



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

2007-0240

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RESPONSE TYPE FINAL PARTIAL

REQUESTER

John F. Conroy

DATE

OCT 22 2007

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 A,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 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,B 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 * \$ 45.52

- 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)

One record has been referred to the U.S. Department of Justice for their review and direct response to you.

The actual fees for processing your request are:

8 hrs. professional review @ \$51.49 per hr. = \$411.92
Duplication of 134 pages @ \$0.20 per page = \$26.80
Total = \$438.72 (LESS ADVANCE PAYMENT OF \$393.20) = \$45.52

The incoming FOIA/PA-2007-0240 request is located in ADAMS at ML071840407.

SIGNATURE - FREEDOM OF INFORMATION ACT AND PRIVACY ACT OFFICER

Russell A. Nichols

[Handwritten Signature]

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PART II.A -- APPLICABLE EXEMPTIONS

APPENDICES
B,C

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
Janice E. Moore	Associate General Counsel for Hearings, Enforcement and Administration	Appendix C/1-C/8		✓	
Guy P. Caputo	Director, Office of Investigations	Appendix B/8, C/9	✓		
James L. Caldwell	Regional Administrator, RIII	Appendix B/1-B/8	✓		
Cynthia A. Carpenter	Director, Office of Enforcement	Appendix B/5	✓		

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."

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

DATE

PART I.C COMMENTS (Continued)

Denying Official Official	Title/Office	Records Denied	Appellate
James E. Dyer	Director, Office of Nuclear Reactor Regulation	B/9, B/10, C/10, C/11 C/12	EDO
Luis A. Reyes	Executive Director for Operations	B/5, B/11	SECY

**APPENDIX A
RECORDS BEING RELEASED IN THEIR ENTIRETY**

<u>NO.</u>	<u>DATE</u>	<u>DESCRIPTION/(PAGE COUNT)</u>
1.	3/9/07	Handwritten Telecon Notes (1 page)
2.	3/20/07	E-Mail from Lagan to Duncan, Conference Call to Davis Besse Exponent Report (3 pages)
3.	3/20/07	E-Mail from Duncan to Boland et al., Conference Call to Davis Besse Exponent Report (7 pages)
4.	3/22/07	Key Conclusions of Exponent's December 15, 2006 Report (13 pages)
5.	3/22/07	E-Mail from Holmberg to Duncan, Re: Conference Call to Davis Besse Exponent report (2 pages)
6.	3/22/07	E-mail from Duncan to Hills et al., Davis Besse meeting in DRS Conference Call (3 pages)
7.	3/22/07	Handwritten Telecon Notes (2 pages)
8.	3/23/07	E-Mail from Lagan to Gavula, Fwd: Re: Conference Call to Davis Besse Exponent Report (1 page)
9.	3/23/07	E-Mail from Duncan to Boland et al., Slides from Davis Besse Call (17 pages)
10.	3/23/07	E-Mail from Tomczak to Jones et al., Davis Besse Exponent Report Meeting (1 page)
11.	3/26/07	E-Mail from Pederson to Collins et al., Region III Technical POC for Exponent Report (1 page)
12.	4/11/07	E-Mail from Gavula to Boger, Your Availability for a Meeting (1 page)
13.	4/23/07	E-Mail from Boger to Globe, Update on Today's Davis Besse Status Hearing (2 pages)
14.	5/3/07	E-Mail from Caputo to Clark, First Energy's Davis Besse Report (4 pages)
15.	5/8/07	E-Mail from Caputo to Sheron et al., Fwd: Re: That is 5 PM Tuesday Scheduling a meeting to discuss level of review needed for Exponent R

(3 pages)

16. 5/10/07 E-Mail from Caputo to Sheron et al., Today's 8:30 Exponent mtg has been moved to 12:30 in 17B4 (4 pages)
17. 5/10/07 E-Mail from Ulie to Lagan, Fwd: A mtg w/Bill Kane re: Update on Exponent has been scheduled for (2 pages)
18. 5/15/07 E-Mail from Lopez to Boland et al., Letter and Order to Anthony Alexander, FirstEnergy Nuclear Operating Company (1 page)
19. 5/24/07 E-Mail from Caputo to Carpenter, FYI: Fwd: Questions Regarding Exponent Report (1 page)
20. 6/12/07 E-Mail from O'Brien to Carpenter, Date of DOJ (RIII:OI) participation on a telephone call with OGC/OE regarding Exponent Report (1 page)
21. 6/13/07 E-Mail from Ulie to Hackworth, Upcoming Public Meetings Involving DB (3 pages)
22. 6/15/07 E-Mail from Ulie to Lagan, Fwd: Meeting Notice for 6/27/07 Meeting to Discuss DFI (13 pages)
23. 6/15/07 E-mail from Wengert to Gavula, Fwd: Reminder: Monday, June 18, 2007 Public PRB Meeting - D. Lochbaum 2.206 (2 pages)
24. 6/18/07 E-Mail from Wengert to Gavula, Re: Fwd: PRB meeting Handout (2 pages)
25. 6/19/07 E-Mail from Wengert to Gavula, re: Fenoc DFI Meeting on June 27, 2007 (4 pages)
26. 6/28/07 E-Mail from Gavula to Wengert, FirstEnergy DFI Meeting (2 pages)
27. 6/29/07 E-Mail from Gavula to Wengert, NRC Public Meeting Feedback (2 pages)

**APPENDIX B
RECORDS WITHHELD IN PART**

<u>NO.</u>	<u>DATE</u>	<u>DESCRIPTION/(PAGE COUNT)/EXEMPTIONS</u>
1.	3/9/07	E-Mail from Rutkowski to Duncan, 3/9/07 DB 1100 EST Passcode Change - see note (3 pages) Ex. 2
2.	3/9/07	E-Mail from Ulie to Gavula, Fwd: RE: DB Conference Call at 1100EST, 1000 CST Today (3 page) Ex. 2, 5
3.	3/20/07	E-mail from Duncan to Boland et al., Telephone Number for Davis Besse Call (6 pages) Ex. 2
4.	3/21/07	E-Mail from Langan to Duncan, Telephone Number for Davis Besse Call (3 pages) Ex. 2
5.	5/8/07	E-mail from Bloomer to Sheron, Key Points from the FENOC Discussion (7 pages) (1 page released) Ex. 5
6.	3/18/07	E-Mail from Duncan to Boland et al., Summary of Davis Besse NEIL Issue (9 pages) (7 pages released) Ex. 5
7.	3/19/07	E-mail from Duncan to Boland et al., Update to Davis Besse NEIL Issue (8 pages) (5 pages released) Ex. 5
8.	3/28/07	E-mail from Grobe to Gavula, Davis Besse Exponent Report (2 pages) Ex. 5
9.	3/29/07	E-mail from Collins to Gavula, Corrosion Equation Consideration (2 pages) Ex. 5
10.	3/29/07	Handwritten Note (1 page) Ex. 5
11.	5/8/07	E-Mail from Caputo to Fitzgerald et al., Key Points from the FENOC Discussion (3 pages) Ex. 5

**APPENDIX C
RECORDS WITHHELD IN THEIR ENTIRETY**

<u>NO.</u>	<u>DATE</u>	<u>DESCRIPTION/(PAGE COUNT)/EXEMPTIONS</u>
1.	3/26/07	E-Mail from Chandler to Caldwell et al., regarding Davis Besse - Exponent Report (1 page) Ex. 5
2.	4/26/07	E-Mail from Caputo/Jones to Fitzgerald et al., regarding Davis Besse Exponent Report (3 pages) Ex. 5
3.	5/8/07	E-Mail from Clark to Gavula regarding DFI (2 pages) Ex. 5
4.	5/8/07	E-Mail from Clark to Langan regarding DFI (1 page) Ex. 5
5.	5/9/07	E-Mail from Langan to Clark regarding DFI (1 page) Ex. 5
6.	5/11/07	E-Mail from Clark to Collins et al., regarding DFI to Davis Besse (5 pages) Ex. 5
7.	5/15/07	E-Mail from Poole to Clark et al., regarding Davis Besse demand for information (1 page) Ex. 5
8.	6/7/07	E-Mail from Clark to Poole et al., regarding meeting with FENOC re: DFI (3 pages) Ex. 5
9.	5/07	Handwritten notes (21 pages) Ex. 5
10.	4/24/07	E-mail from Collins to Bateman, Davis Besse news (4 pages) Ex. 5
11.	4/24/07	Handwritten Notes (1 page) Ex. 5
12.	5/1/07	Handwritten Notes (1 page) Ex. 5