

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

2004-0369

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RESPONSE
TYPE ☐ FINAL ☒ PARTIAL

REQUESTER

Peter Alexander

DATE

NOV 16 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, 11555 Rockville Pike, Rockville, MD 20852-2738.
- ☐ **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-2004-0369 request is located in ADAMS at ML042710288.

SIGNATURE - FREEDOM OF INFORMATION ACT AND PRIVACY ACT OFFICER

Russell A. Nichols

(6-1998)

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

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PART II.A - APPLICABLE EXEMPTIONS**APPENDICES
F, G, H, I**

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 253b, 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
Eliot B. Brenner	Director, Office of Public Affairs	Appendix F		✓	
Dr. Carl J. Paperiello	Director, Office of Nuclear Regulatory Research	Appendix F/34	✓		
Samuel J. Collins	Regional Administrator, RI	Appendix G	✓		
William N. Outlaw	Director, Office of Communications	Appendix I		✓	

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."

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

DATE

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PART I.C COMMENTS (Continued)

**DENYING OFFICIAL
OFFICIAL**

TITLE/OFFICE

RECORDS DENIED

APPELLATE

James E. Dyer

Director, Office of Nuclear Reactor Regulation Appendix H

EDO

**APPENDIX F
RECORDS WITHHELD IN THEIR ENTIRETY**

<u>NO.</u>	<u>DATE</u>	<u>DESCRIPTION/(PAGE COUNT)/EXEMPTIONS</u>
1.	3/30/04	E-Mail from Hayden to Screnci, Leahy & Jefford Letters Sent (1 page) Ex. 5
2.	4/5/04	E-Mail from Burnell to Howe, Vermont Yankee op-ed piece (1 page) Ex. 5
3.	4/13/04	E-Mail from Hayden to Burnell, VY PSB response (1 page) Ex. 5
4.	5/4/04	E-Mail from Brenner to PA Staff, Tomorrow's News Today (1 page) Ex. 4, 5
5.	5/5/04	E-Mail from Brenner to PA Staff, Tomorrow's News Today (1 page) Ex. 4, 5
6.	5/6/04	E-Mail from Brenner to PA Staff, Tomorrow's News Today (1 page) Ex. 4, 5
7.	5/20/04	E-Mail from Brenner to Brenner, Energy Daily' kinda fake round table sense have a table he at end, and then chairs off to side get (2 pages) Ex. 5
8.	5/25/04	E-Mail from Brenner to PA Staff, Tomorrow's News Today (1 page) Ex. 4, 5
9.	6/3/04	E-Mail from Brenner to Brenner, Tomorrow's News Today (1 page) Ex. 4, 5
10.	6/10/04	E-Mail from Brenner to PA Staff, Tomorrow's News Today (2 pages) Ex. 4, 5
11.	6/14/04	E-Mail from Brenner to PA Staff, Tomorrow's News Tonight (3 pages) Ex. 4, 5
12.	6/17/04	E-Mail from Brenner to PA Staff, Tomorrow's News Tonight (1 page) Ex. 4, 5
13.	9/22/04	E-Mail from Brenner to PA Staff, Tomorrow's News Tonight (1 page) Ex. 4, 5
14.	6/21/04	E-Mail from Brenner to PA Staff, Tomorrow's News Today (1 page) Ex. 4, 5

15. 6/28/04 E-Mail from Brenner to PA Staff, Tomorrow's News Today (1 page) Ex. 4, 5
16. 7/7/04 E-Mail from Brenner to PA Staff, Tomorrow's News Tonight (1 page) Ex. 4, 5
17. 7/8/04 E-Mail from Brenner to PA Staff, Tomorrow's News Tonight (1 page) Ex. 4, 5
18. 7/12/04 E-Mail from Brenner to M Landau, Tomorrow's News Tonight (2 pages) Ex. 4, 5
19. 7/19/04 E-Mail from Brenner to PA Staff, Tomorrow's News Tonight (1 page) Ex. 4, 5
20. 7/21/04 E-Mail from Brenner to PA Staff, Tomorrow's News Tonight (2 pages) Ex. 4, 5
21. 7/22/04 E-Mail from Brenner to PA Staff, Tomorrow's News Tonight (1 page) Ex. 4, 5
22. 7/26/04 E-Mail from Brenner to PA Staff, Tomorrow's News Tonight (1 page) Ex. 4, 5
23. 7/27/04 E-Mail from Burnell to Brenner, TNT (1 page) Ex. 4, 5
24. 7/28/04 E-Mail from Brenner to PA Staff, Tomorrow's News Tonight (1 page) Ex. 4, 5
25. 8/5/04 E-Mail from Brenner to PA Staff, Tomorrow's News Today (2 pages) Ex. 4, 5
26. 8/6/04 E-Mail from Brenner to PA Staff, Tomorrow's News Tonight (1 page) Ex. 4, 5
27. 8/9/04 E-Mail from Brenner to PA Staff, Tomorrow's News Tonight (2 pages) Ex. 4, 5
28. 8/12/04 E-Mail from Brenner to PA Staff, Tomorrow's News Tonight (1 page) Ex. 4, 5
29. 8/17/04 E-Mail from Brenner to PA Staff, Tomorrow's News Tonight (2 pages) Ex. 4, 5
30. 8/24/04 E-Mail from Brenner to PA Staff, Tomorrow's News Tonight (2 pages) Ex. 4, 5
31. 8/27/04 E-Mail from Brenner to PA Staff, EDO meeting (1 page) Ex. 5
32. 8/30/04 E-Mail from Brenner to PA Staff, Tomorrow's News Tonight (1 page) Ex.

4, 5

- 33. 8/31/04 E-Mail from Brenner to PA Staff, Tomorrow's News Tonight (2 pages) Ex. 4, 5
- 34. 9/1/04 E-Mail from Brenner to Craig, Tomorrow's News Tonight (2 pages) Ex. 4, 5
- 35. 9/13/04 E-Mail from McIntyre to Cook, Tomorrow's News Tonight (2 pages) Ex. 4, 5
- 36. 9/15/04 E-Mail from Brenner to PA Staff, Tomorrow's News Tonight (1 page) Ex. 4, 5
- 37. 9/16/04 E-Mail from Brenner to PA Staff, Tomorrow's News Tonight (1 page) Ex. 4, 5
- 38. 9/17/04 E-Mail from Brenner to PA Staff, Tomorrow's News Tonight (1 page) Ex. 4, 5
- 39. 9/20/04 E-Mail from Brenner to PA Staff, Tomorrow's News Tonight (2 pages) Ex. 4, 5
- 40. 9/21/04 E-Mail from Gagner to Brenner, Additional Media Interest (1 page) Ex. 4, 5
- 41. 9/21/04 E-Mail from Brenner to PA Staff, Tomorrow's News Tonight (1 page) Ex. 4, 5

**APPENDIX G
RECORDS WITHHELD IN THEIR ENTIRETY**

<u>NO.</u>	<u>DATE</u>	<u>DESCRIPTION/(PAGE COUNT)/EXEMPTIONS</u>
1.	3/17/04	E-Mail from Miller to Hayden, UCS basis for independent safety assessment at vermont yankee (1 page) Ex. 5
2.	4/30/04	E-Mail from Sheehan to Brenner, Media Calls Today (1 page) Ex. 5
3.	5/4/04	E-Mail from Walker to Howe, Revised PSB Letter Rollout Plan (16 pages) Ex. 5
4.	5/25/04	E-Mail from Sheehan to Brenner, Possible Media Items (1 page) Ex. 4, 5
5.	7/19/04	E-Mail from Sheehan to Brenner, Media Interactions (1 page) Ex. 4, 5
6.	7/21/04	E-Mail from Sheehan to Brenner, Media Interactions (1 page) Ex. 4, 5
7.	7/21/04	E-Mail from Sheehan to Brenner, Media Interactions Footnote (1 page) Ex. 4, 5
8.	7/28/04	E-Mail from Sheehan to Brenner, Media Interaction (1 page) Ex. 4, 5
9.	7/30/04	E-Mail from Sheehan to Brenner, Media Interactions (1 page) Ex. 4, 5
10.	8/4/04	E-Mail from Sheehan to Brenner, Media Interaction (1 page) Ex. 4, 5
11.	8/5/04	E-Mail from Sheehan to Brenner, Media Interactions (1 page) Ex. 4, 5
12.	8/18/04	E-Mail from Sheehan to Brenner, Media Interactions (1 page) Ex. 4, 5
13.	8/18/04	E-Mail from Collins to Holden, Communication Plan for VY Order (1 page) Ex. 5
14.	8/26/04	E-Mail from Sheehan to Brenner, Media Interactions (1 page) Ex. 4, 5
15.	8/30/04	E-Mail from Sheehan to Brenner, Media Interactions (1 page) Ex. 4, 5
16.	8/31/04	E-Mail from Sheehan to Brenner, Media Interactions (1 page) Ex. 4, 5
17.	9/13/04	E-Mail from Pelton to Sheehan, AP questions on VY LER (2 pages) Ex. 5
18.	9/14/04	E-Mail from Sheehan to Brenner, Media Interactions (1 page) Ex. 4, 5

19. 9/15/04 E-Mail from Sheehan to Brenner, Media Interactions (1 page) Ex. 4, 5
20. 9/16/04 E-Mail from Sheehan to Brenner, Media Interactions (1 page) Ex. 4, 5
21. 9/20/04 E-Mail from Sheehan to Brenner, Media Interactions (1 page) Ex. 4, 5
22. Undated Draft Communication Plan for Vermont Yankee Engineering Team Inspection (6 pages) Ex. 5
23. Undated Handwritten VY Yankee - Extended Power Uprate Issues (2 pages) Ex. 5
24. Undated Fuel Qs and As (2 pages) Ex. 5
25. Undated Draft Communication Plan for Vermont Yankee Potentially Missing Fuel Rod Segments (6 pages) Ex. 5
26. Undated Draft Communication Rollout Plan for Response to Congressman on Misplaced Fuel Rod Segments at Vermont Yankee (7 pages) Ex. 5
27. Undated Draft To the Citizens Interested in Vermont Yankee (2 pages) Ex. 5
28. Undated VY Strike Talking Points (1 page) Ex. 5
29. Undated VY (1 page) Ex. 5
30. Undated Draft Note to Commissioner Assistants (7 pages) Ex. 5

**APPENDIX H
RECORDS WITHHELD IN THEIR ENTIRETY**

<u>NO.</u>	<u>DATE</u>	<u>DESCRIPTION/(PAGE COUNT)/EXEMPTIONS</u>
1.	4/13/04	E-Mail from Howe to Burnell, Request for Comm Team Members (1 page) Ex. 5
2.	4/21/04	E-Mail from Ennis to Dean, Draft Proposed D-Note (4 pages) Ex. 5
3.	4/21/04	E-Mail from Clifford to Jasinski, VY Fuel Pin Questions (2 pages) Ex. 5
4.	4/22/04	E-Mail from Jasinski to Screnci, MOU with Vermont (1 page) Ex. 5
5.	4/28/04	E-Mail from Ennis to Skay, VY Communication Plan Revision - Reactor Vessel Clad Cracking (3 pages) Ex. 5
6.	5/13/04	E-Mail from Ennis, May 5, 2004 News Release of Vermont Yankee (2 page) Ex. 6
7.	5/19/04	E-Mail from Ennis to Wang, VY 50.72 update on fuel (3 pages) Ex. 5
8.	6/22/04	E-Mail from Ennis to Howe, Key points and Qs and As for PSB brief (3 page) Ex. 5
9.	8/18/04	E-Mail from Skay to Howe, communications related to SECY Order (3 pages) Ex. 5
10.	9/7/04	E-Mail from Jacobson to Howe, VY Engineering Inspection - Short Term Actions (3 pages) Ex. 5
11.	9/9/04	E-Mail from Richards to Howe, VY Comm Team meeting (3 pages) Ex. 5
12.	9/16/04	E-Mail from Poole to Sheehan, Media call re: Vermont Yankee Power Uprate (4 pages) Ex. 5, attorney client
13.	9/22/04	E-Mail from Skay to Howe, VY controlled correspondence status (12 pages) Ex. 5

**APPENDIX I
RECORDS WITHHELD IN THEIR ENTIRETY**

<u>NO.</u>	<u>DATE</u>	<u>DESCRIPTION/(PAGE COUNT)/EXEMPTIONS</u>
1.	8/18/04	E-Mail from Ennis to Outlaw, Communication Plan for VY Order (2 pages) Ex. 5
2.	8/18/04	E-Mail from Kim to Merschoff, Vermont Yankee - Service of Commission Order Denying Extension Request (1 page) Ex. 5
3.	7/29/04	E-Mail from Kim to Merschoff, Vermont Yankee - Briefing of Congressional Staff (1 page) Ex. 5
4.	8/9/04	E-Mail from Outlaw to Brenner, give me good but quick edit on this (9 pages) Ex. 5