



UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

May 20, 2008

Mr. James E. Foster



RE: RESPONSE TO FOIA 2008-0150

Dear Mr. Foster:

This letter is in response to your appeal of the agency's April 10, 2008 denial of your request for a document under the Freedom of Information Act (FOIA). Specifically, the NRC denied your request for "Memorandum to Commission from W. Parler, General Counsel, regarding Issues Regarding OI Mission and Role of Investigations." This eight-page document was withheld in its entirety under Exemption 5, as attorney-client privileged information and as predecisional information. See Appendix C, Document Number 1 of the NRC's response of April 10, 2008. For the reasons explained below, I deny the appeal.

The memorandum consists of "confidential communications between an attorney and his client[s] on [] legal matter[s] for which the client[s] [have] sought professional advice." *Mead Data Cent., Inc. v. U.S. Dep't of the Air Force*, 566 F.2d 242, 252 (D.C. Cir. 1977). The memorandum responds to the Commission's request that the General Counsel analyze the OI mission and the role of its investigators. In the memorandum, the General Counsel recommends several modifications to the NRC's regulations, manual chapters, and other guidance documents. The recommendations in the memorandum are supported by confidential legal analysis. The General Counsel's recommendations regarding changes to NRC regulations, manual chapters, and guidance documents are also withheld under Exemption 5 as predecisional information, the disclosure of which would tend to inhibit the open and frank exchange of ideas essential to the deliberative process. See *Kidd v. U.S. Dep't of Justice*, 362 F. Supp. 2d 291, 295-96 (D.D.C. 2005).

This is a final agency action of this record pursuant to 10 C.F.R. § 9.29(c). As set forth in the FOIA, 5 U.S.C. § 552(a)(4)(B), judicial review of this decision is available in a district court of the United States in the district in which you reside or have your principal place of business, or in the District of Columbia.

Sincerely,

A handwritten signature in black ink that reads "Annette Vietti-Cook".

Annette L. Vietti-Cook