



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

2004-0321

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RESPONSE TYPE  FINAL  PARTIAL

REQUESTER

Kevin Kamps

DATE

JUL - 8 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  F,G 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  F,G 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)

Records subject to your request have been referred to the U.S. Department of Labor and the Equal Employment Opportunity Commission for their review and direct response to you.

This confirms your telephone conversation with Ms. Mary Jean Pool on August 18, 2004, in which you eliminated from the scope of your request copies of e-mails from Shirani where NIRS received a cc.

Exhibit 9 to OI Case 3-2001-055 has already been released in part to you under your previous FOIA request, 2003-0395 in my 1/15/04 response, record H/1.

SIGNATURE - FREEDOM OF INFORMATION ACT AND PRIVACY ACT OFFICER

*Georganna Kammberg*

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

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

APPENDICES  
**G,H**

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
Guy P. Caputo	Director, Office of Investigations	Appendix G,H	✓		

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 F  
RECORDS BEING RELEASED IN THEIR ENTIRETY

<u>NO.</u>	<u>DATE</u>	<u>DESCRIPTION/(PAGE COUNT)</u>
1.	1/8/97	Ltr to Chung from Shirani (1 page)
2.	6/10/02	Fax Cover Sheet to Langan from Helfrich (1 page)
3.	4/19/02	Ltr to Langam from Helfrich (1 page)
4.	5/17/02	Fax Cover Sheet to Langan from Helfrich (1 page)

APPENDIX G  
RECORDS BEING WITHHELD IN PART

<u>NO.</u>	<u>DATE</u>	<u>DESCRIPTION/(PAGE COUNT)/EXEMPTIONS</u>
1	10/30/2002	Memorandum and Report of Investigation/(55 pages)/ Exemptions 5 and 7c
2	11/19/2001	Exhibit 1, Investigation Status Record, OI Case No. 3-2001-055/(3 pages)/ Exemption 7c
3.	12/18/2001	Exhibit 2, Transcript of Interview with SHIRANI/(156 pages)/ Exemption 7c
4.	05/03/2002	Exhibit 6, Report of Telephonic Contact With SHIRANI/(2 pages)/ Exemption 7c
5.	5/3/02	Exhibit 7, Statement by Shirani (3 pages) Exemption 7c
6.	11/19/01	Case Chronology, OI Case 3-2001-055 (17 pages) Exemption 7c
7.	12/21/2001	Exhibit 12, Letter from BURKE, Exelon/(10 pages)/ Exemption 7c
8.	02/19/2002	Exhibit 18, Exelon's Response to SHIRANI's DOL/OSHA complaint/(28 pages)/ 18 pages released Exemption 7c
9.	12/19/2001	Exhibit 20, Internal Resume, SHIRANI/(3 pages)/ Exemption 7c
10.	01/01/2002	Exhibit 21, Exelon Selection/Compensation Action (Revised) for SHIRANI/(2 pages)/ Exemption 7c
11.	10/16/2001	Exhibit 22, Exelon Career Opportunity System Attachment 7.1 - Self-Nomination Form w/supporting documentation/(8 pages)/ Exemption 7c
12.	Various	Exhibit 23, Exelon Nuclear Job Description - Management Position w/supporting documentation/(13 pages)/ Exemption 7c
13.	10/30/2001	Exhibit 24, GARZA's Notes from her meeting/(2 pages)/ Exemption 7c
14.	10/26/2001	Exhibit 25, Christopher Luis' Letter to SHIRANI w/attachment/(4 pages)/ 3 pages released. Exemption 7c
15.	Undated	Exhibit 27, Various Meeting Notes by PALACIO regarding SHIRANI and his issues/(24 pages)/ Exemption 7c
16.	05/02/2002	Exhibit 29, Report of Telephonic Contact/(2 pages)/ Exemption 7c
17.	04/16/2002	Exhibit 30, Letter from Robert Helfrich to Scott Langan w/organization chart/(3 pages)/ Exemption 7c

18. Various Exhibit 31, Various E-mails involving SHIRANI, for the time period of August 9, 2001 to October 30, 2001/(15 pages)/ Exemption 7c
19. Various Exhibit 32, Various Correspondence related to Sargent & Lundy, LLC and SHIRANI; JACQUES' Notes of a Telephone Conversation with SHIRANI/(11 pages)/ Exemption 7c
20. 06/14/2002 Exhibit 33, Letter w/attachments from Robert Helfrich to Scott Langan/(63 pages)/ Exemption 7c
21. 04/24/2002 Exhibit 35, Transcript of Interview/(115 pages)/ Exemption 7c
22. 04/16/2002 Exhibit 36, Transcript of Interview/(92 pages)/ Exemption 7c
23. 05/17/2002 Exhibit 37, Transcript of Interview/(79 pages)/ Exemption 7c
24. 05/30/2002 Exhibit 38, Transcript of Interview/(62 pages)/ Exemption 7c
25. 05/15/2002 Exhibit 39, Transcript of Interview/(44 pages)/ Exemption 7c
26. 05/15/2002 Exhibit 40, Transcript of Interview/(16 pages)/ Exemption 7c
27. Undated Resume Package for SHIRANI/(28 pages)/ Exemption 7c
28. 05/21/2002 Letter from Julie Stevenson, Exelon to Scott Langan/(1 page)/ Exemption 7c
29. 11/28/2001 Letter from P.J. Meehan to SHIRANI/(1 page)/ Exemption 7c
30. 05/02/2002 Facsimile cover sheet from Sargent and Lundy to Scott Langan/(1 page)/ Exemption 7c
31. 03/01/2002 E-mail from SHIRANI to Jerry Quest, Sargent & Lundy/(4 pages)/ Exemption 7c
32. Undated Facsimile cover sheet from SHIRANI to Scott Langan/(1 page)/ Exemption 7c
33. Undated Spelling sheet/(1 page)/ Exemption 7c
34. 11/19/2001 Investigation Status Record, OI Case No. 3-2001-055/(3 pages)/ Exemption 7c
35. 5/2/02 E-Mail from Paul to Boyd, Auto Track Request 3-2001-055 (2 pages) Exemption 7c

**APPENDIX H  
RECORDS WITHHELD IN THEIR ENTIRETY**

<b><u>NO.</u></b>	<b><u>DATE</u></b>	<b><u>DESCRIPTION/(PAGE COUNT)/EXEMPTIONS</u></b>
1.	01/29/02	Exhibit 3 to Case 3-2001-055, E-Mail from Berson to Paul, Review of CI Transcript - OI Case 3-2001-055 (2 pages) EX. 5
2.	Various	Exhibit 19 to Case 3-2001-055, Various Performance Appraisals and Supporting documentation (136 pages) EX. 7C
3.	Various	Exhibit 26 to Case 3-2001-055, Shirani's Candidate Assessment, Performance Planning and Appraisal, Evaluation (15 pages) EX. 7C