman's edits. *DS*

No - given that the Commission hasn't  
agreed to ND's view's re: being more  
cautious w/ our info and that there's  
three last few sentences in the last full  
page: OHS, I would just have ND vote -  
No comment

*NSD*

*A/8*

CORR: 02-0124

*Diaz*  
CORR: 02-0124

## COMMISSION CORRESPONDENCE

### Correspondence Response Sheet

**Date:** June 7, 2002

No comment.

**To:** Chairman Meserve  
Commissioner Dicus  
Commissioner Diaz ✓  
Commissioner McGaffigan  
Commissioner Merrifield

*Nils J. Diaz*  
Nils J. Diaz 6/13/02

**From:** Annette Vietti-Cook, Secretary

**Subject:** Letter to John Fenzel, OHS, concerns actions that NRC has taken to protect information regarding weapons of mass destruction and other documents that may be considered sensitive in the context of homeland security

**ACTION:** Please comment/concur and respond to the Office of the Secretary by:

**Time:** NOON  
**Day:** Monday  
**Date:** June 17, 2002

**Comment:** RESPONSE DUE TO OHS NLT WEDNESDAY, JUNE 19, 2002

**Contact:** Wayne Burnside, NSIR/EDO  
415-3211

CC'D BY NFD-

JUN 02 10:45

Entered in STARS Tracking System ☒ Yes ☐ No

ORIGINAL

*2/9*

**CORR: 02-0124**

**CORR: 02-0124**

## COMMISSION CORRESPONDENCE

### Correspondence Response Sheet

Approve with edits.

**Date:** *June 7, 2002*

**To:** *Chairman Meserve*  
*Commissioner Dicus* ✓  
*Commissioner Diaz*  
*Commissioner McGaffigan*  
*Commissioner Merrifield*

*Greta Joy Dicus*  
*06/11/02*

**From:** *Annette Vietti-Cook, Secretary*

**Subject:** *Letter to John Fenzel, OHS, concerns actions that NRC has taken to protect information regarding weapons of mass destruction and other documents that may be considered sensitive in the context of homeland security*

**ACTION:** *Please comment/concur and respond to the Office of the Secretary by:*

**Time:** *NOON*  
**Day:** *Monday*  
**Date:** *June 17, 2002*

*06/13/02*

**Comment:** *RESPONSE DUE TO OHS NLT WEDNESDAY, JUNE 19, 2002*

**Contact:** *Wayne Burnside, NSIR/EDO*  
*415-3211*

**Entered in STARS Tracking System** ☒ **Yes** ☐ **No**

*A/10*



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

Mr. John Fenzel, Staff Director  
Office of Homeland Security  
Executive Office of the President  
Eisenhower Executive Office Building  
725 17<sup>th</sup> Street, NW  
Washington, D.C. 20503

(WAC)

Dear Mr. Fenzel:

*On behalf of the U.S. Nuclear Regulatory Commission, I am responding.*  
*Mr. Andrew H. Card, Jr.*  
~~This letter responds to your memorandum of March 19, 2002, concerning actions that~~  
~~the U.S. Nuclear Regulatory Commission (NRC) has taken to protect information regarding~~  
weapons of mass destruction and other documents that may be considered sensitive in the  
context of homeland security. *The staff has* ~~Having reviewed our procedures and processes,~~ *and* ~~we believe that~~  
we are fully compliant with the guidance from the Information Security Oversight Office (ISOO),  
dated March 19, 2002.

With respect to classified information, the NRC operates in conformance with the existing procedures and controls prescribed by Executive Order 12958 and the Atomic Energy Act (AEA) of 1954, as amended. For National Security Information (NSI), NRC updated the current classification guides following the publication of Executive Order 12958 to indicate that information related to the development or use of weapons of mass destruction is exempt from declassification at 10 years, and may be extended to 25 years. The NRC is also aware that automatic declassification does not apply to Restricted Data (RD), and we recognize the U.S. Department of Energy as the sole authority for declassification of RD. For documents with multiple government agency equities, the NRC routinely works with respective individual agencies to ensure that decisions concerning declassification take into account their equities and perspectives. In addition, the NRC sought and was granted interim approval to extend the

*gja*  
*06-11-02*

classification of specific information beyond 25 years by the Interagency Security Classification Appeals Panel on October 17, 2001.

~~Because of the relatively small amount of classified information generated by the NRC,~~ <sup>At the</sup>  
there have been very few instances in which previously unclassified information subsequently became classified in accordance with Section 1.8(d) of Executive Order 12958. Similarly, <sup>generalized by NRC in large part of the nature of our mission regarding correct uses of nuclear material,</sup>  
declassification of information has been extremely rare for the NRC because most of our unclassified or non-sensitive information is released to the public and, therefore, would not be reclaimable under Section 1.8(d).

The NRC commonly uses the various categories of Sensitive But Unclassified information common to other government agencies (e.g., Official Use Only, Proprietary, Privacy Act Information, etc.). It should be noted, however, that early in the agency's history, the NRC recognized the need to protect certain information related to nuclear topics which was not classifiable under either the NSI or RD regimes. At that time, the National Security Council (NSC) advised the NRC to seek legislative relief to protect this information, and instituted a category of Sensitive But Unclassified information known as "Safeguards Information" (SGI) under Section 147 of the AEA. As a result, the NRC has a 20-year history of protecting sensitive nuclear information that does not meet the criteria for classification as NSI or RD. Because of its statutory basis, this information, along with classified information, can be withheld from public disclosure under Exemption 3 of the Freedom of Information Act.

<sup>is reviewing the scope of SGI under the AEA. In addition, NRC is to determine whether it</sup>  
The NRC has already begun to assess other categories of information that may require protection as Sensitive Homeland Security Information (SHSI). The Commission has approved guidance which describes to the staff the types of information to be withheld, and which

gvd  
06-11-02

J. Fenzel

- 3 -

provides a framework for reviewing and controlling such information to ensure that it remains protected from public disclosure. ~~We are also reviewing the scope of SGI under the AEA, and are awaiting the Office of Homeland Security's (OHS) final definition of SHSI.~~ We will ensure that our guidance on SHSI remains consistent with any final guidance provided by OHS. Once this is done, we will develop additional guidance for the agency, our licensees, and other stakeholders reflecting how best to apply these protective regimes.

← The NRC welcomes the opportunity for further dialogue with the NSC, OHS, and ISOO on these issues.

Sincerely,

Richard A. Meserve

cc: Andrew H. Card, Jr.

grl  
06-11-07



CORR: 02-0124

Meserve  
CORR: 02-0124

## COMMISSION CORRESPONDENCE

### Correspondence Response Sheet

Date: June 7, 2002

To: Chairman Meserve ✓  
Commissioner Dicus  
Commissioner Diaz  
Commissioner McGaffigan  
Commissioner Merrifield

Offered as filed  
June 10, 2002

From: Annette Vietti-Cook, Secretary

Subject: Letter to John Fenzel, OHS, concerns actions that NRC has taken to protect information regarding weapons of mass destruction and other documents that may be considered sensitive in the context of homeland security

ACTION: Please comment/concur and respond to the Office of the Secretary by:

Time: NOON

Day: Monday

Date: June 17, 2002

Comment: RESPONSE DUE TO OHS NLT WEDNESDAY,  
JUNE 19, 2002

Contact: Wayne Burnside, NSIR/EDO  
415-3211

Entered in STARS Tracking System ☒ Yes ☐ No

A/11

Mr. John Fenzel, Staff Director  
Office of Homeland Security  
Executive Office of the President  
Eisenhower Executive Office Building  
725 17<sup>th</sup> Street, NW  
Washington, DC 20503

Dear Mr. Fenzel:

~~This letter responds to your~~ I am responding on behalf of the U.S. Nuclear Regulatory Commission (NRC) to Mr. Andrew Card, Jr.'s memorandum of March 19, 2002, concerning actions that the ~~U.S. Nuclear Regulatory Commission (NRC)~~ has taken to protect information regarding weapons of mass destruction and other documents that may be considered sensitive in the context of homeland security. <sup>We have</sup> Having reviewed our records management procedures and processes, <sup>and</sup> we believe ~~that we are~~ the NRC is fully compliant with the guidance ~~from~~ prepared by the Information Security Oversight Office (ISOO), dated March 19, 2002.

With respect to classified information, the NRC operates in conformance with the existing procedures and controls prescribed by Executive Order 12958 and the Atomic Energy Act (AEA) of 1954, as amended. For National Security Information (NSI), NRC updated the current classification guides following the publication of Executive Order 12958 to indicate that information related to the development or use of weapons of mass destruction is exempt from declassification at 10 years, and may be extended to 25 years. The NRC is also aware that automatic declassification does not apply to Restricted Data (RD), and ~~we recognize~~ recognizes <sup>that</sup> the U.S. Department of Energy as the sole authority for declassification of RD. For <sup>reflecting information from other</sup> documents with multiple government agency equities, the NRC routinely works with <sup>those</sup> respective individual agencies to ensure that decisions concerning declassification take into account their

~~equities and~~ perspectives. In addition, the NRC sought and was granted interim approval to extend the classification of specific information beyond 25 years by the Interagency Security Classification Appeals Panel on October 17, 2001.

Because of the relatively small amount of classified information generated by the NRC, there have been very few instances in which previously unclassified information subsequently became classified in accordance with Section 1.8(d) of Executive Order 12958. Similarly, reclassification of information has been extremely rare for the NRC because most of our unclassified or non-sensitive information is released to the public and, therefore, would not be reclaimable under Section 1.8(d).

The NRC commonly uses the various categories of Sensitive But Unclassified information common to other government agencies (e.g., Official Use Only, Proprietary, Privacy Act Information, etc.). It should be noted, however, that early in the agency's history, the NRC recognized the need to protect certain information related to nuclear topics which was not classifiable under either the NSI or RD regimes. At that time, the National Security Council (NSC) advised the NRC to seek legislative relief to protect this information, and instituted a category of Sensitive But Unclassified information known as "Safeguards Information" (SGI) under Section 147 of the AEA. As a result, the NRC has a 20-year history of protecting sensitive nuclear information that does not meet the criteria for classification as NSI or RD. Because of its statutory basis, this information, along with classified information, can be withheld from public disclosure under Exemption 3 of the Freedom of Information Act.

The NRC has ~~already~~ begun to assess other categories of information that may require protection as Sensitive Homeland Security Information (SHSI). The Commission has approved

J. Fenzel

- 3 -

guidance which describes ~~to the staff~~ the types of information to be withheld, and which. This guidance also provides a framework for reviewing and controlling such information to ensure that it remains protected from public disclosure. We are also reviewing the scope of SGI under the AEA, and are awaiting the Office of Homeland Security's (OHS) final definition of SHSI. We will ensure that our guidance on SHSI remains consistent with any final guidance provided by OHS. Once this is done, we will develop additional guidance for the agency, our licensees, and other stakeholders reflecting how best to apply these protective regimes.

<sup>discussion</sup>  
The NRC welcomes the opportunity for further ~~dialogue with the NSC, OHS, and ISOO~~ on these issues ~~safeguarding information related to homeland security~~. If there is any question, please contact me.

Sincerely,

Richard A. Meserve

cc: Andrew H. Card, Jr.



UNITED STATES  
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

June 21, 2002

ML 021490018  
Distribution:  
WTravers  
CPaperiello  
WKane  
PNorry  
JCraig  
RZimmerman, NSIR  
WBurnside, NSIR  
KCyr, OGC  
MSpringer, ADM  
SReiter, CIO  
MVirgilio, NMSS  
SCollins, NRR  
CSchum, EDO  
G20020166  
EDO r/f

Mr. John Fenzel, Staff Director  
Office of Homeland Security  
Executive Office of the President  
Eisenhower Executive Office Building  
725 17<sup>th</sup> Street, NW  
Washington, D.C. 20503

Dear Mr. Fenzel:

I am responding on behalf of the U.S. Nuclear Regulatory Commission (NRC) to Mr. Andrew Card, Jr.'s memorandum of March 19, 2002, concerning actions that the NRC has taken to protect information regarding weapons of mass destruction and other documents that may be considered sensitive in the context of homeland security. We have reviewed our records management procedures and processes and believe the NRC is fully compliant with the guidance prepared by the Information Security Oversight Office, dated March 19, 2002.

With respect to classified information, the NRC operates in conformance with the existing procedures and controls prescribed by Executive Order 12958 and the Atomic Energy Act (AEA) of 1954, as amended. For National Security Information (NSI), NRC updated the current classification guides following the publication of Executive Order 12958 to indicate that information related to the development or use of weapons of mass destruction is exempt from declassification at 10 years and may be extended to 25 years. The NRC is also aware that automatic declassification does not apply to Restricted Data (RD) and recognizes the U.S. Department of Energy as the sole authority for declassification of RD. For documents reflecting information from other government agencies, the NRC routinely works with these agencies to ensure that decisions concerning declassification take into account their perspectives. In addition, the NRC sought and was granted interim approval to extend the classification of specific information beyond 25 years by the Interagency Security Classification Appeals Panel on October 17, 2001.

At the NRC, there have been very few instances in which previously unclassified information subsequently became classified in accordance with Section 1.8(d) of Executive Order 12958. Reclassification of information generated by the NRC has been extremely rare in large part because of the nature of our mission regarding commercial uses of nuclear materials. Most of our unclassified or non-sensitive information is released to the public and, therefore, would not be reclaimable under Section 1.8(d).

The NRC generally uses the various categories of Sensitive But Unclassified information common to other government agencies (e.g., Official Use Only, Proprietary, Privacy Act Information, etc.). It should be noted, however, that early in the agency's history, the NRC recognized the need to protect certain information related to nuclear topics which was not classifiable under either the NSI or RD regimes. At that time, the National Security Council advised the NRC to seek legislative relief to protect this information and instituted a category of

Originated by: [WBurnside, NSIR]

1112

J. Fenzel

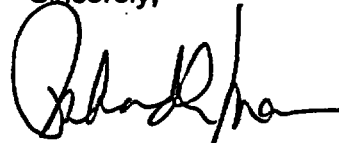
- 2 -

Sensitive But Unclassified information known as "Safeguards Information" (SGI) under Section 147 of the AEA. As a result, the NRC has a 20-year history of protecting sensitive nuclear information that does not meet the criteria for classification as NSI or RD. Because of its statutory basis, this information, along with classified information, can be withheld from public disclosure under Exemption 3 of the Freedom of Information Act.

The NRC is reviewing the scope of SGI under the AEA. In addition, the NRC is assessing other categories of information to determine whether they may require protection as Sensitive Homeland Security Information (SHSI). The Commission has approved guidance which describes the types of information to be withheld. This guidance also provides a framework for reviewing and controlling such information to ensure that it remains protected from public disclosure. We will ensure that our guidance on SHSI is consistent with any final guidance provided by the Office of Homeland Security. Once this is done, we will develop additional guidance for the agency, our licensees, and other stakeholders reflecting how best to apply these protective regimes.

The NRC welcomes the opportunity for further discussion on safeguarding information related to homeland security. If there is any question, please contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'Richard A. Meserve', with a stylized flourish at the end.

Richard A. Meserve

cc: Andrew H. Card, Jr.



OFFICE OF THE  
CHAIRMAN

UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

Mr. John Fenzel, Staff Director  
Office of Homeland Security  
Executive Office of the President  
Eisenhower Executive Office Building  
725 17<sup>th</sup> Street, NW  
Washington, DC 20503

Dear Mr. Fenzel:

This letter responds to your memorandum of March 19, 2002, concerning actions that the U.S. Nuclear Regulatory Commission (NRC) has taken to protect information regarding weapons of mass destruction and other documents that may be considered sensitive in the context of homeland security. Having reviewed our procedures and processes, we believe that we are fully compliant with the guidance from the Information Security Oversight Office (ISOO), dated March 19, 2002.

With respect to classified information, the NRC operates in conformance with the existing procedures and controls prescribed by Executive Order 12958 and the Atomic Energy Act (AEA) of 1954, as amended. For National Security Information (NSI), NRC updated the current classification guides following the publication of Executive Order 12958 to indicate that information related to the development or use of weapons of mass destruction is exempt from declassification at 10 years, and may be extended to 25 years. The NRC is also aware that automatic declassification does not apply to Restricted Data (RD), and we recognize the U.S. Department of Energy as the sole authority for declassification of RD. For documents with multiple government agency equities, the NRC routinely works with respective individual agencies to ensure that decisions concerning declassification take into account their equities and perspectives. In addition, the NRC sought and was granted interim approval to extend the classification of specific information beyond 25 years by the Interagency Security Classification Appeals Panel on October 17, 2001.

Because of the relatively small amount of classified information generated by the NRC, there have been very few instances in which previously unclassified information subsequently became classified in accordance with Section 1.8(d) of Executive Order 12958. Similarly, reclassification of information has been extremely rare for the NRC because most of our unclassified or non-sensitive information is released to the public and, therefore, would not be reclaimable under Section 1.8(d).

The NRC commonly uses the various categories of Sensitive But Unclassified information common to other government agencies (e.g., Official Use Only, Proprietary, Privacy Act Information, etc.). It should be noted, however, that early in the agency's history, the NRC recognized the need to protect certain information related to nuclear topics which was not classifiable under either the NSI or RD regimes. At that time, the National Security Council (NSC) advised the NRC to seek legislative relief to protect this information, and instituted a category of Sensitive But Unclassified information known as "Safeguards Information" (SGI) under Section 147 of the AEA. As a result, the NRC has a 20-year history of protecting

A113

sensitive nuclear information that does not meet the criteria for classification as NSI or RD. Because of its statutory basis, this information, along with classified information, can be withheld from public disclosure under Exemption 3 of the Freedom of Information Act.

The NRC has already begun to assess other categories of information that may require protection as Sensitive Homeland Security Information (SHSI). The Commission has approved guidance which describes to the staff the types of information to be withheld, and which provides a framework for reviewing and controlling such information to ensure that it remains protected from public disclosure. We are also reviewing the scope of SGI under the AEA, and are awaiting the Office of Homeland Security's (OHS) final definition of SHSI. We will ensure that our guidance on SHSI remains consistent with any final guidance provided by OHS. Once this is done, we will develop additional guidance for the agency, our licensees, and other stakeholders reflecting how best to apply these protective regimes.

The NRC welcomes the opportunity for further dialogue with the NSC, OHS, and ISOO on these issues.

Sincerely,

Richard A. Meserve

cc: Andrew H. Card, Jr.



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The NRC has already begun to assess other categories of information that may require protection as Sensitive Homeland Security Information (SHSI). The Commission has approved guidance which describes to the staff the types of information to be withheld, and which provides a framework for reviewing and controlling such information to ensure that it remains protected from public disclosure. We are also reviewing the scope of SGI under the AEA, and are awaiting the Office of Homeland Security's (OHS) final definition of SHSI. We will ensure that our guidance on SHSI remains consistent with any final guidance provided by OHS. Once this is done, we will develop additional guidance for the agency, our licensees, and other stakeholders reflecting how best to apply these protective regimes.

The NRC welcomes the opportunity for further dialogue with the NSC, OHS, and ISOO on these issues.

Sincerely,

Richard A. Meserve

cc: Andrew H. Card, Jr.

Distribution:

EDO R/F (G20020166)  
ASiller (NSIR 02-22)  
W.D. Travers, EDO  
W.F. Kane, DEDR  
J.W. Craig, OEDO  
S.G. Burns, OGC  
S. Reiter, OCIO  
M.J. Virgilio, NMSS  
C.C. Schum, OEDO

NSIR R/F  
INFOSEC R/F  
C.J. Paperiello, DEDMRS  
P.G. Norry, DEDM  
K.D. Cyr, GC  
M.L. Springer, ADM  
R.H. Wessman, NSIR  
S.J. Collins, NRR  
J.R. Davis, NSIR

This correspondence addresses policy issues previously resolved by the Commission, transmits factual information, or restates Commission policy.

ADAMS ACCESSION NO: ML021490018 (package)

Template=EDO-003

To receive a copy of this document, indicate in the box: "C" = Copy without attachment/enclosures "E" = Copy with attachments/enclosures "N" = No copy

OFFICE	INFOSEC	INFOSEC	OGC	D/DNS	D/NSIR*
NAME	WGBurnside*	ALSilvious*	DHassell*	GMTracy*	RPZimmerman
DATE	05/05/02	05/07/02	05/07/02	05/14/02	5/30/02
OFFICE	EDO	OCM/RM			
NAME	WDTravers	RAMeserve			
DATE	6/17/02	6/21/02			

Mr. Andrew H. Card, Jr.  
Assistant to the President and Chief of Staff  
The White House  
Washington, D.C.

Dear Mr. Card:

(MR) This letter responds to your memorandum of March 19, 2002, concerning the Nuclear Regulatory Commission's actions relative to protection of information regarding weapons of mass destruction and other sensitive documents related to homeland security. We have reviewed our procedures and processes and believe that we are in compliance with the March 19<sup>th</sup> 2002 guidance from the Information Security Oversight Office.

Our agency has operated in conformance with the existing procedures and controls for classified information as prescribed by Executive Order 12958 and the Atomic Energy Act (AEA) of 1954, as amended. For National Security Information, current classification guides were updated after the publication of Executive Order 12958 to indicate that information relative to the development or use of weapons of mass destruction is exempt from classification at 10 years, (and has been extended to 25 years)? NRC is aware that automatic declassification does not apply to Restricted Data, and recognizes the Department of Energy as the sole authority for declassification of Restricted Data. The NRC sought and was granted interim approval for the extension of sensitive information beyond 25 years by the Interagency Security Classification Appeals Panel on October 17, 2001.

Regarding documents with multiple government agency equities, NRC has been working with individual agencies to ensure that decisions on declassification take into account their equities and perspectives.

2  
were ok  
Because of the relatively small amount of classified information generated by the NRC, there have been very few instances where previously unclassified information has been classified in accordance with Section 1.8(d) of the Order. Similarly, reclassification of information has been extremely rare because most of our unclassified or non-sensitive information is released to the public, and therefore would not be reclaimable under Section 1.8(d).

It should be noted that in addition to the categories of sensitive unclassified information available to other government agencies (Official Use Only, Privacy Act Information, etc.), the NRC, early in its history, recognized the need to protect certain information related to nuclear topics which was not classifiable under either the National Security Information or Restricted Data regimes. The NRC was advised by the National Security Council to seek legislative relief to protect this information and instituted a category of sensitive unclassified information known as "Safeguards Information," under Section 147 of the AEA. Accordingly, the NRC has a 20-year history of protecting sensitive nuclear information which does not meet the criterion for classification as National Security Information or Restricted Data. Because of its statutory basis, this information can, along with classified information, be withheld from public disclosure under Exemption 1 of the Freedom of Information Act.

The NRC has already begun to assess other categories of information that may require protection as Sensitive Homeland Security Information. The Commission has approved guidance to the staff which describes the types of information to be withheld, and which provides a framework for review and control of such information to ensure it remains protected

*Handwritten:* ~~to the President~~

*Handwritten:* OHS  
Exec. Order of the President  
U.S. Eisenhower  
7-25 17 14 54  
NRC

*Handwritten:* WDC 2050

*Handwritten notes in right margin:*  
my opinion  
the subject  
work  
to the  
classification  
at a time ago  
in the past  
should have  
be C. Long

from public disclosure. We are also reviewing the scope of Safeguards Information under the AEA, and are awaiting the Office of Homeland Security's final definition of Sensitive Homeland Security Information. We will ensure that our guidance on SHSI remains consistent with any final guidance provided by the Office of Homeland Security. Once this is done, additional guidance for the agency, our licensees and other stakeholders will be developed reflecting how best to apply these protective regimes.

**(FOIA paragraph to be provided by OGC)?**

The NRC welcomes the opportunity for further dialogue with the National Security Council, the Office of Homeland Security and the Information Security Oversight Office on these issues.

**Richard A. Meserve**  
**Chairman**

**From:** Mindy Landau jEDD  
**To:** Michael Weber; Roy Zimmerman  
**Date:** 4/22/02 11:18AM  
**Subject:** Status of SHSI and Andrew Card response

Mike and Roy,

I wanted to update you on the working group's latest decisions regarding sensitive homeland security info... see attached summary of our last meeting. Roy, recall when you met with me, Pat, Dick and Tom Martin we discussed identifying all the docs in the agency that may need to be reviewed for sensitivity. The group felt that this would not be the most efficient course of action, and recommended that instead, a refresher security "determination" guide be developed which would be aimed at all agency information. We also recommended that a series of orientation sessions be held to refresh the staff on all classification info, plus the new SHSI designation. Wayne Burnside was tasked with developing a draft of the guide, with all of us providing input.

Mindy

**CC:** A. Lynn Silvious; Debra Engel; Dennis Gordon; Wayne Burnside

EX 5  
EX 2

B/1

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

2003-0117

2

RESPONSE TYPE ☐ FINAL ☒ PARTIAL

REQUESTER

Will Ferroggiaro

DATE

MAY 22 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** 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** **C** 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 NRC is consulting with the Office of Homeland Security with regard to one record subject to your request. As soon as the release determination has been made, I will inform you of the outcome.

SIGNATURE - FREEDOM OF INFORMATION ACT AND PRIVACY ACT OFFICER

Carol Ann Reed

**APPENDIX C**  
**RECORDS BEING RELEASED IN THEIR ENTIRETY**

<b><u>NO.</u></b>	<b><u>DATE</u></b>	<b><u>DESCRIPTION/(PAGE COUNT)</u></b>
1.	6/18/02	Vote on CORR 02-0124, McGaffigan (1 page)

CORR: 02-0124

*Mc Gaspard*  
CORR: 02-0124

## COMMISSION CORRESPONDENCE

### Correspondence Response Sheet

Date: June 7, 2002

To: Chairman Meserve  
Commissioner Dicus  
Commissioner Diaz  
Commissioner McGaffigan ✓  
Commissioner Merrifield

From: Annette Vietti-Cook, Secretary

Subject: Letter to John Fenzel, OHS, concerns actions that NRC has taken to protect information regarding weapons of mass destruction and other documents that may be considered sensitive in the context of homeland security

ACTION: Please comment/concur and respond to the Office of the Secretary by:

Time: NOON

Day: Monday

Date: June 17, 2002

Comment: RESPONSE DUE TO OHS NLT WEDNESDAY,  
JUNE 19, 2002

Contact: Wayne Burnside, NSIR/EDO  
415-3211

Entered in STARS Tracking System ☐ Yes ☐ No

*Agree or  
edit by  
Chairman  
E. McGaffigan  
6/18/02*

*c/1*

**RESPONSE TO FREEDOM OF  
INFORMATION ACT (FOIA) / PRIVACY  
ACT (PA) REQUEST**2003-0117 &  
2003-010A

3

RESPONSE TYPE ☒ FINAL ☐ PARTIAL

REQUESTER

Will Ferroggiaro

DATE

AUG 1 9 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** 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** **D** 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 Department of Homeland Security will respond directly to you on one record originated by that agency.

This response also closes your lack of response appeal dated February 7, 2003 (FOIA/PA 2003-010A).

SIGNATURE - FREEDOM OF INFORMATION ACT AND PRIVACY ACT OFFICER

Carol Ann Reed



**APPENDIX D**  
**RECORDS BEING RELEASED IN THEIR ENTIRETY**

<b><u>NO.</u></b>	<b><u>DATE</u></b>	<b><u>DESCRIPTION/(PAGE COUNT)</u></b>
1.	4/8/02	NRC Comments on Draft White Paper on Sensitive Homeland Security Information (3 pages)

**NRC Comments on  
DRAFT WHITE PAPER ON SENSITIVE HOMELAND SECURITY INFORMATION  
(as of April 8, 2002)**

- Under Task 1. Insert "or protected under other legislative authority (e.g., the Atomic Energy Act.)" to the end of the first sentence after, "safeguarding sensitive homeland security information that is not classified on national security grounds." The Atomic Energy Act (AEA) is the legal authority for other categories of protected information such as Restricted Data and unclassified Safeguards Information whose protection standards exceed those of SHSI.
- Under the proposed definition of Sensitive Homeland Security Information (a), insert "or protected under other legislative authority (e.g., the Atomic Energy Act)." after, "which is not currently classified as national security information." Again, the AEA is the legal authority for other categories of protected information such as Restricted Data and unclassified Safeguards Information whose protection standards exceed those of SHSI.
- Under Task 4. The last sentence limits training for "State officials". This stipulation is too limited in that this training is intended for all individuals listed in (a) and (b). We suggest that the last sentence be changed to, "The training for non-federal employees who receive security clearances should include guidance about how to use classified information effectively as well as how to safeguard it."

NRC Contact:  
Thomas O. Martin  
301-415-8080  
[tom2@nrc.gov](mailto:tom2@nrc.gov)

2/1

**EDO Principal Correspondence Control**

**FROM:**

**DUE: 04/12/02**

**EDO CONTROL: G20020206**

**DOC DT: 04/10/02**

**FINAL REPLY:**

**John Fenzel  
Office of Homeland Security**

**TO:**

**Agency Heads**

**FOR SIGNATURE OF :**

**\*\* GRN \*\***

**CRC NO: 02-0264**

**DESC:**

**Homeland Security Council Policy Coordination  
Committee on the Information Intelligence  
Initiative**

**ROUTING:**

**Travers  
Paperiello  
Kane  
Norry  
Craig  
Burns/Cyr  
Zimmerman, NSIR**

**DATE: 04/11/02**

**ASSIGNED TO:**

**CONTACT:**

**ADM**

**Springer**

**SPECIAL INSTRUCTIONS OR REMARKS:**

**Coordinate response with Tom Martin, ADM. Clear  
response through EDO.**

**Template: SECY-017**

**E-RDS: SECY-01**

**OFFICE OF THE SECRETARY  
CORRESPONDENCE CONTROL TICKET**

*Date Printed: Apr 10, 2002 16:40*

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<b>PAPER NUMBER:</b>	LTR-02-0264	<b>LOGGING DATE:</b>	04/10/2002
<b>ACTION OFFICE:</b>	EDO		
<b>AUTHOR:</b>	John Fenzel		
<b>AFFILIATION:</b>	WH		
<b>ADDRESSEE:</b>	Agency Heads		
<b>SUBJECT:</b>	Homeland Security Council Policy Coordination Committee on the Information Intelligence Initiative		
<b>ACTION:</b>	Appropriate		
<b>DISTRIBUTION:</b>	Chairman, Comrs, RF		
<b>LETTER DATE:</b>	04/10/2002		
<b>ACKNOWLEDGED</b>	No		
<b>SPECIAL HANDLING:</b>	OCM #10120		
<b>NOTES:</b>	NOTE DUE DATE OF APRIL 12TH FOR RECOMMENDATIONS		
<b>FILE LOCATION:</b>	Adams		
<b>DATE DUE:</b>		<b>DATE SIGNED:</b>	

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EDO --G20020206