



Tennessee Valley Authority, 1101 Market Street, Chattanooga, Tennessee 37402-2801

Mark O. Medford
Vice President, Engineering & Technical Services

December 4, 1995

U.S. Nuclear Regulatory Commission
ATTN: Document Control Desk
Washington, DC 20555-0001

In the Matter of the Application of) Docket Nos. 50-390
Tennessee Valley Authority) 50-391

REQUEST TO WITHHOLD SENSITIVE INFORMATION (TAC M72494)

This responds to your letter of November 7, 1995, requesting that TVA provide its justification for withholding sensitive information contained in Enclosure 1 to TVA's October 23, 1995, letter to the NRC regarding Department of Labor (DOL) Case No. 95-ERA-20. As a basis for withholding such information, TVA cited the personal privacy interests of those associated with the DOL complaint pursuant to 10 C.F.R. § 2.790(a)(6) and (7) and TVA's corresponding regulations at 18 C.F.R. § 1301.1(a)(6) and (7).

As a corporate agency and instrumentality of the United States Government, TVA is subject to the Freedom of Information Act (FOIA) and is obligated to make determinations on whether documents it has originated are exempt from disclosure under FOIA. TVA's status as a government agency for FOIA purposes has been acknowledged in a letter from NRC's James Lieberman to TVA's Mark O. Medford dated April 12, 1993. Thus, insofar as Enclosure 1 to TVA's letter of October 23 is concerned, TVA determined that the information contained therein would be protected from mandatory disclosure under TVA's FOIA regulations at 18 C.F.R. § 1301.1(a)(6) and (7). Despite that the underlying event discussed in Enclosure 1 has been litigated, information about the individuals involved and TVA's position in the matter, as set forth in Enclosure 1, has not been widely disseminated and has not been disclosed by TVA. Furthermore, the information described in Enclosure 1 is the subject of a Recommended Decision and Order of an Administrative Law Judge (ALJ) which TVA intends to pursue before the Secretary of Labor. Given that this recommended decision must be reviewed by the Secretary, we believe that releasing sensitive, personal information involving those individuals and the circumstances associated with the subject case at this time would represent an unwarranted invasion of their personal privacy.

110090

9512120027 951204
PDR ADCK 05000390
PDR

DD301/0

U.S. Nuclear Regulatory Commission

Page 2

December 4, 1995

Of course, if it is eventually found that no one engaged in misconduct, it is generally held that the privacy interests of the individuals involved would outweigh any public interest in the privacy-protected information. Even if a finding of misconduct is eventually reached, individuals' privacy rights are protected unless those individuals are of sufficiently high rank that the public interest would outweigh any of their privacy interests.

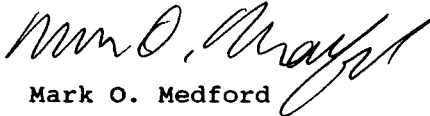
In addition to the above, TVA provided the information contained in Enclosure 1 as part of an interagency exchange of information which is being used in connection with TVA and NRC predecisional internal agency deliberations. As you know, TVA's letter of October 23, 1995, was in response to NRC's October 13, 1995, request for information regarding 95-ERA-20, and Enclosure 1 provided the basis for TVA's disagreement with the ALJ's Recommended Decision and Order. In addition, NRC informed TVA by letter dated November 8, 1995, that it had reviewed TVA's response and that enforcement action would be addressed in the future in accordance with normal enforcement practice. The information provided in Enclosure 1 reflects information being used as part of TVA's predecisional internal agency deliberations pending the final outcome of the case as well as information being used in NRC's predecisional internal agency deliberations regarding future enforcement action. Since it is NRC's normal practice not to release material related to pending internal deliberations, TVA believes that in providing additional material to NRC as part of an interagency exchange of information, such material is likewise subject to protection from disclosure under the FOIA. Of course, it is well-established that disclosure of information among federal agencies does not waive any exemption.

In summary, it is TVA's position that the information contained in Enclosure 1 to TVA's letter of October 23, 1995, is protected from disclosure under exemptions 5, 6, and 7 of the FOIA and that TVA would deny a request for such information at this time on the bases of these exemptions. This information does not lose its protection under the FOIA because it was provided to another federal agency. Moreover, it is standard interagency FOIA practice that when one agency possesses records originated by another agency, any decisions on public release of the records will be made by the agency which originated the record (see, e.g., 28 C.F.R. § 16.4 (1994)). Consistent with that standard interagency practice, we also ask that any requests the NRC may receive from the public for the release of Enclosure 1 be referred to the originating agency, TVA, for disposition. Accordingly, we ask that NRC not preempt a TVA decision on release of a TVA-originated record by placing it in the Public Document Room, thereby making it publicly available and waiving any exemptions TVA may find applicable.

U.S. Nuclear Regulatory Commission
Page 3
December 4, 1995

Thank you for the opportunity to present our views on this important matter. Any questions may be directed to Edward J. Vigluicci, Office of the General Counsel, at (423) 632-7317 or Patrick P. Carrier, Manager of Corporate Licensing at (423) 751-2687.

Sincerely,



Mark O. Medford

cc: U.S. Nuclear Regulatory Commission
Region II
101 Marietta Street, NW, Suite 2900
Atlanta, Georgia 30323

Mr. D. E. LaBarge, Project Manager
U.S. Nuclear Regulatory Commission
One White Flint North
11555 Rockville Pike
Rockville, Maryland 20852

Mr. Peter S. Tam, Project Manager
U.S. Nuclear Regulatory Commission
One White Flint North
11555 Rockville Pike
Rockville, Maryland 20852

Mr. J. F. Williams, Project Manager
U.S. Nuclear Regulatory Commission
One White Flint North
11555 Rockville Pike
Rockville, Maryland 20852

NRC Resident Inspector
Sequoyah Nuclear Plant
2600 Igou Ferry Road
Soddy Daisy, Tennessee 37379

NRC Resident Inspector
Watts Bar Nuclear Plant
1260 Nuclear Plant Road
Spring City, Tennessee 37381

NRC Resident Inspector
Browns Ferry Nuclear Plant
10833 Shaw Road
Athens, Alabama 35611