

**RESPONSE TO FREEDOM OF
INFORMATION ACT (FOIA) / PRIVACY
ACT (PA) REQUEST**

2008-0306

3

RESPONSE
TYPE ☐ FINAL ☒ PARTIAL

REQUESTER

Richard Webster

DATE

DEC 12 2008

PART I. -- INFORMATION RELEASED

- ☐ No additional agency records subject to the request have been located.
- ☐ Requested records are available through another public distribution program. See Comments section.
- ☐ APPENDICES
Agency records subject to the request that are identified in the listed appendices are already available for public inspection and copying at the NRC Public Document Room.
- ☒ APPENDICES
G, H Agency records subject to the request that are identified in the listed appendices are being made available for public inspection and copying at the NRC Public Document Room.
- ☐ Enclosed is information on how you may obtain access to and the charges for copying records located at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD 20852-2738.
- ☒ APPENDICES
G, H Agency records subject to the request are enclosed.
- ☐ Records subject to the request that contain information originated by or of interest to another Federal agency have been referred to that agency (see comments section) for a disclosure determination and direct response to you.
- ☒ We are continuing to process your request.
- ☐ See Comments.

PART I.A -- FEES

AMOUNT *

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- ☐ You will be billed by NRC for the amount listed. ☐ None. Minimum fee threshold not met.
- ☐ You will receive a refund for the amount listed. ☒ Fees waived.

* See comments
for details**PART I.B -- INFORMATION NOT LOCATED OR WITHHELD FROM DISCLOSURE**

- ☐ No agency records subject to the request have been located.
- ☒ Certain information in the requested records is being withheld from disclosure pursuant to the exemptions described in and for the reasons stated in Part II.
- ☒ This determination may be appealed within 30 days by writing to the FOIA/PA Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Clearly state on the envelope and in the letter that it is a "FOIA/PA Appeal."

PART I.C COMMENTS (Use attached Comments continuation page if required)

The incoming request is in ADAMS at ML082330048.

SIGNATURE - FREEDOM OF INFORMATION ACT AND PRIVACY ACT OFFICER

Donna Sealing

**RESPONSE TO FREEDOM OF INFORMATION
ACT (FOIA) / PRIVACY ACT (PA) REQUEST**

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**APPENDICES
H & I****PART II.A -- APPLICABLE EXEMPTIONS**

Records subject to the request that are described in the enclosed Appendices are being withheld in their entirety or in part under the Exemption No.(s) of the PA and/or the FOIA as indicated below (5 U.S.C. 552a and/or 5 U.S.C. 552(b)).

- ☐ Exemption 1: The withheld information is properly classified pursuant to Executive Order 12958.
- ☐ Exemption 2: The withheld information relates solely to the internal personnel rules and procedures of NRC.
- ☐ Low 2 Internal matters of a relatively trivial nature.
- ☐ High 2 Disclosure would risk circumvention of a legal requirement.
- ☐ Exemption 3: The withheld information is specifically exempted 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 (42 U.S.C. 2161-2165).
- ☐ Section 147 of the Atomic Energy Act, which prohibits the disclosure of Unclassified Safeguards Information (42 U.S.C. 2167).
- ☐ 41 U.S.C., Section 253b, subsection (m)(1), prohibits the disclosure of contractor proposals in the possession and control of an executive agency to any person under section 552 of Title 5, U.S.C. (the FOIA), except when incorporated into the contract between the agency and the submitter of the proposal.
- ☐ Exemption 4: The withheld information is a trade secret or commercial or financial information that is being withheld for the reason(s) indicated.
- ☐ The information is considered to be confidential business (proprietary) information.
- ☐ The information is considered to be proprietary because it concerns a licensee's or applicant's physical protection or material control and accounting program for special nuclear material pursuant to 10 CFR 2.390(d)(1).
- ☐ The information was submitted by a foreign source and received in confidence pursuant to 10 CFR 2.390(d)(2).
- ☐ Disclosure will harm an identifiable private or governmental interest.
- ☒ Exemption 5: The withheld information consists of interagency or intraagency records that are not available through discovery during litigation. Applicable privileges:
- ☒ Deliberative process: Disclosure of predecisional information would tend to inhibit the open and frank exchange of ideas essential to the deliberative process. Where records are withheld in their entirety, the facts are inextricably intertwined with the predecisional information. There also are no reasonably segregable factual portions because the release of the facts would permit an indirect inquiry into the predecisional process of the agency.
- ☐ Attorney work-product privilege. (Documents prepared by an attorney in contemplation of litigation)
- ☒ Attorney-client privilege. (Confidential communications between an attorney and his/her client)
- ☒ Exemption 6: The withheld information is exempted from public disclosure because its disclosure would result in a clearly unwarranted invasion of personal privacy.
- ☐ Exemption 7: The withheld information consists of records compiled for law enforcement purposes and is being withheld for the reason(s) indicated.
- ☐ (A) Disclosure could reasonably be expected to interfere with an enforcement proceeding (e.g., it would reveal the scope, direction, and focus of enforcement efforts, and thus could possibly allow recipients to take action to shield potential wrongdoing or a violation of NRC requirements from investigators).
- ☐ (C) Disclosure would constitute an unwarranted invasion of personal privacy.
- ☐ (D) The information consists of names of individuals and other information the disclosure of which could reasonably be expected to reveal identities of confidential sources.
- ☐ (E) Disclosure would reveal techniques and procedures for law enforcement investigations or prosecutions, or guidelines that could reasonably be expected to risk circumvention of the law.
- ☐ (F) Disclosure could reasonably be expected to endanger the life or physical safety of an individual.
- ☐ OTHER (Specify)

PART II.B -- DENYING OFFICIALS

Pursuant to 10 CFR 9.25(g), 9.25(h), and/or 9.65(b) of the U.S. Nuclear Regulatory Commission regulations, it has been determined that the information withheld is exempt from production or disclosure, and that its production or disclosure is contrary to the public interest. The person responsible for the denial are those officials identified below as denying officials and the FOIA/PA Officer for any denials that may be appealed to the Executive Director for Operations (EDO).

DENYING OFFICIAL	TITLE/OFFICE	RECORDS DENIED	APPELLATE OFFICIAL		
			EDO	SECY	IG
Samuel J. Collins	Regional Administrator, Region 1	H/1-H/3	✓		
Eric J. Leeds	Director, Office of Nuclear Reactor Regulation	H/4-H/6, I/1-I/14	✓		

Appeal must be made in writing within 30 days of receipt of this response. Appeals should be mailed to the FOIA/Privacy Act Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, for action by the appropriate appellate official(s). You should clearly state on the envelope and letter that it is a "FOIA/PA Appeal."

APPENDIX G
RECORDS BEING RELEASED IN THEIR ENTIRETY
(If copyrighted identify with *)

<u>NO.</u>	<u>DATE</u>	<u>DESCRIPTION/(PAGE COUNT)</u>
1.	undated	Oyster Creek License Renewal. 1 page ML081780732
2.	04/01/08	Email from Richard Conte to Gregory Bowman regarding FatiguePro. 1 page
3.	08/18/08	Memo from Eric Leeds to Vonna Ordaz, subject: Request For Assistance Matter – Amergen Energy Co. LLX (License Renewal for Oyster Creek Nuclear Generating Station) - Docket No. 50-0219-LR. 2 pages ML082270653

**APPENDIX H
RECORDS BEING WITHHELD IN PART**

<u>NO.</u>	<u>DATE</u>	<u>DESCRIPTION/(PAGE COUNT)/EXEMPTIONS</u>
1.	04/22/08	Email exchange between Richard Conte, Bo Pham, and Rani Franovich regarding Fatigue Issue Drft CommPln rev 2.doc. 8 pages total, 1 page released EX. 5 & EX. 6
2.	05/07/08	Email from Richard Conte to L. Lund, D. Ashley, J. Fair, N. Sheehan, D. Screnci, D. Roberts, M. Gamberoni, R. Bellamy, H. Gray, M. Modes, and J. Richmond re Key Message on Fatigue Issue at Oyster Creek. 1 page EX. 6
3.	05/27/08	Email exchange between Marjorie McLaughlin and R. Conte and D. Ashley, regarding DLR letter to NJDEP re: metal fatigue. 2 pages EX. 6
4.	04/23/08	Email exchange between Richard Conte, Bo Pham, and M. Modes re Fatigue RIS Apparently Issued. 2 pages EX. 5 & EX. 6
5.	04/29/08	Email exchange between Richard Conte and Bo Pham, attaching draft Communication Plan for Issuance of Draft NRC Regulatory Issue Summary (RIS) for Fatigue Analysis of Nuclear Power Plant Components. 12 pages total, 1 page released. EX. 5
6.	07/29/08	Email exchange between Mary Baty and Donnie Ashley regarding Oyster Creek Supp 1 to SER (2).doc. 19 pages total, 2 pages released. EX. 5

**APPENDIX I
RECORDS BEING WITHHELD IN ENTIRETY**

<u>NO.</u>	<u>DATE</u>	<u>DESCRIPTION (PAGE COUNT)</u>
1.	07/17/08	E-mail M. Baty to D. Ashley re: FW:Please Review Oyster Creek Supp 1 to SER' attaching Oyster Creek Supp 1 to SER draft (19 pages) EX. 5: Deliberative Process; Attorney-Client Privilege
2.	07/17/08	E-mail M. Baty to D. Ashley re: Please Review Oyster Creek Supp 1 to SER' attaching Oyster Creek Supp 1 to SER draft with attorney comments (19 pages) EX. 5: Deliberative Process, Attorney-Client Privilege.
3.	07/29/08	E-mail M. Baty to D. Ashley re: Oyster Creek Supp 1 to SER' attaching Oyster Creek Supp 1 to SER (2) draft with attorney comments (19 pages) EX. 5: Deliberative Process, Attorney-Client Privilege.
4.	08/04/08	E-mail A. Tsirigotis to M. Baty CC: J. Fair & M. Simon Re: Response to Mary's Oyster Creek Fatigue Analysis Comments attaching Response to 4.3 Mary's Comments_Oyster Creek Supp 1 to Ser (2) draft with attorney comments and staff response to attorney comments (18 pages) EX. 5: Deliberative Process, Attorney-Client Privilege.
5.	08/12/08	E-mail A. Tsirigotis to M. Baty & Marcia Simon Re: 2nd Round of response to your comments on OC LRA 4.3.4 attaching Response_2nd to Mary's comments8-8-08_Suppliment 1 to Oyster Creek SER draft with attorney comments and staff response to attorney comments (20 pages) EX. 5: Deliberative Process, Attorney-Client Privilege.
6.	08/13/08	E-mail M. Baty to A. Tsirigotis Re: 2nd Round of response to your comments on OC LRA 4.3.4 Attaching Response_2nd to Mary's comments8-8-08_Suppliment 1 to Oyster Creek SER draft with attorney comments and staff response to attorney comments (20 pages) EX. 5: Deliberative Process, Attorney-Client Privilege.

7. 08/14/08 E-mail A. Tsirigotis to D. Ashely CC: M. Baty, M. Simon, J. Fair, K. Manoly Attaching 6a_Ready for PM_Back from Mary 8-13_Response to 2nd Mary's Comments8-8-08_Supplement 1 to Oyster Creek SER (2) draft (18 pages) **EX. 5: Deliberative Process**
8. 08/19/08 E-mail A. Tsirigotis to D. Ashley & M. Baty CC: J. Fair, K. Manoly, & M. Simon Re: Input for Supplement to OC LRA Section 4.3.4 attaching 7_Changed for QTE's comments 6a_Ready for PM_Back from Mary 8-13_Response to 2nd Mary's Comments 8-8-08_Supplement 1 to Oyster Creek SER (2) draft (19 pages) **EX. 5: Deliberative Process**
9. 08/19/08 E-mail A. Tsirigotis to D. Ashley & M. Baty CC: J. Fair, K. Manoly, & M. Simon Re: Input for Supplement to OC LRA Section 4.3.4 attaching 7_Changed for QTE's comments 6a_Ready for PM_Back from Mary 8-13_Response to 2nd Mary's Comments 8-8-08_Supplement 1 to Oyster Creek SER (2) draft with highlighted changes (20 pages) **EX. 5: Deliberative Process**
10. 09/12/08 E-mail A. Tsirigotis to D. Ashley CC: M. Baty Re: Oyster Supplement transmitting change to draft text of supplemental SER (1 page) **EX. 5: Deliberative Process, Attorney-Client Privilege.**
11. 07/14/08 E-mail Kamal A. Manoly to Bo Pham Re: Supplemental Input To Section 4.3.4 of Nureg-1875 "Safety Evaluation Report Related To The License Renewal of Oyster Creek Generating Station" (March 2007) (TAC No. MC8261) (5 pages) **EX. 5**
12. 07/08 Safety Evaluation Report Draft (18 pages) **EX.5**
13. 09/08 Safety Evaluation Report Draft (24 pages) **EX.5**
14. No Date NRR Summary (2 pages) **EX.5**