



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

OFFICE OF THE  
INSPECTOR GENERAL

July 28, 2008

MEMORANDUM TO: R. William Borchardt  
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: DIRECTOR, OFFICE OF INFORMATION SERVICES,  
MEMORANDUM DATED MAY 22, 2008

This memorandum provides the Office of the Inspector General's (OIG) analysis and status of Recommendation 1 as discussed in the agency's update dated May 22, 2008. Based on the agency's response, Recommendation 1 is resolved. OIG closed Recommendation 2, with comments, in January 2008 (see ML080290077).

Please provide an updated status by September 30, 2008.

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

Attachment: Status of Recommendation

cc: V. Ordaz, OEDO  
J. Arildsen, OEDO  
P. Shea, OEDO

**Audit Report**  
**Audit of NRC's Process for Releasing Commission Decision Documents**  
**OIG-06-A-22**

**Status of Recommendation**

Recommendation 1:            Develop a program for NRC compliance with the Freedom of Information Act's (FOIA) automatic disclosure requirements.

Agency Response dated  
May 22, 2008:

The Office of Information Services (OIS) is scheduled to complete a revision of Management Directive (MD) 3.4, "Release of Information to the Public," to address this recommendation. This revision incorporates the necessary information addressing NRC's compliance with FOIA's automatic disclosure requirements. The draft of M.D. 3.4, "Release of Information to the Public," is in the final stages of the concurrence process. We anticipate publication of MD 3.4 in FY 2008. The current version of the M.D. is consistent with Internal Commission Procedures, which were approved by the Commission on October 30, 2006 (COMSECY-06-0050). The Commission chose not to require the Secretary (SECY) in every case to consult with OGC and OIS. Some documents clearly do not fall within the mandatory disclosure provisions of FOIA, and there is no need for SECY to consult with other offices on those. For example, some documents pertain to personnel matters or direct further action by the staff before final Commission review.

As a matter of practice, since November 1, 2006, the Secretary reviews Staff Requirements Memoranda (SRMs) that have not been designated for public disclosure against the automatic disclosure provision under FOIA Sections 552 (a)(1) and (a)(2). For each Commission decision not designated for public disclosure, a form is filled out identifying the paper and whether the Commission decision clearly did not fall within any of the categories of documents requiring automatic disclosure (the categories are listed for easy reference), or if it could possibly fall within any of the categories it is referred to OGC for a determination (see attached form).

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**Status of Recommendation**

SECY, along with OGC, has had over a year and a half of successful experience with this process. As stated in the EDO's January 8, 2008, memorandum to the OIG, as a result of these reviews, the NRC concluded that an SRM on SECY-07-0146, "Regulatory Options for Licensing New Uranium Conversion and Depleted Uranium Deconversion Facilities" is a policy statement that must be disclosed pursuant to 5 U.S.C. 552(a)(2). That document is now publicly available on the NRC's 552(a)(2) website. In this particular case, the NRC staff was also consulted. We consider the actions to update the Internal Commission Procedures under this recommendation to be complete.

OIG Analysis:

OIG acknowledges the agency's stated position that the SECY need not consult OGC and OIS in every 552(a)(1) and (a)(2) review and that this position is consistent in the current version of MD 3.4 and the Internal Commission Procedures.

In a December 26, 2007 status update, the agency informed OIG that the proposed language in a pending revision to MD 3.4 would reflect the involvement of the OGC and OIS "in all determinations" of the public release of Commission decision documents. OIG accepted the proposed language as meeting the intent of the recommendation. However, OIG's review of the current revised version of MD 3.4 notes the removal of references to this required involvement. Instead, the draft language now reflects that the involvement of OGC is on an "as needed" basis as determined by the SECY and there is no discussion of the SECY involving OIS in the public release determinations. As OIG has opined in its previous analyses, the SECY is not a 552(a)(1) and (a)(2) automatic disclosure expert which would seem to necessitate routine involvement by OGC and OIS in the determination process.

OIG further acknowledges the agency's statement that since the issuance of OIG's report, the SECY has adopted the use of form, *Review under FOIA Sections 552(a)(1) and (a)(2)*. However, OIG notes that proposed draft MD 3.4 does not include any reference to the SECY's use of this review form.

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**Status of Recommendation**

As a matter of practice, OIG audit recommendations cannot be closed based on "draft" documents. Therefore, this recommendation remains resolved until NRC provides a final version of MD 3.4 for OIG's review to determine if the revised language meets the intent of this recommendation.

**Status:** Resolved.