

FOIA/PA REQUEST

Case No.: 2006-002A
Date Rec'd: 12-22-05
Specialist: Pool
Related Case: 2006-0047

December 22, 2005

Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

RE: Appeal of FOIA/PA 2006-0047: Fee Waiver Denial Notice.

Dear Secretary:

Below is an appeal of the December 7, 2005, response to my December 5, 2005, Freedom of Information Act request for waiver of fees.

In the December 7, 2005, response to my December 5, 2005, Freedom of Information Act request for waiver of fees, Russel A. Nichols, FOIA/Privacy Act Officer, states:

You requested that fees be waived for your request, and I have determined that your request for a waiver of fees cannot be favorable considered because the NRC is prohibited by law (5 U.S.C. 504) from funding "parties intervening in regulatory or adjudicatory proceedings" before the NRC.

The December 7 reply does not reference the Nuclear Regulatory Commission (NRC) proceeding in question. That is because there is no such NRC proceeding that requestor is a party to.

The December 7 determination is based on a misunderstanding of requestor's FOIA Request submittal of December 5. Neither requestor nor any of the organizations requestor represents are parties intervening in any regulatory or adjudicatory proceeding before the NRC or the State of Utah. There is no NRC proceeding related to the records requested that requestor is aware of. The NRC does not regulate the facility in Utah that will be impacted by the disposition of the materials from the FMRI, Inc., facility that is licensed by the NRC.

There is, in Utah a comment proceeding that includes a public hearing where any citizen or organization can make public comment. There are no parties involved in such a proceeding since it is open to any member of the public and does not fall under the State of Utah regulations applicable to interventions in regulatory and adjudicatory proceedings.

Requestor never in any manner stated in the FOIA request that requestor or any organization represented by the requestor was an intervenor or potential intervenor in a current or proposed NRC regulatory or adjudicatory proceeding related to the requested records. Requestor does not understand how the

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FOIA/PA Officer came to such a conclusion.

Therefore, the denial of the request for a fee waiver has no basis in fact and should not be upheld.

2. Additionally, accompanying the December 7 is Fee Waiver Denial Notice. Under factor (1), the response states:

Records not likely to contribute significantly to public understanding of government operations or activities. Therefore, you do not meet the fee waiver requirements of this factor.

The December 7 response does not explain why the records requested are not likely to contribute significantly to public understanding of government operations or activities.

It appears that the NRC requires what amounts to a full legal brief or academic thesis describing why a document would contribute significantly to public understanding of government operations or activities.

As discussed in the December 5 request for records, the records requested provide data related to a facility that is regulated by the NRC. It is impossible to understand how that facility has been regulated without knowing the radioactive and non-radioactive characteristics of the regulated material. It is impossible to determine whether the decommissioning plan approved by the NRC has been properly carried out if one does not have the basis for that plan. How can a member of the public understand NRC regulation of a facility if one does not have the basic data with respect the material that is being regulated?

As stated in the December 5 request, only the documents requested would provide the public with the definitive information needed to understand how the NRC has regulated the materials. The records are needed for the public to understand how the materials should be properly disposed of and whether the materials are mixed waste, subject to both NRC and EPA regulation.

I request that the FOIA Request receive expedited consideration. I, therefore request that this appeal receive expedited consideration. I have been ill, which is why there has been a delay in this appeal.

If you have any questions, please feel free to contact me.

Sincerely,

Sarah M. Fields
P.O. Box 143
Moab, Utah 84532

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435-259-4724

From: "Sarah M. Fields" <sarahmfields@earthlink.net>
To: Secretary of the Commission <secy@nrc.gov>
Date: Thu, Dec 22, 2005 1:47 PM
Subject: Appeal: FOIA/PA 2006-0047

Dear Secretary,

Attached please find an appeal of the Fee Waiver Denial Notice for FOIA/PA 2006-0047.

Please respond to this submittal so that I know that you have received it.

Many thanks,

Sarah Fields

CC: NRC FOIA/PA Officer <foia@nrc.gov>