



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

2006-0174

1

RESPONSE TYPE  FINAL  PARTIAL

REQUESTER

John Greenewald Jr.

DATE

JUN 19 2006

**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 **B** 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 **A, C** 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 **A, C** 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 request can be located in ADAMS at ML061000484.

SIGNATURE - FREEDOM OF INFORMATION ACT AND PRIVACY ACT OFFICER

Russell Nichols

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

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

APPENDICES  
**C & D**

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 2.390(d)(1).
  - The information was submitted by a foreign source and received in confidence pursuant to 10 CFR 2.390(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)  
Ex. 2 - Disclosure would risk circumvention of a legal requirement

**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
Joseph R. Gray	Associate General Counsel for Licensing and Regulations	C1, D1-7, D11-D12		✓	
Luis A. Reyes	Executive Director for Operations	D8-10	✓		

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 A**  
**RECORDS BEING RELEASED IN ITS ENTIRETY**  
 (If copyrighted identify with \*)

<u>NO.</u>	<u>DATE</u>	<u>DESCRIPTION/(PAGE COUNT)/EXEMPTIONS</u>
1	01/13/06	E-mail from Sheila McKelvin, re: Delegation of Agency Chief FOIA Officer (3 pages)
2.	01/11/06	Memorandum from Annette Vietti-Cook to Chairman Diaz, re: COMNJD-06-0001 - Appointment of Chief Freedom of Information Act Officer (1 page)
3.	01/11/06	Staff Requirements Memorandum from Annette Vietti-Cook to Luis Reyes, EDO, re: COMNJD-06-0001 (1 page)
4.	01/04/06	Chairman Nils Diaz's vote on COMNJD-06-0001 (1 page)
5.	01/04/06	Commissioner Edward McGaffigan's vote on COMNJD-06-0001 (1 page)
6.	01/05/06	Commissioner Jeffrey Merrifield's vote on COMNJD-06-0001 (1 page)
7.	01/06/06	Commissioner Peter Lyons' vote on COMNJD-06-0001 (1 page)
8.	01/09/06	Commissioner Gregory Jaczko's vote on COMNJD-06-0001 (1 page)
9.	01/06/06	E-mail from Sheila McKelvin to Patricia Tressler, re: G20060010 - CIO (Ref. COMNJD-06-0001) (1 page)
10	01/11/06	E-mail from Cathy Jaegers to SRM; SRM-OD/RA/ACS Contacts, re: Sensitive SRM - COMNJD-06-0-001 (FOIA) (1) Attachment: E-mail from Darlene Wright (1 page) re: Sensitive SRM - COMNJD-06-0-001 (FOIA) with attached memorandum from Annette Vietti-Cook, Secretary (1 pages), to Chairman Diaz dated 1/11/06 re: COMNJD-06-0001 - Appointment of Chief Freedom of Information Act (:FOIA") Officer Pursuant to Executive Order 13392, "Improving Agency Disclosure of Information" (3 pages)
11	01/03/06	E-mail from Trip Rothschild to John Linehan, Russell Nichols, re: Reader—Tuesday, January 3, 2006 (1 page) with attached e-mail from Billie Champ to Commission E-Reader Distribution and E-Reader Distribution dated 1/3/06) (1 page) with attached memorandum from Joel D. Kaplan, Deputy Director, Office of

Management & Budget (OMB) dated 12/30/05 already public at [www.whitehouse.gov/omb/memoranda/fy2006/m06-04.pdf](http://www.whitehouse.gov/omb/memoranda/fy2006/m06-04.pdf) (8 pages)

- 12 12/27/05 E-mail from Edward Baker to John Linehan, Brenda Shelton, & Russell Nichols re: Chief FOIA Officer ( 1 page)\_w/attached e-mail from Jacqueline Silber to Edward Baker re: Executive Order on FOIA (1 page)
- 13 12/15/05 E-mail from Jacqueline Silber to Edward Baker re: Action - FOIA w/attached article from [www.govexec.com](http://www.govexec.com) (3 pages)
- 14 01/06/06 E-mail from Joseph Gray to Trip Rothschild re: Appointment of Chief FOIA Officer (1 page)
- 15 01/06/06 E-mail from Trip Rothschild to Edward Baker, John Linehan, Russell Nichols & Nicola Sanchez re: Appointment of Chief FOIA Officer (1 page)
- 16 12/20/05 E-mail from Jacqueline Silber to Edward Baker re: Executive Order on FOIA (1 page)
- 17 01/06/06 E-mail from Karen Olive to Debra McCain re: Action: Incoming G2006-010 (EDATS: SECY-2006-001 & SECY-2006-002) (1 page)
- 18 12/28/05 E-mail from John Linehan to Trip Rothschild re: Chief FOIA Officer (1 page)
- 19 12/19/05 E-mail from Edward Baker to Jackie Silber & Karen Olive re: Executive Order on FOIA (1 page)
- 20 12/19/05 E-mail from Russell Nichols to Edward Baker re: Executive Order on FOIA (2 pages) w/Executive Order attached [www.whitehouse.gov/news/releases/2005/12/print/20051214-4.html](http://www.whitehouse.gov/news/releases/2005/12/print/20051214-4.html) (8 pages)
- 21 12/28/05 E-mail from Edward Baker to Karen Olive, Rickie Seltzer, Thomas Bergman re: OIS Comments on Memo to Commission on FOIA EO (1 page)

APPENDIX B  
RECORDS ALREADY PUBLICLY AVAILABLE

<u>NO.</u>	<u>DATE</u>	<u>ACCESSION NUMBER</u>	<u>DESCRIPTION/(PAGE COUNT)</u>
1	12/30/05	ML060060032	EDO Principal Correspondence Control (5 pages) with OMB Memorandum located at <a href="http://www.whitehouse.gov/omb/memoranda/fy2006/M-06-04.pdf">www.whitehouse.gov/omb/memoranda/fy 2006/M-06-04.pdf</a> (8 pages)
2	01/13/06	ML060090505	Letter from Nils J. Diaz to Daniel J. Metcalf, DOJ re: designation of Chief FOIA Officer (1 page)

APPENDIX C  
RECORDS BEING WITHHELD IN PART

<u>NO.</u>	<u>DATE</u>	<u>DESCRIPTION/(PAGE COUNT)/EXEMPTIONS</u>
1	01/09/06	E-mail from Karen Olive to John Linehan,,re: ACTION: Incoming G2006010 (EDATS: SECY-2006-001 & SECY-2006-002 (2 pages) Exemption 2 and portions outside the scope of the request

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

<b><u>NO.</u></b>	<b><u>DATE</u></b>	<b><u>DESCRIPTION/(PAGE COUNT)/EXEMPTIONS</u></b>
1	Undated	Draft of Memo from Karen Cyr, OGC to the Commission on Executive Order 13392, Improving Agency Disclosure of Information (6 pages) <b>Exemption 5, Attorney-Client Privilege</b>
2	Undated	Draft of Memo from Karen Cyr, OGC to the Commission on Executive Order 13392, Improving Agency Disclosure of Information (7 pages) <b>Exemption 5, Attorney-Client Privilege</b>
3	Undated	Draft of Memo from Karen Cyr, OGC to the Commission on Executive Order 13392, Improving Agency Disclosure of Information (6 pages) <b>Exemption 5, Attorney-Client Privilege</b>
4	12/28/05	E-mail from Trip Rothschild to Nicola Sanchez, on OIS Comments on Memo to Commission on FOIA EO (2 pages) <b>Exemption 5, Predecisional</b>
5	12/28/05	E-mail from Trip Rothschild to Joseph Gray on FOIA EO (1 page) <b>Exemption 5, Predecisional</b>
6	12/29/05	E-mail from Trip Rothschild to Cathy Holzle and Nicola Sanchez, on Revised OIS Input on FOIA Executive Order (8 pages) <b>Exemption 5, Predecisional</b>
7	12/30/05	Memo from Karen Cyr, OGC to the Commission on Executive Order 13392, Improving Agency Disclosure of Information (7 pages) <b>Exemption 5, Attorney-Client Privilege</b>
8	01/06/06	E-mail from Karen Olive to Edward Baker, Patricia Tressler, Richard Ousley re: Action: Incoming G2006-010 (EDATS: SECY-2006-0001 & SECY-2006-0002 (1 page) <b>Exemption 2</b>
9	01/11/06	E-mail from Karen Olive to Cathy Jaegers, & Patricia Tressler re: Sensitive SRM - COMNJD-06-0-001 (FOIA) (1 page) <b>Exemption 2</b>
10	01/19/06	E-mail from Karen Olive to Joan Hoffman re: Jackie Silber's bio (1 page) <b>Exemption 2</b>
11	12/28/05	E-mail from Russell Nichols to Trip Rothschild, re: OIS comments on Memo to Commission on FOIA EO (8 pages) <b>Exemption 5, Predecisional</b>

12 12/30/05

E-mail from John Linehan to Brenda Shelton, Edward Baker, & James Schaeffer re: FOIA Memo (2 pages), e-mail from Trip Rothschild to John Linehan & Russel Nichols (2 pages) with attached memo from Karen D. Cyr, OGC to Commission (6 pages) withheld Exemption 5, Predecisional