

August 25, 2004

MEMORANDUM TO: Office Directors and Regional Administrators

FROM: Luis A. Reyes /RA/
Executive Director for Operations

SUBJECT: WITHHOLDING SENSITIVE INFORMATION FROM PUBLIC
DISCLOSURE

The purpose of this memorandum is to request your help in assuring that the staff is aware of the Commission's current policy concerning withholding sensitive information from the public. This is a topic of significant interest to the Commission as well as external stakeholders. Since the events of September 11, 2001, the potential for regulatory information placed in the public domain to be used for terrorist planning has been a topic of increased concern. The Nuclear Regulatory Commission (NRC) has assessed and modified its policies and practices in this area following September 11, 2001. Actions taken to date include removing all potentially sensitive information from the NRC's public website and Agencywide Document Access and Management System (ADAMS), establishing guidance for withholding sensitive infrastructure-related information, and restoring public access to appropriate documents following a careful review of the information. In addition, the staff has conducted ongoing discussions with the Commission and external stakeholders concerning what criteria to apply in establishing formal guidelines concerning information protection. However, in trying to make this judgement, difficulties have emerged due to the conflicting nature of two NRC performance goals, security and openness.

Guidance for staff and licensees in this area was provided in COMSECY-02-0015 and its associated Staff Requirements Memorandum (SRM) dated May 28, 2002. The criteria established in COMSECY-02-0015 was that information should be withheld if its *release would provide clear and significant benefit to a terrorist in a potential attack*. The staff proposed clarifications to this guidance including proposed industry guidance in COMSECY 03-0036. In an SRM dated May 7, 2004, the Commission disapproved the staff's recommendation and modified its guidance to the staff concerning the criteria to be applied in considering what information should be withheld from public disclosure. The criterion that has been established is that **any information that could be useful, or could reasonably be expected to be useful, to a terrorist in a potential attack should be withheld.**

The Commission's revised guidance clearly lowers the threshold in making determinations whether information should be withheld from the public. I recognize that the subjective judgement that must be applied means that two individuals could evaluate the same information and possibly make different determinations. Therefore, I am asking you to advise your staff of the Commission's recent direction and emphasize the need to make careful decisions regarding what information is made accessible to the public. The staff should be advised to seek guidance from their management if they have any doubt about the appropriate sensitivity level concerning information in their work products.

It is not my expectation that you develop formal guidance for your offices at this time. In order to be able to provide formal guidance to the staff, I intend to submit a framework for the long-term guidance concerning sensitive critical infrastructure information for Commission review and approval in September. Once the Commission has approved the framework, formal guidance will be developed which will include illustrative examples for all classes of licensees. In the interim, it is important that all members of the staff be aware of the revised criterion and make access decisions concerning the documents that they receive, produce, and review with this revised guidance in mind.

cc: SECY
OGC
DOC
OPA
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OIP
OCFO

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