



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

2004-0277

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RESPONSE TYPE  FINAL  PARTIAL

REQUESTER

Paul Gunter

DATE

MAR 02 2005

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 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 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)

The incoming FOIA/PA-2004-0277 request is located in ADAMS at ML041810024.

SIGNATURE - FREEDOM OF INFORMATION ACT AND PRIVACY ACT OFFICER

Carol Ann Reed

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

2004-0277

**PART II.A -- APPLICABLE EXEMPTIONS**

APPENDICES  
MM, NN

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
Bruce S. Mallet	Regional Administrator, RIV	Appendix MM, NN/7	✓		
Dr. Carl J. Paperiello	Director, Office of Nuclear Regulatory Research	Appendix NN/1	✓		
Dr. Frank J. Congel	Director, Office of Enforcement	Appendix NN/2-NN/6	✓		

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 LL  
RECORDS BEING RELEASED IN THEIR ENTIRETY

<u>NO.</u>	<u>DATE</u>	<u>DESCRIPTION/(PAGE COUNT)</u>
1.	4/13/04	Enforcement Action Tracking System, Arkansas Nuclear 1 (1 page)

**APPENDIX MM  
RECORDS WITHHELD IN PART**

<u>NO.</u>	<u>DATE</u>	<u>DESCRIPTION/(PAGE COUNT)/EXEMPTIONS</u>
1.	3/15/04	E-Mail from Vasquez to Armenta et al., Region IV/SERP Panel Agenda - Thursday March 18 (1 page) Ex. 2
2.	3/16/04	E-Mail from Vasquez to Armenta et al., Supplemental Info - Region IV/SERP Panel Agenda - Thursday March 18 (1 page) Ex. 2

**APPENDIX NN  
RECORDS WITHHELD IN THEIR ENTIRETY**

<u>NO.</u>	<u>DATE</u>	<u>DESCRIPTION/(PAGE COUNT)/EXEMPTIONS</u>
1.	Undated	Draft Preliminary Precursor Analysis (14 pages) Ex. 5
2.	11/12/03	Handwritten Notes (2 pages) Ex. 5
3.	Undated	Draft, Fire Protection Enforcement Issues (2 pages) Ex. 5
4.	Undated	Draft Ltr to Dingell and Markey from Diaz (30 pages) Ex. 5
5.	Undated	Draft ltr to Dingell and Markey from Diaz (27 pages) Ex. 5
6.	01/28/03	SDP/EA Request & Strategy Form, Arkansas Nuclear One (1 page) Ex. 5
7.	3/30/04	SDP/EA Request & Strategy Form, Arkansas Nuclear One (1 page) Ex. 5

FOIA/PA REQUEST

Case No.: 2004-0277  
Date Rec'd: 6-25-04  
Specialist: 1001  
Related Case: 2003-0358

NUCLEAR INFORMATION AND RESOURCE SERVICE

1424 16<sup>th</sup> NW Suite 404  
Washington, DC 20036  
Tel. 202 328 0002 <http://www.nirs.org>

June 25, 2004

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

BY EMAIL: [foia@nrc.gov](mailto:foia@nrc.gov)

To Whom It May Concern:

Pursuant to the Freedom of Information Act (FOIA); 5 U.S.C. 552(b), et seq., Nuclear Information and Resource Service (NIRS) hereby requests information for the subject matter described as follows. This request covers but is not limited to all draft and final reports, correspondence, memoranda, notes, records of telephone contacts, electronic communications including fax transmissions and Email, or other written records, whether in paper or computer files, preserved via the use of any medium (e.g., paper documents, final notes, or word processors or computer discs, diskettes, hard drives, or network systems.) In addition, this request includes studies, analyses, work papers, internal or external communications of any sort, testimony, press releases, reports, memoranda of the like concerning, recording or in any way related to:

- 1) All communications within the timeframe of July 14, 2003 through June 25, 2004 to and from the Nuclear Regulatory Commission (NRC) Office of the Commission regarding 10 CFR 50 Appendix R III.G.2 and non-compliant "operator manual actions" at U.S. nuclear power reactors.
- 2) All communications within the timeframe of July 14, 2003 through June 25, 2004 to and from the Office of the Executive Director of Operations regarding 10 CFR 50 Appendix R III.G.2 and non-compliant "operator manual actions" at U.S. nuclear power reactors.
- 3) All communications within the timeframe of July 14, 2003 through June 25, 2004 to and from the Office of Nuclear Reactor Regulation regarding 10 CFR 50 Appendix R III.G.2 and non-compliant "operator manual actions" at U.S. nuclear

power reactors.

4) All communications within the timeframe of July 14, 2003 through June 25, 2004 to and from the Office of Enforcement regarding 10 CFR 50 Appendix R III.G.2 and non-compliant "operator manual actions" at U.S. nuclear power reactors.

5) All communications within the timeframe of July 14, 2003 through June 25, 2004 to and from the Office of General Counsel regarding 10 CFR 50 Appendix R III.G.2 and non-compliant "operator manual actions" at U.S. nuclear power reactors.

6) All communications within the timeframe of July 14, 2003 through June 25, 2004 to and from the Regional Offices of NRC (Regions 1, 2, 3 and 4) regarding 10 CFR 50 Appendix R III.G.2 and non-compliant "operator manual actions" at U.S. nuclear power reactors.

Pursuant to this request, please provide all documents and communications prepared or utilized by, in the possession of, or routed through the NRC related to items 1-6.

For any portion of the request that you deem appropriate to deny, NIRS requests that you describe the information that is denied, identify the exception to the FOIA on which you rely, and explain how that exception applies to the withheld information.

Pursuant to federal regulations at 10 CFR 9.41, NIRS requests that any searching and copying fees incurred as a result of this search be waived, and provides the following information in response to the eight criteria listed in Section 9.41(b):

**1) Purpose of request:**

The purpose of the request is to gather information on fire protection compliance issues in the nuclear industry in conjunction with the NRC rulemaking underway on operator manual actions in lieu of operable fire barriers and adequate cable separation per 10 CFR 50 Appendix R III.G.2. The requested information is currently not publicly available through the agency's public document room nor NRC's Agency-wide Document Access Management System (ADAMS).

**2) Extent to which NIRS will extract and analyze the substantive content of the records:**

NIRS is qualified to make use of the requested information. The staff has demonstrated the ability to interpret information and communicate that information in a form comprehensible to the general public. Members of the NIRS staff have published articles in such national journals and publications as The Progressive, Nuclear Times, and Newsday. NIRS is quoted as a reliable source of information on public safety and nuclear power policy issues in newspapers across the country, including the New York Times, The Washington Post, The San Francisco Chronicle.

NIRS has a working relationship with attorneys, nuclear engineers, fire protection engineers, fire fighters and other respected professionals who contribute to the full understanding of industry compliance and agency enforcement of fire protection regulations and the public safety risks associated with a fire in a nuclear power station.

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

NIRS seeks the requested information solely to contribute to and help shape the public debate on nuclear industry compliance and NRC enforcement policy of fire protection regulations. NIRS intends to use the information in order to advance the concerns for public understanding of on nuclear industry compliance and NRC enforcement of fire protection regulations.

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

The public understanding of the issues regarding industry compliance and agency enforcement policy of fire protection regulations will be enhanced by the contribution of this information.

**5) Size and nature of the public to whose understanding a contribution will be made:**

NIRS has an active membership of over 6500 throughout the United States. Several thousand additional members periodically receive mailings from NIRS. NIRS provides resource material to electronic and print media outlets with very broad outreach to our constituency and interested public. Additionally, NIRS has a web site ([www.nirs.com](http://www.nirs.com)) which receives on the average of 1000 visitors per day where postings on this issue will be made available.

**6) Means of distribution of the requested information:**

NIRS will use its own newsletter publication of The Nuclear Monitor and our media contacts in both the electronic and print media outlets to provide very broad outreach to the public. NIRS will also share information with other interested parties concerned about regarding industry compliance and agency enforcement of fire protection regulations. Additionally, NIRS will post information on its web site ([www.nirs.com](http://www.nirs.com)) which receives on average of 1000 visitors per day.

**7) Whether free access to information will be provided:**

NIRS will provide the information without charge to all members of the public. Information prepared from the FOIA requested will be posted on the web site for downloading free of charge. NIRS will also provide a copy of information to all interested parties without charge.

**8) No commercial interest by NIRS or any other party:**

NIRS has no commercial interest in obtaining the requested information. This information is provided to all public requests without charge. The sole interest of NIRS is to promote a policy debate regarding industry compliance and agency enforcement of fire protection regulations.

Sincerely,

Paul Gunter, Director  
Reactor Watchdog Project  
NIRS