

October 26, 2007

MEMORANDUM TO: Luis A. Reyes
Executive Director for Operations

FROM: Stephen D. Dingbaum */RA/*
Assistant Inspector General for Audits

SUBJECT: STATUS OF RECOMMENDATIONS: AUDIT OF NRC'S
PROCESS FOR RELEASING COMMISSION DECISION
DOCUMENTS (OIG-06-A-22)

REFERENCE: EXECUTIVE DIRECTOR FOR OPERATIONS' MEMORANDA
DATED MARCH 2, 2007, AND MARCH 15, 2007

Attached is the Office of the Inspector General's (OIG) analysis and status of Recommendation 2 as discussed in your memoranda dated March 2, 2007, and revised March 15, 2007. Based on your response, Recommendation 2 remains unresolved.

It is the agency's contention that previously unpublished Commission decision documents have been withheld appropriately. In contrast, OIG continues to believe that the agency should take additional action to ensure that documents are appropriately released to the public and that it would be in the agency's best interest to assess a sample of Commission documents (as stated in Recommendation 2) that have been withheld recently.

Although not specific to SECY papers or Staff Requirements Memoranda (SRM), the agency recently acknowledged that it had gone "too far" regarding the withholding of documents in furtherance of its security policies. OIG believes that this situation may be symptomatic of the agency's need to examine decision documents that have been withheld but should have been released.

According to the agency, short of “compelling evidence” to the contrary, the Commission considers it “unreasonable and unnecessary to spend extensive resources reviewing hundreds or thousands” of previously unpublished Commission decision documents to confirm NRC’s compliance with FOIA. In its December 26, 2006, memorandum to the EDO (ML063600281), OIG proposed that a reasonable approach to resolve our concerns was for the agency to review a statistical sample of the previously unpublished documents.

With consideration of the agency’s position that extensive resources would be needed to perform a FOIA compliance review, OIG staff with extensive FOIA experience reviewed a sample of 12 SECY papers and SRMs¹ withheld from public release in 2005 and 2006. Based on our review, OIG concluded that it was not readily apparent why at least two² of these documents had not been released, either in full or, at a minimum, as redacted documents.

Therefore, OIG reiterates that without internal controls in place, such as a defined review process, NRC has *no basis* upon which to assert its full compliance with the automatic disclosure provisions of the FOIA. OIG maintains that conducting a statistical sample would provide empirical evidence of the extent of NRC’s compliance with the provisions of 5 U.S.C. 552 (a)(1) and (a)(2).

As noted in our recent response to Recommendation 1, Recommendation 2 will remain unresolved and be noted as such in OIG’s next semi-annual report to Congress.

Please provide an updated status on Recommendation 2 by December 28, 2007. If our offices cannot resolve Recommendation 2 at that time, I will request the Chairman’s assistance through the impasse resolution process.

If you have any questions or concerns, please call me at 415-5915.

Attachment: Status of Recommendation

cc: V. Ordaz, OEDO
M. Malloy, OEDO
P. Tressler, OEDO

¹ OIG used attribute sampling for this test (i.e., withhold or release). A full sample would have consisted of testing 59 sample items from the full population of 2005 and 2006 SECY papers and SRMs. Under this scenario, if even one of the sample items fails to meet the proper criteria (withhold or release), the *entire population* must be tested. OIG, therefore, began with a small test of 12 selected SECY papers and SRMs from 2005 and 2006. OIG found that *at least 2 withheld documents should have been released* in whole or in part.

² SRM SECY-06-0132, *International Atomic Energy Agency (IAEA) Safeguards Implementation Responsibility at U.S. Nuclear Regulatory Commission Licensees*, dated June 27, 2006; and SRM SECY-06-213, *Regional State Liaison Officers’ Outreach Activities*, dated November 8, 2006.

Audit Report

Audit of NRC's Process for Releasing Commission Decision Documents OIG-06-A-22

Status of Recommendation

Recommendation 2: Conduct a documented FOIA 552(a)(1) and (a)(2) review of previously unpublished SECY Papers and SRMs.

Revised Agency
Response dated
March 15, 2007:

For the reasons set forth in the Executive Director for Operations' response dated October 20, 2006 (ML062770134), the NRC does not believe it is necessary to review a statistical sample of documents from the last five or ten years. The NRC believes it is in compliance with the automatic disclosure provisions of the FOIA. Absent compelling evidence to the contrary, the Commission considers it unreasonable and unnecessary to spend extensive resources reviewing hundreds or thousands of documents to confirm that no 5 U.S.C. 552 (a)(1) or (a)(2) documents are undisclosed. We obtained the Commission's formal review and concurrence on the October 20th response to the audit report, and the Commission offices were provided the status update contained herein. Therefore, we consider this matter to be resolved and request that the OIG close the recommendation.

OIG Analysis:

According to the agency, short of "compelling evidence" to the contrary, the Commission considers it "unreasonable and unnecessary to spend extensive resources reviewing hundreds or thousands" of previously unpublished Commission decision documents to confirm NRC's compliance with FOIA. In its December 26, 2006, memorandum to the EDO (ML063600281), OIG proposed that a reasonable approach to resolve our concerns was for the agency to review a statistical sample of the previously unpublished documents.

Therefore, OIG reiterates that without internal controls in place, such as a defined review process, NRC has *no basis* upon which to assert its full compliance with the automatic disclosure provisions of the FOIA. OIG maintains that conducting a statistical sample would provide empirical evidence of the extent of NRC's compliance with the provisions of 5 U.S.C. 552 (a)(1) and (a)(2). As a result, this recommendation remains unresolved.

Status:

Unresolved.