

January 24, 2008

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, MARCH 15, 2007, AND  
JANUARY 8, 2008

This memorandum provides the Office of the Inspector General's (OIG) analysis and status of Recommendation 2 as discussed in your memoranda dated March 2, 2007, March 15, 2007, and January 8, 2008. OIG continues to believe that additional action is warranted. However, the recommendation is closed based on the agency's steadfast belief, as reiterated in its January 8, 2008, response stating that "...the NRC remains in full compliance with the mandatory disclosure provisions of the FOIA and that the requested review of a statistical sample would be an imprudent use of the agency's limited resources."

It is the agency's contention that previously unpublished Commission decision documents do not contain anything which should have been made public, even though no process was in place to ensure these items have been withheld appropriately. OIG believes that the agency should ensure that documents issued prior to the new review process instituted on November 1, 2006, were appropriately withheld from the public. Therefore, OIG reiterates that NRC has *no basis* upon which to assert its compliance with the automatic disclosure provisions of the FOIA prior to November 1, 2006. 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).

Absent its willingness to review and assess even a sample of previously withheld documents, the agency assumes the risk that its decisions to withhold documents could be challenged and overturned. OIG believes that the agency's unwillingness to take action may imperil its position and public stature.

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

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