

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

2003-0395

4

RESPONSE
TYPE☐

FINAL

☒

PARTIAL

REQUESTER

Kevin Kamps

DATE

JAN 15 2004

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**
G, H
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**
G, H
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 *

\$

* See comments
for details☐

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.

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

NRC FORM 464 Part II (6-1998)	U.S. NUCLEAR REGULATORY COMMISSION	FOIA/PA 2003-0395	DATE JAN 15 2004
RESPONSE TO FREEDOM OF INFORMATION ACT (FOIA) / PRIVACY ACT (PA) REQUEST			

APPENDICES H, I	PART II.A – APPLICABLE EXEMPTIONS 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)).
<input type="checkbox"/> Exemption 1: The withheld information is properly classified pursuant to Executive Order 12958. <input type="checkbox"/> Exemption 2: The withheld information relates solely to the internal personnel rules and procedures of NRC. <input type="checkbox"/> Exemption 3: The withheld information is specifically exempted from public disclosure by statute indicated. <input type="checkbox"/> 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). <input type="checkbox"/> Section 147 of the Atomic Energy Act, which prohibits the disclosure of Unclassified Safeguards Information (42 U.S.C. 2167). <input type="checkbox"/> 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. <input checked="" type="checkbox"/> Exemption 4: The withheld information is a trade secret or commercial or financial information that is being withheld for the reason(s) indicated. <input checked="" type="checkbox"/> The information is considered to be confidential business (proprietary) information. <input type="checkbox"/> 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). <input type="checkbox"/> The information was submitted by a foreign source and received in confidence pursuant to 10 CFR 2.790(d)(2). <input type="checkbox"/> Exemption 5: The withheld information consists of interagency or intraagency records that are not available through discovery during litigation. Applicable privileges: <input type="checkbox"/> 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. <input type="checkbox"/> Attorney work-product privilege. (Documents prepared by an attorney in contemplation of litigation) <input type="checkbox"/> Attorney-client privilege. (Confidential communications between an attorney and his/her client) <input type="checkbox"/> Exemption 6: The withheld information is exempted from public disclosure because its disclosure would result in a clearly unwarranted invasion of personal privacy. <input checked="" type="checkbox"/> Exemption 7: The withheld information consists of records compiled for law enforcement purposes and is being withheld for the reason(s) indicated. <input type="checkbox"/> (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). <input checked="" type="checkbox"/> (C) Disclosure would constitute an unwarranted invasion of personal privacy. <input type="checkbox"/> (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. <input type="checkbox"/> (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. <input type="checkbox"/> (F) Disclosure could reasonably be expected to endanger the life or physical safety of an individual. <input type="checkbox"/> 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
James L. Caldwell	Regional Administrator, RIII	Appendix II/1, II/2	✓		
Martin J. Virgilio	Director, Office of Nuclear Material Safety and Safeguards	Appendix II/3-II/11, Appendix I	✓		

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 G
RECORDS BEING RELEASED IN THEIR ENTIRETY**

<u>NO.</u>	<u>DATE</u>	<u>DESCRIPTION/(PAGE COUNT)</u>
1.	1/31/02	E-Mail from Gray to Narbut, Feeder Report - FitzPatrick 05000333/2001-003 fro UST&D (5 pages)
2.	8/20/02	E-Mail from Heller to O'Connell, Further Explanation of Dry Cask Storage Allegation (1 page)
3.	Undated	Draft Letter to Kingsley from Pedersen, Notification of Non-Conformance (4 pages)
4.	Undated	E-Mail from Kock to Langan, Additional Information from Hte CI (1 page)
5.	Undated	Alleger Visit (43 pages)

**APPENDIX H
RECORDS WITHHELD IN PART**

<u>NO.</u>	<u>DATE</u>	<u>DESCRIPTION/(PAGE COUNT)/EXEMPTIONS</u>
1.	1/14/02	Memo to Jorgensen from Kock, Review of Documents from a CI: RIII-2002-A-0005 (Exelon/Dresden) (82 pages) Exemption 7C
2.	2/22/02	Memo to O'Connell from Heller, Transfer of Concerns 1 and 8 of Allegation File RIII-2002-A-0005 to NMSS (104 pages) Exemption 7C
3.	3/5/02	E-Mail from Hodges to O'Connell, Oscar Shirani's allegations (4 pages) Exemption 7C
4.	5/7/02	Handwritten notes (1 page) Exemption 7C
5.	6/13/02	E-Mail from { } to Mwh@nrc.gov , Final Clarification on my dry cask allegation (9 pages) Exemption 7C
6.	6/18/02	E-Mail from Allegations RIII to O'Connell, Oscar Shirani's Allegation No. 6 (dry cask issues) (10 pages) Exemption 7C
7.	7/5/02	E-Mail from O'Connell to Narbut, Allegation Response Letter (3 pages) Exemption 7C
8.	7/30/03	Handwritten Notes (1 page) Exemption 7C
9.	8/19/02	E-Mail from { } to rlo@nrc.gov (4 pages) Exemption 7C
10.	Undated	Allegation NMSS-2000-A-0011 (6 pages) Exemption 7C
11.	Undated	Status of NAC-NSF4FR (1 page) Exemption 7C

APPENDIX I
RECORDS WITHHELD IN THEIR ENTIRETY

<u>NO.</u>	<u>DATE</u>	<u>DESCRIPTION/(PAGE COUNT)/EXEMPTIONS</u>
1.	Undated	Handwritten Notes (4 pages) Exemption 4