

FOIA/PA REQUEST

Case No.: 2008-005A
Date Rec'd: 4-28-08
Specialist: Raphael
Related Case: 2008-0150

FOIA/Privacy Act Officer
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

James E. Foster



April 26, 2008

SUBJECT: Appeal of Document Withheld

Ladies and Gentlemen of the NRC,

This letter is to appeal the denial of a document requested under FOIA/PA 2008-0150, your document dated April 10, 2008. This document was denied by Sandy M. Joosten, Executive Assistant, Office of the Secretary, and was the single document listed in Appendix C, "Records Withheld in Their Entirety."

Specifically, the document withheld was a "Memorandum to Commission from W. Parler, General Counsel regarding Issues Regarding OI Mission and Role of Investigations," dated May 25, 1988. This document was withheld under FOIA Exemption 5. NOTE: This document was actually addressed to NRC Chairman Lando W. Zech, and Commissioners Roberts, Carr, and Rogers, the entire Commission at that time (it is likely that others received copies).

This document was written almost 20 years ago, and is important to my research into the deliberate misclassification of Office of Investigations Special Agents in the 1811 "Criminal Investigator" classification. I have communicated with the Chairman and the Commission on this issue numerous times. The issue has received media attention on MSNBC in two articles by writer Mike Stuckey, who has a continued interest in this issue.

This document is also important in that it will show whether Chairman Lando Zech was aware of issues regarding the Office of Investigations when he allegedly signed a letter to OPM regarding their "rigorous positions" (please see attached chronology).

I appeal the withholding of this document and request its release.

Sincerely,

James Edwin Foster



CHRONOLOGY

- 03/01/88 NRC clarification, regarding October 8, 1987 testimony of B. Hayes, Director, OI, before Subcommittee on Nuclear Regulation. Hayes indicated "I was also referring to at least three important authorities given to Inspectors General, but currently not given to OI. These are: (1) the authority of the Director, OI, to appoint, direct, and supervise all subordinate OI personnel, (2) statutory authority to conduct criminal investigations,..."
- 04/26/88 The Committee on Interior and Insular Affairs: Subcommittee on Energy and the Environment, a hearing on H.R. 4140, "Nuclear Investigations Improvement Act of 1988." Testimony from Senator Breaux; Representatives Mavroules and Glickman; and the NRC: Lando W. Zech, Chairman; Thomas M. Roberts, Frederick M. Bernthal, Kenneth M. Carr and Kenneth C. Rogers, Commissioners; and Ben B. Hayes, Director, Office of Investigations. Hayes: "The second additional authority would be express criminal investigative authority, concurrent with the FBI, for violations of statutes or regulations..." Zech: "OI...should continue to be able to report possible criminal violations to the department of Justice."
- 05/25/88 **Memo for Chairman Lando W. Zech, Commissioners Roberts, Carr, and Rogers from Parler, Subj: ISSUES REGARDING OI MISSION AND ROLE OF INVESTIGATIONS (FOIA denied)(8 pages).**
- 06/14/99 Letter to Lando Zech from Manuel Lujan, provides 6 questions. Question 2: "Do you believe that your Office of Investigations should be granted the authority to conduct criminal investigations, concurrent with the FBI, for violations of statutes or regulations otherwise within the civil jurisdiction of the NRC?"
- 06/21/88 **Letter, NRC (original signed by Lando W. Zech?) advises OPM that a review of Federal Personnel Manual (FPM) Bulletin 842-3 had been performed, and certified that positions of OI investigators met "rigorous" definition. Mentions a "pre-employment medical examination and an annual examination thereafter." FOIA produced documents (at least until 1999, do not support required annual medical examinations.**
- 08/03/88 Nuclear Investigations Improvement Act : hearing before the Subcommittee on Energy and Power of the Committee on Energy and Commerce, House of Representatives, One Hundredth Congress, second session on H.R. 4140.
- 08/03/88 Letter, NRC Chairman Zech to M. Lujan Jr., of the House of Representatives Committee on Interior and Insular Affairs: "The Commission does not believe that a grant of authority to OI to conduct criminal investigations would enhance our ability to protect public health and safety or the government's ability to prosecute criminal violations of the Atomic Energy Act."
- 12/14/88 MOU with DOJ, signed by Chairman Lando Zech.