



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

2004-0107

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RESPONSE TYPE  FINAL  PARTIAL

REQUESTER

Timothy L. Judson

DATE

MAR 31 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 A** 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 B** 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 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)

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  
**C**

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
Guy P. Caputo	Director, Office of Investigations	Appendix C/1	✓		
Hubert J. Miller	Regional Administrator, Regio 1	Appendix C/2	✓		

Appeal must be made in writing within 30 days of receipt of this response. Appeals should be mailed to the FOIA/Privacy Act Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, for action by the appropriate appellate official(s). You should clearly state on the envelope and letter that it is a "FOIA/PA Appeal."

**APPENDIX A  
RECORDS ALREADY AVAILABLE IN THE PDR**

<u>NO.</u>	<u>DATE</u>	<u>ACCESSION NUMBER</u>	<u>DESCRIPTION/(PAGE COUNT)</u>
1.	04/30/1996	ML010600099	Ltr from R. Bernero of USNRC to J. Brons of Nuclear Generation Power Authority of the State of New York, regarding Exemption from Appendix R to 10 CFR 50 concerning installation of fire dampers (14 pages)
2.	12/29/1999	ML003672744	Ltr from M. Colomb of New York Power Authority to USNRC, regarding Supplement to Annual Summary of Plant Changes, Tests, and Experiments as Required by 10 CFR 50.59 (4 pages)
3.	09/10/1992	ML010920013	Ltr from R. Capra of USNRC to R. Beedle of Nuclear Generation Power Authority of the State of New York, regarding Issuance of Exemptions from Requirements of 10 CFR Part 50, Appendix R, for the James A. FitzPatrick Nuclear Power Plant (TAC No. M83969) (20 pages)
4.	05/29/2001	ML010790125	Ltr from G. Vissing of USNRC to M. Kansler of Entergy Nuclear Operations, Inc., regarding James A. FitzPatrick Nuclear Power Plant - Exemption from certain requirement of Section III.G.2.c of Appendix R to 10 CFR Part 50 (TAC No. MB0395) (14 pages)
5.	05/31/2002	ML021510281	Ltr from J. Linville of USNRC to T. Sullivan of Entergy Nuclear Northeast, regarding James A. FitzPatrick Nuclear Power Plant - NRC Triennial Fire Protection Inspection Report No. 50-333/02-002 (24 pages)

APPENDIX A  
RECORDS ALREADY AVAILABLE IN THE PDR  
(continued)

<u>NO.</u>	<u>DATE</u>	<u>ACCESSION NUMBER</u>	<u>DESCRIPTION/(PAGE COUNT)</u>
6.	07/31/2003	ML032130007	Ltr from G. Meyer of USNRC to T. Sullivan of Entergy Nuclear Northeast, regarding James A. FitzPatrick Nuclear Power Plant - NRC Integrated Inspection Report 05000333/2003005 (32 pages)

**APPENDIX B  
RECORDS TO BE RELEASED IN THEIR ENTIRETY**

<u>NO</u>	<u>DATE</u>	<u>DESCRIPTION (PAGE COUNT)</u>
1.	10/23/1997	Allegation Disposition Record, regarding Allegation No. RI-97-A-0126 and RI-97-A-0033 (4 pages)
2.	Undated	Assessment of the Licensee response to concerns raised to the NRC regarding activities at FitzPatrick Nuclear Power Plant (15 pages)
3.	10/22/1997	E-mail from J. Rogge, regarding actions associated with allegation - Forwarded (4 pages)
4.	09/16/1997	Ltr from J. Knubel of New York Power Authority to D. Vito of USNRC (39 pages)
5.	08/14/1997	Ltr from C. Hehl of USNRC to J. Knubel of New York Power Authority (4 pages)
6.	06/30/1997	Allegations Disposition Record, regarding Allegation No. RI-97-A-0033 and RI-97-A-0126 (4 pages)
7.	07/25/1997	E-mail from R. Barkley, regarding update of Fitz allegation 97-33/126 (1 page)
8.	05/28/1997	FitzPatrick Status of Allegations (6 pages)
9.	06/20/1997	Allegation 97-A-0033 & Supplements, Summary of Technical Issues Raised by Alleger & Proposed Inspection Assignments (4 pages)
10.	10/01/1996	Allegation Disposition Record, regarding Allegation No. RI-97-A-0033 (4 pages)
11.	05/21/1997	Allegation Receipt Record, regarding Allegation No. RI-97-A-0126 (2 pages)
12.	05/19/1997	Allegation 97-A-0033 & Supplements 05/19/1997 Summary of Technical Issues Raised by Alleger (4 pages)
13.	06/13/1994	Licensee Event Report, regarding James A. FitzPatrick Nuclear Power Plant (11 pages)
14.	11/27/1991	Licensee Event Report, regarding James A. FitzPatrick Nuclear Power Plant (11 pages)

15. 07/25/1997 E-mail from E. Kelly, regarding Update of Fitz Allegation 97-33/126 -reply (1 page)
16. 10/30/1997 Allegation RI-97-A-0126, Response to Technical Concerns (8 pages)
17. Undated Handwritten note (2 pages)
18. 10/22/1997 E-mail from J. Rogge, regarding actions associated with allegation - Forwarded (4 pages)
19. Undated Handwritten notes faxed to J. Rogge from FitzPatrick Resident Office (8 pages)
20. 10/17/1997 Memo from A. Blamey of USNRC to D. Vito of USNRC, regarding Allegation 97-A-0126, 0033 (6 pages)
21. Undated Memo from D. Burch to File: RI-97-A-0126, regarding FitzPatrick (1 page)
22. 08/14/1997 Ltr from C. Hehl of USNRC to J. Knubel of New York Power Authority, regarding activities at the FitzPatrick Nuclear Plant (6 pages)
23. 07/30/1997 Allegation Disposition Record, regarding Allegation No. RI-97-A-0126 and RI-97-A-0033 (4 pages)
24. 05/21/1997 Allegation Disposition Record, regarding RI-97-A-0033 (4 page)
25. 05/15/1997 Allegation Receipt Report, regarding RI-97-A-0033 (supplement 2) (2 pages)
26. Undated Drawings and Photos of S&A Bldg, LKG West, East Side of JAF Plant, JAF Plant from the South, JAF Admin/Support Building (5 pages)

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

<u>NO.</u>	<u>DATE</u>	<u>DESCRIPTION/(PAGE COUNT)/EXEMPTIONS</u>
1.	Various	Records subject to the request maintained in Office of Investigations' investigation Case No. 1-2003-034 are being withheld in entirety. (Approximately 1500 pages) EX. 7A
2.	Various	Records subject to the request maintained in NRC Region 1 Allegation File RI-2003-A-0068 are being withheld in entirety. (Approximately 900 pages) EX. 7A