

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

2004-0191

2

RESPONSE
TYPE ☐ FINAL ☒ PARTIAL

REQUESTER

David Lochbaum

DATE

NOV 10 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**
E & F 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**
E & F 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 *

\$

* See comments
for details

- ☐ 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.

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)

SIGNATURE - FREEDOM OF INFORMATION ACT AND PRIVACY ACT OFFICER

Russell A. Nichols

NRC FORM 464 Part II <small>(6-1998)</small> RESPONSE TO FREEDOM OF INFORMATION ACT (FOIA) / PRIVACY ACT (PA) REQUEST	U.S. NUCLEAR REGULATORY COMMISSION FOIA/PA 2004-0191	DATE NOV 10 2005
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PART II.A -- APPLICABLE EXEMPTIONS

APPENDICES F & G

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
Samuel J. Collins	Regional Administrator, Region 1	Appendices F & G	<input checked="" type="checkbox"/>		

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 E
RECORDS TO BE RELEASED IN THEIR ENTIRETY

<u>NO</u>	<u>DATE</u>	<u>DESCRIPTION (PAGE COUNT)</u>
1.	03/24/2004	E-mail from S. Johnson of USNRC to C. O'Daniell of USNRC, regarding ADAMS Input (4 pages)
2.	03/23/2004	Ltr from A. Blough of USNRC to R. Anderson of PSEG Nuclear LLC - N09, regarding OI Case No. 1-2002-0113 (1 page)
3.	12/01/2003	E-mail from L. Harrison of USNRC to D. Holody of USNRC, regarding Status requested (1 page)
4.	09/22/2003	E-mail from E. Wilson of USNRC to S. Johnson of USNRC, regarding Draft ARB Forms for Salem/Hope Creek and Oyster Creek (1 page)
5.	09/22/2003	E-mail from S. Barber of USNRC to D. Vito and S. Johnson of USNRC, regarding Rev 1 to Alleg Panel Schedule for 9/22/03 (1 page)
6.	06/20/2003	TARP Procedure Non-Compliance (QA observation 2003-0161) 8 pages
7.	09/08/2003	E-mail from S. Johnson of USNRC to D. Vito and L. Harrison of USNRC, regarding R1-2002-A-0113 - 3 Week OE Memo (1 page)
8.	08/28/2003	E-mail from S. Barber of USNRC to D. Vito of USNRC, regarding R1-2002-A-0113 and R1-2003-A-0068 (1 page)
9.	12/10/2002	E-mail from S. Barber of USNRC to D. Vito and S. Johnson of USNRC, regarding Revision to R1-01-A-0113 (1 page)
10.	12/09/2002	E-mail from S. Barber of USNRC to D. Vito and S. Johnson of USNRC, regarding R1-02-A-0113 & 0136 ARB forms
11.	11/13/2002	E-mail from R. Lorson of USNRC to B. Letts, D. Vito, G. Meyer, J. Schoppy, and S. Barber of USNRC, regarding Follow-up to a Prior Salem Concern (1 page)
12.	10/22/2002	E-mail from S. Barber of USNRC to D. Vito and S. Johnson of USNRC, regarding 2002-0113 Closeout

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- 13. 10/10/2002 E-mail from S. Barber of USNRC to D. Vito and S. Johnson of USNRC, regarding R1-02-A-0113 ARB form (1 page)**
- 14. 08/30/2002 E-mail from R. Barkley of USNRC to D. Vito of USNRC, regarding Proposed ARM for 2002-0113 at Hope Creek/Salem (1 page)**
- 15. 08/23/2002 E-mail from J. Schoppy of USNRC to D. Vito of USNRC, regarding meeting with allegor (1 page)**
- 16. 05/13/2002 PSEG Nuclear L.L.C. SH.OP-AP.ZZ-0101(Q) - Rev 6 Post-Transient Response Requirements (21 pages)**

**APPENDIX F
RECORDS TO BE WITHHELD IN PART**

<u>NO</u>	<u>DATE</u>	<u>DESCRIPTION (PAGE COUNT)(EXEMPTION)</u>
1.	03/23/2004	Ltr from D. Vito of USNRC, regarding R1-2002-A-0113 Concern raised to the NRC Regarding Salem and Hope Creek (3 pages) (Exemption 7C)
2.	01/26/2004	Ltr from D. Vito of USNRC, regarding R1-2002-A-0113 Concern raised to the NRC Regarding Salem and Hope Creek (1 page) (Exemption 7C)
3.	01/22/2004	E-mail from D. Vito of USNRC to D. Nelson, D. Dambly, H. Miller, J. Dyer, L. Chandler, OEMAIL, and R. Franovich of USNRC, regarding 3-week e-mail for OI cases 1-2003-010, 010S, 008, 001, 015F and 017 (2 pages) (Exemption 7C)
4.	01/08/2004	Allegation Review Board Disposition Record, regarding allegation R1-2002-A-0113 (2 pages) (Ex 5 Attorney-Client privilege, and 7C)
5.	09/22/2003	Allegation Review Board Disposition Record, regarding allegation R1-2002-A-0113 (2 pages) (Exemption 5 Attorney-Client privilege, and Exemption 7C)
6.	09/02/2003	Ltr to D. Vito of USNRC, regarding Concerns Raise to the NRC Regarding Salem and Hope Creek (R1-2002-A-0113) (1 page) (Exemption 7C)
7.	08/29/2003	Telephone Record, regarding call from Alleger for R1-2002-A-0113 (1 page) (Exemption 7C)
8.	08/07/2003	Ltr from D. Vito of USNRC, regarding Concerns Raised to the NRC Regarding Salem and Hope Creek (1 page) (Exemption 7C)
9.	03/11/2003	Allegation Review Board Disposition Record, regarding Allegation R1-2002-A-0113 (1 page) (Exemption 7C)
10.	02/14/2003	Ltr from D. Vito of USNRC, regarding Concerns Raised to the NRC Regarding Salem and Hope Creek R1-2002-A-0113 (2 pages) (Exemption 7C)
11.	01/08/2003	Allegation Review Board Disposition Record, regarding Allegation R1-2002-A-0113 (2 page) (Ex. 5 Attorney-Client privilege and 7C)

12. 12/31/2002 Handwritten note, regarding Telephone conversation and follow-up letter from Allegor re: R1-2002-A-0113 (3 pages) (Exemption 7C)
13. 12/11/2002 Allegation Review Board Disposition Record, regarding Allegation R1-2002-A-0113 (1 page) (Exemption 7C)
14. 11/20/2002 Ltr to D. Vito of USNRC, regarding safety concerns with PSEG (1 page) (Exemption 7C)
15. 11/06/2002 Ltr from D. Vito, regarding Concerns Raised to the NRC Regarding Salem and Hope Creek R1-2002-A-0113 (3 pages) Exemption 7C
16. 10/16/2002 Allegation Review Board Disposition Record, regarding Allegation R1-2002-A-0113 (1 page) (Exemption 7C)
17. 09/12/2002 E-mail from R. Rzepka of USNRC to D. Vito of USNRC, regarding Allegor: RE: R1-2002-A-0113 (1 page) (Exemption 7C)
18. 09/11/2002 Ltr from D. Vito of USNRC, regarding Concerns Raised to the NRC Regarding Salem and Hope Creek (4 pages) (Exemption 7C)
19. 09/04/2002 Allegation Review Board Disposition Record, regarding Allegation R1-2002-A-0113 (2 pages) (Exemption 5 Attorney-Client privilege and Exemption 7C)
20. 08/23/2002 Allegation Receipt Report, regarding Allegation R1-2002-A-0113 (2 pages) (Exemption 7C)
21. 09/03/2003 Allegation Review Board Disposition Record, regarding Allegation No. R1-2002-A-0113 (1 page) (Exemption 7C)

APPENDIX G
RECORDS TO BE WITHHELD IN ITS ENTIRETY

<u>NO</u>	<u>DATE</u>	<u>DESCRIPTION (PAGE COUNT) (EXEMPTION)</u>
1.	09/17/2003	Fax to K. Monroe of USNRC regarding PSEG Power LCC employee evaluation (9 pages) EX. 7C
2.	2003	2003 Performance Management - employee evaluation. 11 pages EX. 7C
3.	11/18/02	Memo from Tom Lake, Employee Concerns Investigator, PSEG, to individual regarding Nuclear Quality Safety Concern. 1 page EX. 7C
4.	No date	Interview of allegor. 7 pages EX. 7C