POLICY ISSUE
INFORMATION

January 28, 2008 SECY-08-0014

FOR: The Commissioners

FROM: Luis A. Reyes
Executive Director for Operations

SUBJECT: ANNUAL FREEDOM OF INFORMATION ACT REPORT

PURPOSE:

This paper conveys to the Commission for its information a copy of the U.S. Nuclear Regulatory Commission's (NRC) annual Freedom of Information Act (FOIA) report for Fiscal Year (FY) 2007.

BACKGROUND:

With the enactment of the Electronic FOIA Amendments of 1996, Public Law 104-231, Congress revised the provisions of the FOIA, pertaining to the submission of annual FOIA reports by Federal agencies. Congress directed the U.S. Department of Justice (DOJ), in consultation with the Office of Management and Budget, to issue guidelines for Federal agencies to use in preparing and submitting their annual FOIA reports.

Under the guidelines, each Federal agency submits its annual report to the DOJ Office of Information and Privacy, and each report must include the agency-specific uniform resource locator (URL) for Web-based access to its report. DOJ provides a single point of access on its Web site for all annual FOIA reports, through a link to each agency's FOIA Web page, and notifies Congress when all reports have been posted on the agency's Web site.

CONTACT: Russell A. Nichols, OIS/IRSD
(301) 415-7169

DISCUSSION:

Enclosed is the NRC's annual FOIA report for FY 2007. Section VIII (page 7) of the enclosed report compares NRC's FY 2007 data with FY 2006. The NRC staff will submit the enclosed annual FOIA report for FY 2007 to the DOJ Office of Information and Privacy and place the report on the NRC's public Web site by February 1, 2008. The URL for the NRC's annual FOIA report for FY 2007 will be http://www.nrc.gov/reading-rm/foia/foia-privacy.html.

On October 16, 2007, the DOJ's Office of Information and Privacy requested additional information due to the issuance of Executive Order 13392, "Improving Agency Disclosure of Information." The staff included the requested information in Section XII (page 8) of this report.

COORDINATION:

The Office of the General Counsel reviewed this package and has no legal objection. The Office of the Chief Financial Officer reviewed this package and determined that it has no financial impact.

/RA Martin J. Virgilio for/

Luis A. Reyes
Executive Director
for Operations

Enclosure:
U.S. Nuclear Regulatory Commission
Annual Freedom of Information Act
Report: FY 2007

DISCUSSION:

Enclosed is the NRC's annual FOIA report for FY 2007. Section VIII (page 7) of the enclosed report compares NRC's FY 2007 data with FY 2006. The NRC staff will submit the enclosed annual FOIA report for FY 2007 to the DOJ Office of Information and Privacy and place the report on the NRC's public Web site by February 1, 2008. The URL for the NRC's annual FOIA report for FY 2007 will be http://www.nrc.gov/reading-rm/foia/foia-privacy.html.

On October 16, 2007, the DOJ's Office of Information and Privacy requested additional information due to the issuance of Executive Order 13392, "Improving Agency Disclosure of Information." The staff included the requested information in Section XII (page 8) of this report.

COORDINATION:

The Office of the General Counsel reviewed this package and has no legal objection. The Office of the Chief Financial Officer reviewed this package and determined that it has no financial impact.

/RA Martin J. Virgilio for/

Luis A. Reyes
Executive Director
for Operations

Enclosure:
U.S. Nuclear Regulatory Commission
Annual Freedom of Information Act
Report: FY 2007

ADAMS Accession No.: ML073610286 WITS 200100009/EDATS: SECY-2007-0131

OFFICE	FOIA/IRSD	FOIA/IRSD	RFPSB/IRSD	OCFO	IRSD/OIS
NAME	B.Culleen:BC	R.Nichols:RAN	M.Janney:MAJ	T.Grancortz:TG	J. Linehan: JJL
DATE	12/31/07	01/02/08	01/02/08	01/02/08	01/11/08
OFFICE	AD/OIS	OGC	QTE	DEDIS/CIO	EDO
NAME	K. Greene:KOG	T. Rothschild:TR	H. Chang	D. Ash	L. Reyes M. Virgilo for
DATE	01/16/08	01/17/08	12/28/2007	01/28/08	01/28/08

OFFICIAL RECORD COPY

United States Nuclear Regulatory Commission
Annual Freedom of Information Act (FOIA) Report:
Fiscal Year 2007

I. Basic Information Regarding Report

A. Name, title, address, and telephone number of person(s) to be contacted with questions about the report.

Russell A. Nichols
Freedom of Information Act and Privacy Act Officer
Mail Stop T-5 F11
United States Nuclear Regulatory Commission
Washington, D.C. 20555-0001
Telephone: 301-415-7169 Fax: 301-415-5130

B. Electronic address for the report on the World Wide Web

http://www.nrc.gov/reading-rm/foia/foia-privacy.html

C. How to obtain a copy of the report in paper form.

Contact the U.S. Nuclear Regulatory Commission (NRC) Public Document Room (PDR) located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, MD 20852-2738, by telephone at 301-415-4737 or 1-800-397-4209, PDR@NRC.GOV or fax at 301-415-3548. The mailing address is Public Document Room, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

II. How to Make a FOIA Request

A. Names, addresses, and telephone numbers of all individual agency components and offices that receive FOIA requests.

Freedom of Information Act and Privacy Act Officer
Mail Stop T-5 F11
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
Telephone: 301-415-7169
Fax: 301-415-5130
E-mail: FOIA@NRC.GOV
Electronic submittal http://www.nrc.gov/reading-rm/foia/foia-submittal-form.html

B. Brief description of agency's response-time ranges.

44% within 4 weeks
68% within 6 weeks
79% within 8 weeks

Enclosure

C. Brief description of why some requests are not granted.

To protect privacy (36%)

To prevent compromise of a pending investigation or proceeding (6%)

To protect the attorney-client privilege, attorney work products, or the agency's predecisional deliberative process (22%)

To protect proprietary information (14%)

III. Definitions of Terms and Acronyms Used in the Report

A. Agency-specific acronyms or other terms.

NRC-defined acronyms are available on the NRC Web site at http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr0544/r4

B. Basic terms, expressed in common terminology.

1. Freedom of Information Act/Privacy Act (FOIA/PA) request. A FOIA request is a request for access to records concerning a third party, an organization, or a particular topic of interest. A Privacy Act request is a request for records concerning oneself; NRC also treats such requests as FOIA requests. (All requests for access to records, regardless of which law is cited by the requester, are included in this report.)

2. Initial request. A request to a Federal agency for access to records under the FOIA Act.

3. Appeal. A request to a Federal agency asking that it review at a higher administrative level a full denial or partial denial of access to records under the FOIA, or any other FOIA determination such as a matter pertaining to fees.

4. Processed request or appeal. A request or appeal for which an agency has taken a final action on the request or the appeal in all respects.

5. Multi-track processing. A system in which simple requests requiring relatively minimal review are placed in one processing track and more voluminous and complex requests are placed in one or more other tracks. Requests in each track are processed on a first-in/first-out basis. A requester who has an urgent need for records may request expedited processing (see below).

6. Expedited processing. An agency will process a FOIA request on an expedited basis when a requester shows an exceptional need or urgency

for the records warranting the agency to prioritize his or her request over other earlier requests.

7. Simple request. A FOIA request that an agency using multi-track processing places in its fastest (non-expedited) track based on the volume and/or simplicity of records requested.

8. Complex request. A FOIA request that an agency using multi-track processing places in a slower track based on the volume and/or complexity of records requested.

9. Grant. An agency decision to disclose all records in full in response to a FOIA request.

10. Partial grant. An agency decision to disclose a record in part in response to a FOIA request, deleting information determined to be exempt under one or more FOIA's exemptions; or an agency decision to disclose some records in their entirety, but to withhold others in whole or in part.

11. Denial. An agency decision not to release any part of a record or records in response to a FOIA request (a) because all the information in the requested records is determined by the agency to be exempt under one or more of the FOIA's exemptions, or (b) because of a procedural reason (such as no record is located in response to a FOIA request).

12. Time Limits. The time period allocated in the FOIA for an agency to respond to a FOIA request (ordinarily 20 working days from proper receipt of a "perfected" FOIA request).

13. Perfected request. A FOIA request for records that adequately describes the records sought, which has been received by the FOIA office of the agency or agency component in possession of the records, and for which there is no remaining question about the payment of applicable fees.

14. Exemption 3 statute. A separate Federal statute prohibiting the disclosure of a certain type of information and authorizing its withholding under Subsection (b)(3) of the FOIA.

15. Median number. The middle, not average, number. For example, for the set of 3, 7, and 14, the median number is 7.

16. Average number. The number obtained by dividing the sum of a set of numbers by the quantity of numbers. For example, for 3, 7, and 14, the average number is 8 (the sum is 24, which is then divided by 3).

IV. Exemption 3 Statutes

A. List of Exemption 3 statutes relied on by agency during current fiscal year.

1. Brief description of type(s) of information withheld under each statute.

41 U.S.C. 253b(m)(1), Contractor Proposals
42 U.S.C. 2167, Unclassified Safeguards Information
42 U.S.C. 2161-2165, Restricted or Formerly Restricted Data

2. Statement of whether a court has upheld the use of each statute. If so, then cite example.

41 U.S.C.253b(m)(1), Hornbostel v. U.S. Department of Interior, 305 F. Supp. 2d 21 (D.D.C. 2003)
42 U.S.C. 2167, Va. Sunshine Alliance v. NRC, 509 F. Supp. 863 (D.D.C. 1981), aff'd, 669 F.2d 788 (D.C. Cir. 1981)
42 U.S.C. 2161-2165, Meeropol v. Smith, No. 75-1121 (D.D.C., February 29, 1984)

V. Initial FOIA/PA Access Requests

A. Numbers of initial requests.

1.	Number of requests pending as of end of preceding fiscal year (09/30/2006)	36
2.	Number of requests received during current fiscal year	349
3.	Number of requests processed during current fiscal year	351
4.	Number of requests pending as of end of current fiscal year (09/30/2007)	34

B. Disposition of initial requests.

1.	Number of total grants	147
2.	Number of partial grants	98
3.	Number of denials	8

a. Number of times each FOIA exemption used (total counting each exemption once per request) 188

(1) Exemption 1	0
(2) Exemption 2	30
(3) Exemption 3	3
(4) Exemption 4	27
(5) Exemption 5	42
(6) Exemption 6	33
(7) Exemption 7(A)	12
(8) Exemption 7(B)	0
(9) Exemption 7(C)	35
(10) Exemption 7(D)	1

(11) Exemption 7(E) 5
(12) Exemption 7(F) 0
(13) Exemption 8 0
(14) Exemption 9 0

4. Other reasons for nondisclosure (total) 98
   a. no records 37
   b. referrals 2
   c. requests withdrawn 19
   d. fee-related reason 12
   e. records not reasonably described 6
   f. not a proper FOIA request for some other reason 3
   g. not an agency record 2
   h. duplicate request 1
   i. other (no response to identity verification (7), lack of response (3); neither confirm nor deny (1); no response to fee estimate (5)) 16

VI. Appeals of Initial Denials of FOIA/PA Requests

A. Number of appeals.

1. Number of appeals received during fiscal year 6
2. Number of appeals processed during fiscal year 7

B. Disposition of appeals.

1. Number completely upheld 1
2. Number partially reversed 3
3. Number completely reversed 1

   a. Number of times each FOIA exemption used (counting each exemption once per appeal)
      (1) Exemption 1 0
      (2) Exemption 2 1
      (3) Exemption 3 0
      (4) Exemption 4 1
      (5) Exemption 5 0
      (6) Exemption 6 1
      (7) Exemption 7(A) 2
      (8) Exemption 7(B) 0
      (9) Exemption 7(C) 1
      (10) Exemption 7(D) 0
      (11) Exemption 7(E) 0
      (12) Exemption 7(F) 0
      (13) Exemption 8 0
      (14) Exemption 9 0

4. Other reasons for nondisclosure (total) 2

a.	no records	0
b.	referrals	0
c.	requests withdrawn	0
d.	fee-related reason	0
e.	records not reasonably described	0
f.	not a proper FOIA request for some other reason	2
g.	not an agency record	0
h.	duplicate request	0
i.	other (fee waiver denial)	0

VII. Compliance with Time Limits/Status of Pending Requests

FY 2007 median day calculations are based on working days.

A. Median processing time for requests processed during the year.

1. Simple requests (Track A)
   - a. number of requests processed 327
   - b. median number of days to process 11

2. Complex requests (Tracks B and C)
   - a. number of requests processed 24
   - b. median number of days to process 40

3. Requests accorded expedited processing
   - a. number of requests processed 0
   - b. median number of days to process 0

B. Status of pending requests.

1. Number of requests pending as of end of current fiscal year: 34
   - Track A 33
   - Track B 1

2. Median number of days that such requests were pending as of that date:
   - Track A 13
   - Track B 31

VIII. Comparisons with Previous Year(s)

Calculations are based on working days.

		FY 06	FY 07	% Change FY 06 to FY 07
A.	Number of requests received	320	349	9%
B.	Number of requests processed	364	351	- 4%
C.	Median number of days requests were pending as of end of fiscal year	15	14	- 7%
D.	Other statistics significant to agency:			
	Expedited Processing ─ Received	20	14	
	Granted	2	0	

E. Other agency efforts to improve the timeliness of FOIA performance and to make records available to the public:

The NRC FOIA Web site lists all FOIA requests that were completed during the year by subject.

NRC provided training on the FOIA process to various staff offices emphasizing specific office needs.

NRC uses several internal agency service levels to enhance the agency's processing timeliness. Offices are provided with status reports of open cases to heighten management awareness.

In addition to providing general public access to material released under the FOIA, in FY 2007, NRC placed more than 46,100 of its official agency records in its Agencywide Documents Access and Management System (ADAMS). These documents are available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records System (PARS) component of ADAMS. ADAMS is accessible from the NRC Web site at http://www.nrc.gov/reading-rm/adams.html (the Electronic Reading Room). NRC's extensive voluntary release program has resulted in 2.9 million documents made publicly available either in paper, microfiche, or electronic format.

IX. Costs/FOIA Staffing

A. Staffing levels.

1.	Number of full-time FOIA personnel	5
2.	Number of personnel with part-time or occasional FOIA duties (in total work years)	2
3.	Total number of personnel (in work years)	7

B. Total costs (including staff and all resources).

1.	FOIA processing (including appeals)	$ 1,109,456
2.	Litigation-related activities (estimated)	$ 0
3.	Total costs	$ 1,109.456
4.	Comparison with previous year: (5% increase from FY 2006)	$ 1,060,923

X. Fees

A.	**Total amount of fees collected by agency for processing requests.**	$ 8,063
B.	**Percentage of total costs.**	.4%

XI. FOIA Regulations

10 CFR Part 9 (Available at NRC's Web site at www.nrc.gov/reading-rm/doc-collections/cfr/part009/index.html)

Fee Schedule (FY 2007)

Search and Review

SES/Commissioners (ES-Max)	$85.83/hr	$1.43/min
Professional (GG-13/6)	$51.49/hr	$0.86/min
Clerical (GG-7/7)	$25.10/hr	$0.42/min

Duplication: $0.20 per page

Minimum fee: $15.00
(NRC does not charge a fee if the total fee is less than $15.00)

XII. Report on FOIA Executive Order Implementation

A. On December 27, 2006, NRC forwarded a modified FOIA Improvement Plan to the Department of Justice (DOJ). The modification changed two items in NRC's original plan.

1. The original plan called for NRC to complete a computer-based FOIA training module in FY 2006. The modified plan changed the completion date to December 31, 2007.

2. The original plan called for NRC to provide FOIA rotational assignment opportunities to the NRC staff. The modified plan does not include this action.

B. In FY 2007, NRC completed all of the actions outlined in Section F.2 in its modified FOIA Improvement Plan, which were as follows:

1. "**Hire an additional FOIA specialist.**" A FOIA specialist was hired and began working at NRC on August 20, 2007.

2. **"Acquire additional contractor assistance for FOIA processing."** A full time contractor was obtained beginning in October 2006, for FY 2007.

3. **"Complete test of onscreen redaction software and identify best business practice for its use."** NRC tested four commercial off the shelf redaction software products (Redax 4.0, FOIAXpress with Redax Plugin 5.3.6, Rapid Redact 1.48, and Brava Desktop). Redax 4.0 was selected. NRC completed testing for compatibility with agency systems in February 2007. In March 2007, NRC purchased and installed 1 package of media and 6 licenses for use by the FOIA/Privacy Team specialists. NRC also developed the business processes for the use of Redax.

4. **"Develop FOIA computer-based training (CBT) module."** NRC developed a CBT module and made it available to NRC staff on the NRC internal Web site on July 18, 2007.

C. Although the following items were not scheduled for completion until after December 2007, NRC has already completed these actions listed in Section F.3 of its FOIA Improvement Plan.

1. **"Obtain additional software and hardware, conduct training, and complete implementation of full-scale use of onscreen redactions no later than December 31, 2008."** NRC implemented the full-scale use of Redax in March 2007.

2. **"By September 30, 2008, improve FOIA responsiveness for complex FOIA requests so that 50 percent of complex requests are**

completed in 180 days or less." For FY 2007, NRC provided responses to complex FOIA requests in 180 days or less, 94 percent of the time.

D. N/A

E. **Exemption 1**
Exempts from public disclosure records that are specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy, and that are properly classified pursuant to such Executive Order.

Exemption 2
Exempts from public disclosure internal personnel rules and policies of an agency (including internal information, which if disclosed would risk circumvention of a legal requirement).

Exemption 3
Exempts 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; Section 147 of the Atomic Energy Act, which prohibits the disclosure of Unclassified Safeguards Information; and 41 U.S.C. 253(b) which prohibits the disclosure of contractor proposals in the possession and control of an executive agency unless the proposal is incorporated in the final contract.

Exemption 4
Exempts from public disclosure trade secrets, commercial, or financial Information that is confidential business (proprietary).

Exemption 5
Exempts from public disclosure inter-agency or intra-agency memoranda or letters which would not be available by law to a party in litigation with the agency.

Exemption 6
Exempts from public disclosure personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Exemption 7
Exempts from public disclosure records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation or by

an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual.

F. **1.** Ten Oldest Pending FOIA Requests (as of January 1, 2008). (NRC had no pending requests from prior calendar years.)

Calendar Year 2007	
Requests:	August 24
	September 18
	October 2
	October 2
	October 5
	October 12
	October 15
	October 15
	October 25
	November 2

2. Consultations

a. **Number of Consultations Received, Processed, and Pending**

Consultations Received From Other Agencies During FY 2007	**Consultations Received from Other Agencies that Were Processed During FY 2007 (include those received prior to FY 2007)**	**Consultations Received from Other Agencies that Were Pending as of October 1, 2007 (include those received prior to FY 2007)**
10	11	0

b. Ten Oldest Pending Consultations Received From Other Agencies. (No pending FY 2007 consultations from FY 2007 or prior calendar years.)

Calendar Year 2007
Consults Pending: 0

G. **The electronic version of NRC's "FOIA Improvement Plan – Modified" can be found on our Web site at** http://www.nrc.gov/reading-rm/foia/foia-improvement-plan-modified-12-27-06.pdf