



Union of Concerned Scientists

Citizens and Scientists for Environmental Solutions

August 19, 2004

Chief - FOIA-LPDR Branch
Division of Freedom of Information and Publication Services
Office of Administration
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

FOIA/PA REQUEST

Case No.: 2004-0336
Date Rec'd: 8-19-04
Specialist: _____
Related Case: _____

SUBJECT: FREEDOM OF INFORMATION ACT REQUEST

Good Day:

Pursuant to the Freedom of Information Act, 5 U.S.C. 552, as amended and 10 C.F.R. 9.8 of the Commission's regulations, and on behalf of Citizens Awareness Network (CAN), Committee to Bridge the Gap (CBG), EFMR Monitoring Group (EFMR), Friends of the Coast Opposing Nuclear Pollution, Greenpeace, Mothers for Peace (M4P), North Carolina Waste Awareness and Reduction Network (NC WARN), Nuclear Control Institute (NCI), Nuclear Information and Resource Service (NIRS), Public Citizen, Riverkeeper, Three Mile Island Alert (TMIA), and the Union of Concerned Scientists (UCS), I hereby request all "documents" in the possession of the NRC, including but not limited to all regional and headquarters offices, the office of the Executive Director of Operations, the NRC Chairman and all Commissioner's offices, the office of Nuclear Security and Incident Response, and "documents" between the agency and the Nuclear Energy Institute and/or the industry's Security Working Group, related to the deliberative processes and bases for three agency decisions:

1. Decision made prior to the nationwide implementation of the revised reactor oversight process in April 2000¹ that performance indicator (PI) and NRC inspection information for the physical protection cornerstone be made publicly available.
2. Decision made following the tragic events of 09/11 that performance indicator and NRC inspection information for the physical protection cornerstone can again be made publicly available.²
3. Decision made prior to August 4, 2004, to remove performance indicator and NRC inspection information for the physical protection cornerstone from the public arena.³

¹ Nuclear Regulatory Commission, News Release No. 00-055, NRC To Expand Use of Revised Reactor Oversight Process, March 29, 2000.

² Nuclear Regulatory Commission, News Release No. 01-124, Threat to Three Mile Island Nuclear Plant Deemed Non-Credible; NRC Monitoring Continues and Website Restored, October 18, 2001.

³ Nuclear Regulatory Commission, News Release No. 04-091, NRC Modifies Availability of Security Information, August 4, 2004.

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Please note that we are not seeking performance indicator and/or NRC inspection finding information via this FOIA request. We are narrowly seeking information in "documents" about the agency's decisions whether this information should be made publicly available. Please consider "documents" to include reports, studies, test results, correspondence, memoranda, meeting notes, meeting minutes, working papers, graphs, charts, diagrams, notes and summaries of conversations and interviews, computer records, e-mail and any other form of written communications including internal NRC memoranda.

We realize that it is uncommon, if not unprecedented, for the NRC to receive a FOIA request from such a large coalition of public interest groups. We opted for a group FOIA request to clearly convey to the NRC how important this matter is to us and because each of our organizations is very interested in the information contained within the requested records.

Pursuant to and in compliance with NRC regulations at 10 CFR 9.41, we request that any searching and copying fees incurred as a result of this search be waived, and provide the following information in response to the eight criteria listed in Section 9.41(b):

1. Purpose of request

We seek to understand decisions made by the NRC about the public availability of information relative to the NRC's reactor oversight process and the physical protection (i.e., nuclear plant security) component of that process. When the revised reactor oversight process was being developed, there was considerable deliberation about the appropriate amount of information to make publicly available leading to an agency decision that the performance indicator and NRC inspection finding data would be publicly released. After the tragic events of 09/11, the NRC temporarily closed its website and revisited the issue of public access to agency information. After considerable deliberation in that new light, an agency decision was made to resume the release of performance indicator and NRC inspection finding data to the public. In 2004, another agency decision was made that reversed the two prior decisions and resulted in all this information being removed from the public arena. The purpose of our request to more fully understand the bases for these three decisions in proper context.

A secondary purpose for this request is to enable us to better understand the NRC's policy on security information that can be freely discussed publicly. We all possess information on nuclear plant security obtained prior to 09/11 and/or prior to the NRC's August 4, 2004, announcement. Security information posted on the NRC's website or reasonably deemed less exploitable than security information posted on the NRC's website was clearly available for public discussion. We seek to better understand the agency's recent decision so we can continue to provide responsible public commentary on this important subject without inadvertently divulging "sensitive information [that] might be misused by those who wish us harm" to quote NRC Chairman Nils Diaz.⁴

2. Extent to which we will extract and analyze the substantive content of the records

We seek to better understand how the issue of what information about nuclear plant security can responsibly be made public could be carefully considered twice by the NRC – once shortly before and once immediately after 09/11 – with a consensus on performance indicator and inspection finding data and subsequently reversed years later. We seek to understand what factors were considered in these three decisions and if new factors or re-weighting of old factors accounted for the different outcomes.

⁴ Nuclear Regulatory Commission, News Release No. 04-091, NRC Modifies Availability of Security Information, August 4, 2004.

3. Nature of the specific activity or research in which the records will be used and our qualifications to utilize the information for the intended use in such a way that it will contribute to public understanding

Our group has a long history of involvement on this matter. For example, UCS was heavily engaged during the development and implementation of the revised reactor oversight program. UCS served on the Pilot Program Evaluation Panel, a group chartered by the NRC in accordance with the Federal Advisory Committee Act to monitor the pilot program period for the reactor oversight program and comment on it. In addition, UCS made several presentations to the NRC Commission regarding the reactor oversight program's strengths and weaknesses. And UCS provided formal comments to the NRC every year since the reactor oversight process was implemented during the agency's annual assessment effort. Before and after 09/11, UCS identified security information on the NRC's website and in ADAMS that appeared too sensitive for public consumption. Prior to 09/11, NCI, NIRS, Public Citizen, and UCS participated in NRC public meetings conducted approximately monthly on the NRC's security program. This involvement included reviewing and commenting on the interim physical protection significance determination process used to assess the significance of NRC findings from security inspections. Friends of the Coast has engaged the NRC on security issues at Maine Yankee since 1998. Since 09/11, all of us have been deeply involved in nuclear plant security issues including testifying before the U.S. Congress and updating our members and citizens about security matters. Many of our organizations have submitted petitions to the NRC under 10 CFR 2.206 seeking security upgrades, such as the 2002 petition by Friends of the Coast on the independent spent fuel storage installation at Maine Yankee. NCI and POGO were solicited by the NRC to speak on security issues at the agency's annual Regulatory Information Conference. And we were invited by the NRC to and we participated in its public meeting on August 4, 2004, where the latest decision was announced.

We seek the requested information to further our understanding and awareness of the reactor oversight process, specifically the physical protection component of it. As representatives of public interest groups, acquiring this understanding and awareness will enable us to better represent the public's interests before the NRC, Congress, the media, and our members.

4. Likely impact on the public's understanding of the subject as compared to the level of understanding of the subject prior to disclosure

There have been three decisions by the NRC since January 2000 on the same question: should performance indicator and NRC inspection finding information for the physical protection cornerstone be publicly available? Two decisions, including one made shortly after and in direct response to 09/11, were yes and one decision was no. There's considerable public understanding of the deliberative process leading up to the first yes decision because that process included numerous public meetings. There's some public understanding of the deliberative process leading up to the second yes decision based on records previously obtained from the agency under the FOIA. There's essentially no public understanding of the deliberative process leading up to the third decision. The information we are requested will greatly increase the public's understanding of all three decisions.

5. Size and nature of the public to whose understanding a contribution will be made

Collectively, the organizations joined in this FOIA request have membership in the tens of thousands. Our membership is diverse in terms of age, geographic location, occupation, and other factors but generally aligned about responsible stewardship of the environment. Additionally, we reach many other persons via our media work, Capitol Hill work, and materials posted on our websites

(www.tmia.com, www.nukebusters.org, www.efmr.org, www.ncwarn.org, www.nci.org,
www.citizen.org, www.nirs.org, www.riverkeeper.org, www.mothersforpeace.org,
www.greenpeace.org, and www.ucsusa.org).

6. Means of distribution of the requested information

We will incorporate insights obtained from the requested information in presentations to the NRC Commission and during other NRC public meetings, such as at next year's Regulatory Information Conference (RIC) and at the next public meeting on nuclear plant security. We will also use the insights during interviews with the media and in testimonies before the U.S. Congress.

7. Whether free access to information will be provided

Yes.

8. Commercial interest by any party to this request?

No.

If all or any part of this request is denied, please cite the specific exemptions relied upon in refusing to release the materials. Further, since the Freedom of Information Act provides that the remainder of a file must be released if only portions are exempt from disclosure, we request that we be provided with all non-exempt portions that are reasonably degradable. Of course, we reserve the right to appeal the withholding or deletion of any information.

If the NRC provides the requested documents to UCS, UCS will ensure copies are provided to the co-requesters.

Sincerely,



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Co-requesters (arranged by organization name in alphabetical order):

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Eric Epstein
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Ray Shadis
Friends of the Coast Opposing Nuclear Pollution

Jim Riccio
Greenpeace

Rochelle Becker
Mothers for Peace

Jim Warren
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Paul Leventhal
Nuclear Control Institute

Paul Gunter
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Wenonah Hauter
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Kyle Rabin
Riverkeeper

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