

July 6, 2006

Mr. Charles J. Fitzpatrick, Esquire
Egan, Fitzpatrick, Malsch & Cynkar
1777 N.E. Loop 410, Suite 600
San Antonio, TX 78217

IN RESPONSE REFER
TO FOIA-2006-004A
(FOIA/PA-2005-0144)

Dear Mr. Fitzpatrick:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am responding to your letter dated March 9, 2006, to the Freedom of Information Act/Privacy Act (FOIA/PA) Officer, in which you appeal the agency's February 14, 2006, decision related to your February 10, 2005, FOIA request (FOIA-2005-0144). You requested records related to a meeting in Washington, DC, January 11–13, 2005, of an ad hoc task force group established by the Nuclear Energy Agency's (NEA's) Radioactive Waste Management Committee (RWMC). You state in your letter that you are appealing those records withheld in their entirety using only FOIA Exemption 4. I have identified the requested records in the enclosed appendices.

Acting on your appeal, I have carefully reviewed the record in the case and have determined that the withheld information will continue to be withheld. Therefore, your appeal is denied.

NRC will continue to withhold the documents pursuant to FOIA Exemption 4 (5 U.S.C. 552(b)(4)); 10 CFR 9.17(a)(4) of the Commission's regulations, the exemption for "trade secrets and commercial or financial information obtained from a person that are privileged or confidential"; and 10 CFR 2.390(d)(2), which states that information submitted in confidence to the Commission by a foreign source will be considered information within the meaning of 10 CFR 9.17(a)(4).

The Environmental Protection Agency hosted this meeting, and the attendees included representatives of several foreign nations, who are members of the Organization for Economic Cooperation and Development (OECD). The attendees discussed the bases for setting long-term criteria for nuclear waste repositories in various countries. Although an NRC delegate attended this EPA-hosted meeting, the withheld documents were prepared for and presented at a closed meeting of an international NEA/RWMC working group. The mandate of this task group is considered to be "For Official Use." "For Official Use" is the OECD classification for "information which should not be communicated except for official purposes." The OECD does not distribute working group discussion documents to the general public but only to member governments of the OECD. All participants prepared their ad hoc presentations with the understanding that the presented material in its entirety was for the sole use of the working group members. If NRC were to release any part of the foreign-generated material, it would violate the participants' expectation that no public disclosure would be made until this material is declassified by the appropriate OECD body. OECD practice is to automatically declassify documents three years after initial distribution. Thus, the documents you requested should become publically available early in the year 2008.

This is NRC's final decision. As set forth in the FOIA (5 U.S.C. 552(a)(4)(B), judicial review of this decision is available in a district court of the United States in the district in which you reside or have your principal place of business. Judicial review also is available in the District of Columbia or the district in which the agency's records are situated.

Sincerely,

/RA/

Martin J. Virgilio
Deputy Executive Director for Materials,
Research, State and Compliance Programs

Enclosures: As stated

Distribution: FOIA/PA subj, NBrown, OGC, NMSS

ADAMS ACCESSION NUMBER: ML061590218

ADAMS TITLE: FOIA/PA 2006-004A (FOIA/PA 2005-0144) *See previous concurrence

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**APPENDIX B
RECORDS BEING WITHHELD IN THEIR ENTIRETY**

<u>NO.</u>	<u>DATE</u>	<u>DESCRIPTION/(PAGE COUNT)/EXEMPTIONS</u>
1.	12/21/04	Agenda for the 1 st meeting of the Radioactive Waste Management Committee (RWMC) ad-hoc task Group on Long-Term Safety Criteria. (6 pages) EX. 4
2.	12/21/04	Mandate of the RWMC ad-hoc Task Group on Long-Term Safety Criteria. (2 pages) EX. 4
3.	12/21/04	Secretariat's Observations o Issues for Discussion at the LT Group Meeting at the EPA Headquarters. (6 pages) EX. 4
4.	No date	Mandate of the RWMC Task Group on Long-Term Safety Criteria Terms of Reference. (2 pages) EX. 4
5.	No date	Questions for Preparing RWMC-37 on Long-term Protection Criteria for Waste Disposal (Item 11.c and 11.d of agenda) (2 pages) EX. 4
6.	12/21/04	Summary of Responses to Questionnaire on Long-Term Protection Criteria for Waste Disposal. (12 pages) EX. 4
7.	01/11/05	Slides: Presentation paper on Active/passive post-closure institutional controls- Item 4.1 of agenda - Planning of RWMC 2005 topical session (prepared during meeting and presented by Janet Kotra, NRC and Hiroyuki Umeki, NUMO. (6 pages) EX. 4
8.	01/14/05	E-mail from Claudio Pescatore, Organisation of Economic Co-operation and Development (OECD) to members of Radioactive Waste Management Committee ad-hoc Task Group on Long-Term Safety Criteria transmitting raw notes from 1/11-13/05 meeting and Topical Session Programme. (22 pages) EX. 4
9.	01/18/05	E-mail from Janet Kotra, NRC to Margaret V. Federline, NRC, subject: Draft agenda for RWMC topical session on LT criteria (4 pages) EX. 4, EX. 5, and EX. 6

10. 08/20/04

RWMC Regulators' Form (RWMC-RF) Summary Record of the 7th Meeting of the RWMC Regulators' Forum. (19 pages)
Ex. 4 and EX. 6

**APPENDIX C
RECORDS BEING WITHHELD IN ENTIRETY**

<u>NO.</u>	<u>DATE</u>	<u>DESCRIPTION/(PAGE COUNT)/EXEMPTIONS</u>
1.	1/11-13/05	Presentation by Bruno Baltes, GRS, entitled How long is long enough? RWMC Task Group on LT Safety Criteria (6 pages) EX. 4
2.	1/11-13/05	Presentation by Bruno Baltes & Klaus-Jurgen Rohlig, GRS, entitled, Ongoing Revision of Safety Criteria in Germany: Human Intrusion. (6 pages) EX. 4
3.	1/11-13/05	Presentation by Bruno Baltes, GRS, entitled, Contribution to Session 3.3 Compliance and Confidence. (9 pages) EX. 4
4.	1/11-13/05	Presentation by Bruno Baltes, GRS, entitled, Contribution to Session 2.2 Basic Nature of LT Safety Criteria. (4 pages) EX. 4
5.	1/11-13/05	Session 3.3 Compliance and Confidence. (3 pages) EX. 4
6.	1/11-13/05	Responses to LTC Questionnaire. (10 pages) EX. 4
7.	1/11-13/05	Safety-1. (11 pages) EX. 4
8.	1/11-13/05	Item 2.1 (6 pages) EX. 4
9.	1/11-13/05	Presentation by Carl-Magnus Larsson, Swedish Radiation Protection Authority. (16 pages) EX. 4
10.	1/11-13/05	Presentation by P. De Preter, IGSN Initiative "Handling of Time scales in a safety case." (22 pages) EX. 4
11.	1/11-13/05	A. Duncan, NEA - Key Issues of Compliance and Confidence. (1 Page) EX. 4
12.	1/11-13/05	Presentation by Hiroyuki Umeki, Nuclear Waste Management Organization of Japan entitled, The role of monitoring in a safety case. (17 pages) EX. 4

13. 1/11-13/05 Presentation by nagra entitled, Summary of discussion & consensus. (7 pages) **EX. 4**
14. 1/11-13/05 Presentation by Bruno Baltes, GRS, entitled, Contribution to Session 2.2, Basic Nature of LT Safety Criteria. (4 pages) **EX. 4**