



UNITED STATES  
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

APR 01 2005

SECRETARY

Mr. Charles J. Fitzpatrick  
Egan, Fitzpatrick, Malsch, & Cynkar, PLLC  
The American Center at Tysons Corner  
8300 Boone Boulevard, Suite 300  
Vienna, Virginia 22182

Re: Appeal 2005-006A

Dear Mr. Fitzpatrick:

I am responding to your March 11, 2005 appeal of the agency's February 11, 2005 response to your FOIA request of November 30, 2004. This response (FOIA-2005-0060) identified in Appendix A the two documents found by a search of NRC agency records to be within the scope of your request and withheld them in their entirety pursuant to Exemption 5. The NRC's form response cited the deliberative process and attorney-client privileges as reasons for the denial of release.

Your appeal objected to the NRC's responding to your FOIA request by a preprinted form on which checkmarks identified the reasons for denial. The NRC finds this procedure necessary for expedition in handling the many FOIA requests received by the agency. The form response benefits FOIA requesters by reducing the time needed for the NRC to process their request while informing them of the basis for the denial.

In response to your appeal we have determined to release a redacted version of document 1, "E-Mail from Cordes to Jones et al." We continue to withhold portions of this document pursuant to Exemption 5 both as deliberative process material and as attorney work product. In the withheld portions Mr. Cordes describes for the Commissioners' legal assistants his impressions of the Environmental Protection Agency's views on possible actions responding to the D.C. Circuit's July 9, 2004 decision vacating and remanding portions of EPA's standards for Yucca Mountain. Mr. Cordes's observations are deliberative and predecisional. Moreover, they deal with legal options related to ongoing litigation. This material is clearly withholdable under Exemption 5. Releasing it would intrude on the NRC's deliberative process and on attorneys' preparation for anticipated litigation. These considerations outweigh any public benefit from release of the complete document. A copy of the released portion of this record is enclosed.

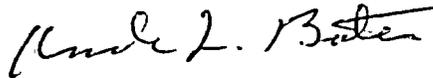
The Executive Director for Operations will respond separately to your appeal of the denial of the second document covered by your FOIA request.

We have performed a further search and have found two earlier drafts of the other document subject to your appeal. These records will be addressed in the response of the Executive Director for Operations to your appeal. We note that your appeal contrasts the large number of EPA documents identified as responsive to a similar request with the very small number (two) the NRC has found. An explanation for the difference is suggested by the released paragraph 5 of the Cordes document. Mr. Cordes notes that the EPA has the lead

responsibility for developing standards and a compliance period, to which the NRC must then conform its regulations.

This is a final agency action on this record pursuant to 10 C.F.R. §9.29(c)(3)(2001). As set forth in the FOIA (5 U.S.C. §552(a)(4)(B)), judicial review of this decision is available in a district court of the United States in the district in which you reside or have your principal place of business, or in the District of Columbia.

Sincerely,

A handwritten signature in black ink, appearing to read "Andrew L. Bates". The signature is written in a cursive style with a long horizontal stroke at the end.

Andrew L. Bates  
Acting Secretary of the Commission

Enclosure: as stated