

July 1, 2005

Director, Domestic Relations Section
Montgomery County
Court of Common Pleas
P.O. Box 311
Norristown, Pennsylvania 19404-0311

RE: Geraldine Powell v. Harold Powell, Docket No. 2001-03308, Montgomery County (Pa.) Court of Common Pleas (Domestic Relations Section); NRC File No. TR-05-02.

Dear Director:

The Office of the General Counsel has received an "Order for Earnings Report, Health Insurance Information [sic] And Subpoena" seeking personal information about Geraldine Powell, an NRC employee. This questionnaire appears to be a legal "demand," which brings it within the parameters of the NRC's regulations at 10 C.F.R. §9.200, et seq. This Office has assigned the processing number "TR-05-02" to your request; please refer to that number in any future correspondence about this matter.

Initially, a subpoena or "demand for information" must be supported by an affidavit or statement explaining (1) what information is sought by the request; (2) what issues are involved in the litigation; (3) how the information sought is relevant to the issues in litigation; and (4) why the information is not available elsewhere. See 10 C.F.R. §9.202. The "Order" or "subpoena" in this case is not supported by such an affidavit. If the requesting party does not comply with the agency's regulations governing these requests, the agency may deny the request. *Davis Enterprises v. EPA*, 877 F.2d 1181 (3d Cir. 1989), *cert. denied*, 110 S.Ct. 1113 (1980); *Boron Oil Company v. Downie*, 873 F.2d 67 (4th Cir. 1989). In addition, your affidavit should also address any legislation that allows a state agency to compel information from an agency of the Federal government under the principles of federalism. You should address your affidavit to:

Karen D. Cyr, General Counsel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555
Attention: Charles E. Mullins, Senior Attorney

In view of the delay to the NRC's mail caused by anthrax screening, you may fax an advance copy of the affidavit (or any other communication) to me at (301) 415-3200 to speed processing of your request.

In addition, your request appears to seek records that fall under the protection of the Privacy Act, 5 U.S.C. §552a ("the Act"). Thus, assuming that your affidavit satisfies the requirements of the NRC's regulations, the NRC still cannot release those records unless you either provide a valid release signed by the individual, demonstrate that you meet another provision of the Act

that allows the release these records without the individual's permission, or demonstrate that the Privacy Act does not apply to the records that you are seeking.

The Act allows the NRC to release the records "pursuant to the order of a court of competent jurisdiction." 5 U.S.C. §552a(b)(11). And as a general proposition, the Privacy Act "cannot be used to block the normal course of court proceedings, including court-ordered discovery." Clavir v. United States, 84 F.R.D. 612, 614 (D.D.C. 1979). However, it is also clear that a subpoena issued by a court clerk is not a "court order" within the meaning of the statute. Doe v. DiGenova, 779 F.2d 74, 77-85 (D.C. Cir. 1985), on remand, 642 F.Supp. 624 (D.C.C. 1986), aff'd in part and reversed in part, 851 F.2d 1457 (D.C. Cir. 1988).

For purposes of Privacy Act compliance, the NRC considers itself legally bound only by a court order from the U.S. District Court for the District of Maryland (or another Federal district court with appropriate jurisdiction); it is not bound by a state court order under the principles of sovereign immunity. Nevertheless, we will give serious consideration to an order from the state court judge in your action requesting that the agency release these records. At this time, you have submitted a form order that has not been signed by a judge and appears to be similar to a subpoena. This cannot suffice as an "order" within the meaning of the Privacy Act. Thus, the General Counsel cannot approve your request at this time, even if you had submitted a valid affidavit.

If you have any questions about this matter, please feel free to call me at (301) 415-1606 or you may reach me at cem@nrc.gov on the Internet.

Sincerely,

/RA/

Charles E. Mullins
Senior Attorney
Office of the General Counsel

cc: Karl L. Farrar
Regional Counsel, NRC Region II