ATTACHMENT 1

May 28, 2002

Release entirety JKH

MEMORANDUM TO: William D. Travers
Executive Director for Operations

Karen D. Cyr
General Counsel

FROM: Annette L. Vietti-Cook, Secretary /RA by Andrew L. Bates
Acting For/

SUBJECT: STAFF REQUIREMENTS - COMSECY-02-0015 - WITHHOLDING SENSITIVE HOMELAND SECURITY INFORMATION FROM THE PUBLIC

The Commission has approved the proposed criteria for withholding certain sensitive homeland security information from the public, subject to the following comments.

1. The staff should review our processes and procedures for implementing Section 147 of the Atomic Energy Act for controlling safeguards information to ensure that information falling into this category is clearly defined and then is carefully protected. OGC should work to refine and expand the existing criteria to protect information under Section 147 of the Atomic Energy Act as safeguards information.

2. After applying these criteria to those documents withdrawn from the NRC external web page, the public library of ADAMS, and in the public document room (second bullet in COMSECY-02-0015), the staff should perform a limited audit of the public library of ADAMS to provide reasonable assurance that information deemed sensitive is not publicly available in ADAMS. The staff can perform this review by selecting a few sensitive words or phrases from those documents withheld in searching the public library of ADAMS.

3. The staff will need to re-evaluate this guidance and these criteria as the Office of Homeland Security continues to further clarify the definition of "Sensitive Homeland Security Information." This guidance and these criteria should continue to be viewed as part of a work-in-progress.

4. OGC should remain fully involved in the process to provide insight and consistency regarding use of the phrases and terminology such as "clearly would", "could be expected to", "could reasonably be foreseen to cause significant harm", and "clear and significant" as these terms bear on the release of information.

5. Upon the completion of item 1 above, the staff should work with our licensees to explain how this new homeland security classification differs from the safeguards classification contained within our regulations.

cc: Chairman Meserve
Commissioner Dicus
Commissioner Diaz
Commissioner McGaffigan
Commissioner Merrifield
OGC
CFO
OCA
OIG
OPA
PDR

ATTACHMENT 2

COMSECY-02-0015

April 4, 2002

Reference JLH

MEMORANDUM TO: Chairman Meserve
Commissioner Dicus
Commissioner Diaz
Commissioner McGaffigan
Commissioner Merrifield

FROM: William D. Travers */RA by William F. Kane Acting For/*
Executive Director for Operations

SUBJECT: WITHHOLDING SENSITIVE HOMELAND SECURITY INFORMATION FROM THE PUBLIC

This memorandum responds to the Staff Requirements Memorandum - COMSECY-01-0030, dated January 25, 2002, which requested the staff to revise the criteria for withholding information from the public and submit it for Commission approval.

Background

Since the events of September 11, the staff has re-examined existing policies on the dissemination of information routinely provided to the public. Once the agency decided to shutdown its web site in October of 2001, the staff began formulating a process for the review of information previously made publicly available that may be considered sensitive from the standpoint of potential terrorist activity.

The staff developed proposed interim criteria for use in deciding what information should not be released to the public and submitted it to the Commission on October 29, 2001. The Commission subsequently provided general comments and discussion and requested the staff to submit revised guidance and criteria, which is contained in this memorandum. We believe the attached guidance is consistent with Commission direction in the SRM.

We also believe that the guidance and criteria contained in this memorandum comport with the draft definition that the Office of Homeland Security has developed for Sensitive Homeland Security Information (SHSI). We will ensure our guidance remains consistent with any final OHS definition.

General Discussion:

The guidance and criteria have been developed to assist the staff in making decisions on when to withhold certain documents from the public, which includes not posting them to the NRC web site or making them available in the ADAMS public library.

This guidance and criteria propose a practical approach to screening documents with the intent of ensuring that the staff does not release information that can be misused against NRC-regulated activities and facilities. The criteria may be adjusted in the future based on our experience using them. To the extent uncertainties exist about whether a particular document should be made publicly available, senior office management will make the final decision.

Information will be withheld only if its release could provide a clear and significant benefit to an adversary in a potential attack and the information must be that which is generated by the NRC, our licensees, or our contractors. Information of a general nature or of marginal relevance will not be withheld.

Guidance on Availability of Documents

In accordance with Commission direction in the SRM, guidance and criteria will be issued to the staff which contain the following instructions on availability of documents:

- Information that is currently widely available to the public via ADAMS as of the issuance date of this guidance should not be systematically reviewed against the criteria;
- However, documents that were on the NRC external web page, the public library of ADAMS, or in the public document room, but were withdrawn in response to 9/11 events, will be reviewed against the criteria before being released again; and
- All new documents generated after the issuance date of this memorandum will be reviewed against the criteria.

Because documents in the PDR are widely available through other sources (GPO, NTIS, local libraries, etc.), we do not intend to have the PDR staff review requests for archived documents. If the technical staff identifies individual documents that contain sensitive information, the PDR staff will no longer make them available. This may require removing a document in its entirety, such as an archived FSAR that is stored on microfiche, even though only several pages are considered sensitive. Licensees who submit more current updates to FSARs on CD-ROM can more easily separate sensitive material from that which is non-sensitive. Additionally, because NRC does not control archival collections external to the agency, documents may continue to be made publicly available through other sources.

Any decision by the staff to withhold information will be guided by balancing the costs and benefits of withholding. If the outcome of balancing of the costs and benefits of withholding the information is uncertain, the information will be released.

Staff will consider providing alternate means for the release of relevant information on important public subjects in a fashion that would not provide significant assistance to a terrorist, i.e. by redacting details or rewriting important documents to eliminate sensitive information.

The web site will be rebuilt by applying the attached criteria to posted information. We are aware that external organizations have material on their web sites that may be considered sensitive under the criteria. When such information is brought to our attention, we have been contacting the owners of these sites requesting that they voluntarily remove such information. We will continue to satisfy our legal obligations to make certain information publicly available.

Records captured by Freedom of Information Act (FOIA) requests are subject to specific laws and statutes. We will continue to handle and process all FOIA requests in the same manner as before, but will separately identify documents that fall within the attached criteria. In October, 2001, the Attorney General issued a new policy indicating that the Department of Justice will defend agency decisions to withhold records that rest on a sound factual and legal footing.

Certain categories of information have been restored to the public domain because they attracted a large amount of public interest. These include: performance indicators and inspection findings, OSRE findings that have been corrected, the plant status report (minus "reasons and comments" column), and specific locations of licensed facilities.

Review Process:

Program offices will be responsible for assigning certain staff to act as points of contact for the identification of SHSI. The staff will be issued specific guidance and training materials concerning the identification, control, and protection of SHSI. Pending the development of revised Management Directives and office-level guidance documents, the staff will continue to use the approaches set forth in this memorandum.

The review process for SHSI will be incorporated into existing procedures for document management and control that are similar to those already existing for proprietary and other types of protected information.

Agency and office-level procedures will contain a process for final disposition where differences of opinion exist among the staff regarding release of information.

We will work with licensees to enable them to identify and mark their documents that meet the criteria for SHSI so that their information can be appropriately controlled and protected when received by NRC staff. The criteria will be shared with Agreement States for their information and appropriate use.

Recommendation:

We recommend the Commission approve the guidance and criteria contained in this memorandum. We plan to issue information contained in this memorandum to the staff once Commission approval is received. When the final definition for Sensitive Homeland Security Information is issued by the Office of Homeland Security, our guidance and criteria may need to be revised.

The major program offices will work with OCIO and others to integrate the identification and control of SHSI into the routine activities performed by the agency.

CRITERIA TO BE USED WHEN DECIDING WHETHER TO WITHHOLD INFORMATION FROM THE PUBLIC

- Information currently widely available to the public via ADAMS as of the issuance date of this guidance should not be systematically reviewed against these criteria. If a document is found to contain sensitive information, it should be carefully reviewed against these criteria while considering the cost of its removal from the public domain.

- However, documents that were on the NRC external web page, the public library of ADAMS, or in the public document room, but were withdrawn in response to 9/11 events, should be reviewed against these criteria before being released again.

- Similarly, all new documents generated after the issuance date of this guidance should be reviewed against these criteria.

The NRC staff should continue to withhold information such as proprietary, privacy, safeguards or classified information consistent with established guidance and procedures. In addition, staff should limit public release of information if it contains one or more elements from the following criteria:

1. Plant-specific information, generated by NRC, our licensees, or our contractors, that would clearly aid in planning an assault on a facility. An example might be drawings depicting the location of certain safety equipment within plant buildings. Examples may include portions of Final Safety Analysis Reports (FSARs), Individual Plant Examination (IPE) material, and other risk and facility vulnerability information.

2. Physical vulnerabilities or weaknesses of nuclear facilities which would clearly be useful to terrorists, such as site-specific security measures, access controls, or personnel security clearance procedures.

3. Construction details of specific facilities, such as wall thicknesses or specific barrier dimensions, detailed diagrams, schematics, or cutaways of specific plant designs where such information would be of clear and significant benefit to a terrorist in a potential attack. Where appropriate, general descriptions instead of exact numbers (i.e. "several feet, several inches, layers of concrete") should be used for general public information.

4. Information which clearly would be useful to defeat or breach key barriers at nuclear facilities.

5. Information in any type of document (e.g. plant status report, press release) that provides the current status or configuration of systems and equipment that could be used to determine facility vulnerabilities if used by an adversary. This does not include general conditions such as 100 percent power or shutdown.

SECY please track.

cc: SECY
OGC
OCA
OPA
CFO
OIG