



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

2002-0256

8

RESPONSE TYPE  FINAL  PARTIAL

REQUESTER

Sean Moulton / Cheryl Gregory

DATE

DEC 12 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 **AA** 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 **Y, Z,** 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 **Y, Z, BB** 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)

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  
**BB, CC**

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
Michael L. Springer	Director, Office of Administration	Appendix BB	✓		
Patricia G. Norry	Deputy Executive Director for Management Services Office of the Executive Director for Operations	Appendix CC		✓	

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 Y  
RECORDS BEING RELEASED IN THEIR ENTIRETY**

<u>NO.</u>	<u>DATE</u>	<u>DESCRIPTION/(PAGE COUNT)/EXEMPTIONS</u>
1.	09/18/01	Information paper from Mindy Landau, EDO - Subject: Urgent - Site Removal (1 page)
2.	10/12/01	Handwritten notes by Office of Public Affairs staff member re Lowered Threshold of Criteria for Web/ADAMS Review (1 page) <i>[Note: threshold document previously denied at Appendix N-8]</i>
3.	10/13/01	Memo from J.A. Zwolinski, NRR, to Mind Landau, EDO, Subj: NRR Review of NRC Web Site Related to Reactors for Sensitive Information (52 pages)
4.	10/17/01	Network Announcement. Subject: Partial NRC Public Web Site Now Available to the Public (1 page)
5.	11/06/01	E-mail from LLO (Legislative Liaison Office to S. Crockett, OGC, et al., Subj: Fwd: Draft EPA Oversight Testimony (Elaine Stanley) for 11/8 Hearing on Right-to-Know After Sept. 11 (1 page)
6.	11/06/01	E-mail from Trip Rothschild, OGC, to various persons, Subj: Fwd: Draft EPA Oversight Testimony (Elaine Stanley) for 11/8 Hearing on Right-to-Know After Sept. 11 (1 page)
7.	11/09/01	Letter from J. Miller, Sabia, Inc., to Chairman Meserve, re: Access to Sealed Source and Device Registration sheets on the database at Oak Ridge (1 page)
8.	11/13/01	E-mail from M. Landau, EDO to Wm. Reckley, NRR, Subj: Fwd: Draft EPA Oversight Testimony (Elaine Stanley) for 11/8 Hearing on Right-to-Know After Sept. 11 (1 page)
9.	11/20/01	Information paper. Subject: Public Access to Sensitive NRC documents (7 pages)
10.	12/06/01	E-mail S. Koenick, NRR, to C. Marco, OGC, et al., Re: St. Lucie-LRA (1 page)
11.	12/10/01	Letter from F. Giffels, HGP, Inc., to Senator S. Thurmond with cc: Chairman Meserve, re: Express Concern on the Impact of the Lack of Availability of NRC Daily Status Reports on Small Business (3 pages)

**APPENDIX Y - continued  
RECORDS BEING RELEASED IN THEIR ENTIRETY**

<u>NO.</u>	<u>DATE</u>	<u>DESCRIPTION/(PAGE COUNT)/EXEMPTIONS</u>
12.	01/03/02	E-mail M. Landau, EDO, to W. Reckley, NRR, Re: Fwd DSRM-COMSECY-01-0030-Guidance to staff on release of info to public (1 page)
13.	01/03/02	E-mail from Chester Poslusny, NMSS to Charlotte Abrams, NMSS, et al., Subj: Re: Fwd: DSRM - COMSECY-01-0030 - Guidance to Staff on Release of Info to Public (1 page)
14.	01/03/02	E-mail from Mark Delligatti, NMSS, to Charlotte Abrams, NMSS, et al., Subj: Re: Fwd: DSRM - COMSECY-01-0030 - Guidance to Staff on Release of Info to Public (1 page)
15.	01/09/02	Rulemaking Coordinating Committee meeting notes. (4 pages) [3 pgs outside scope; 1 pg released with outside scope]
16.	02/12/02	Rulemaking Coordinating Committee meeting notes. (3 pages) [2 pgs outside scope, 1 pg released with outside scope]
17.	05/30/02	Memo from T. McGinty, NSIR, to HOO Section, NSIR, re: Event Release Screening Criteria for Posting on the Public Website (5 pages)
18.	Undated	Information paper. Subject: General Public Advisory related to data available on the Web (1 page)

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

<u>NO.</u>	<u>DATE</u>	<u>ACCESSION NUMBER</u>	<u>DESCRIPTION/(PAGE COUNT)</u>
1.	10/11/01	ML012960081	Letter from David Lochbaum, Union of Concerned Scientists, to D. B. Matthews (NRR), re: UCS Policy on Information Formerly Available from the NRC (3 pages)
2.	10/24/01	ML013020407	Letter from F. Giffels, HGP, Inc. to Chairman Meserve re: Impact of Lack of Availability of NRC Daily Status Report on Small Business (5 pages)
3.	11/13/01	ML020370330	Letter from Rep. E. J. Markey to Chairman Meserve re: NRC's Decision on Whether to Remove Plant Status Reports from the Website Permanently (4 pages)
4.	12/31/01	ML020280117	Letter from D. J. Popeo & R. A. Samp, Washington Legal Foundation to W. D. Travers re: Denying Public Access to Information About Operating Reactors (4 pages)
5.	01/16/02	ML020310072	Letter from T. Gurdziel to Chairman Meserve re: Availability of Information on the Operational Status of U.S. Nuclear Power Plants (5 pages)
6.	02/05/02	ML020570401	Letter from D. Salter, HGP, Inc., to Chairman Meserve re: Request Status of Decision to Provide Public Access to the Daily Plant Status and Daily Event Reports Removed from NRC's Website (5 pages)
7.	03/21/02	ML020840485	Letter from W. D. Travers, EDO, to Senator S. Thurmond re: a constituent inquiry regarding Impact of Lack of Availability of NRC Daily Status Report on Small Business (2 pages)
8.	03/26/02	ML020920805	Letter from Rep. Jim DeMint to A. Vietti-Cook, SECY, re Daily Plant Status Report and Daily Event Reports be made Accessible from the NRC Website (11 pages)

**APPENDIX AA  
RECORDS ALREADY PUBLICLY AVAILABLE**

<u>NO.</u>	<u>DATE</u>	<u>ACCESSION NUMBER</u>	<u>DESCRIPTION/(PAGE COUNT)/EXEMPTIONS</u>
1.	11/05/01	ML013090388	Memo to W. Travers from Annette L. Cook, SECY - Subject: Staff Requirements - Meeting with NRC Stakeholders - Progress of Regulatory Reform, 9:00 a.m., Thursday, October 18, 2001, Auditorium, Two White Flint North, Rockville, Maryland (Open to Public Attendance)
2.	12/03/01	ML023360287	E-Mail Network Announcement re Freedom of Information Action (1 page)
3.	12/19/01	ML023360290	Note to Agreement States from Paul Lohaus Re: Program Information: NRC Guidance to Staff on Application of Attorney General Ashcroft FOIA Policy Memo (1 page)
4.	03/19/02	<a href="http://fas.org/sqp/bush/wh031902">http://fas.org/sqp/bush/wh031902</a>	Memo to the Heads of Executive Departments and Agencies from Andrew H. Card Jr., White House - Subject: Action to Safeguard Information Regarding Weapons of Mass Destruction and Other Sensitive Documents Related to Homeland Security (13 pages)

**APPENDIX BB  
RECORDS BEING WITHHELD IN PART**

<b><u>NO.</u></b>	<b><u>DATE</u></b>	<b><u>DESCRIPTION/(PAGE COUNT)/EXEMPTIONS</u></b>
1.	11/14/2001	Rulemaking Coordinating Committee meeting notes (2 pages) [1 pg = withheld in entirety, Ex. 5 & outside scope; 1 pg. = partially withheld (Ex. 5 & outside scope, outside scope & release); 1 pg. = release with outside scope]
2.	03/12/02	Rulemaking Coordinating Committee meeting notes. (1 page) [1 pg partial release (Ex. 5 & outside scope); 26 pages outside scope]
3.	04/23/02	Rulemaking Coordinating Committee meeting notes. (1 page) [1 pg partial release, Ex. 5; 1 pg outside scope]

**APPENDIX CC  
RECORDS BEING WITHHELD IN ENTIRETY**

<u>NO.</u>	<u>DATE</u>	<u>DESCRIPTION/(PAGE COUNT)/EXEMPTIONS</u>
1.	No date	Information paper from Mindy Landau, EDO - Subject: Block access to depositories and LPDRs (1 page) [Ex. 5]
2.	No date	Information paper from Mindy Landau, EDO - Subject: Supplement to Redaction Criteria (2 pages) [Ex. 5]
3.	No date	Information paper from Richard Wessman, NSIR - Subject: Criteria to be used when deciding to release information to the public (1 page) [Ex. 5]
4.	No date	Information paper. Subject: Evaluating Information to NRC's SE's and EISs as Candidates for Redacting from Publicly Available Versions (2 pages) [Ex. 5]
5.	No date	Information paper. Subject: Sensitive Information Criteria - Information with Potential for redacting from Public Versions (Rationale for Redacting) (4 pages) [Ex. 5]
6.	Undated	Information paper re Document Availability and Access Since 10/11 Web Site Shut Down with handwritten notes (3 pages) [Ex. 5]
7.	01/08/02	Information paper. Comments on Draft SRM COMSECY-01-0030 (1 page) [Ex. 5]
8.	01/25/02	Information paper from Mindy Landau, EDO - Subject: Discussion of 01/31/02 meeting on the January 25, 2002, SRM on COMSECY -01-0030 (10 pages) [Ex. 5]