



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

February 25, 2009

Ms. Teresa Fountain
State of New York
Office of the Attorney General
The Capitol
Albany, NY 12224

IN RESPONSE REFER
TO FOIA/PA-2009-006A
(FOIA/PA-2009-0010)

Dear Ms. Fountain:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am responding to your letter dated January 14, 2009, in which you appealed the agency's December 12, 2008, decision related to your October 14, 2008, Freedom of Information Act (FOIA) request (FOIA/PA-2009-0010). Specifically, you appealed the decision to withhold five records in their entirety pursuant to Exemption 5. You also requested that the agency release in entirety documents in the NRC's Agencywide Documents Access and Management System (ADAMS) filed under Main Library (ML) numbers ML072950292 and ML072950185.

Acting on your appeal, I have reviewed the record in this case and have determined that some information may be released to you. Therefore, I have partially granted and partially denied your appeal.

The agency is now releasing records B/3, B/4 and B/5. I have enclosed copies of these records.

ML072950292 was identified as record B/5 in the NRC's December 12, 2008 response to your initial FOIA/PA request. Therefore, since we are now releasing this record, the NRC will change the availability of ML072950292 in ADAMS from nonpublic to public. ML072950185 is a package in ADAMS which contains a November 29, 2007, memorandum to Vonna Ordaz from Brian Sheron. The agency previously released this record to you in response to your FOIA/PA-2009-0010 request as record A/1 with ML072950282. The second record in the package is the final communication plan identified in ADAMS ML072950292 (record B/5) and is being released in response to your appeal. The NRC will change the availability in ADAMS from nonpublic to public for ML072950185.

Records B/1 and B/2 are drafts of the final communication plan. These records consist of predecisional staff opinions and recommendations. For this reason, the agency is withholding these records from public disclosure pursuant to Exemption 5 (5 U.S.C) 552(b)(5)) and 10 CFR 9.17(a)(5) of the Commission's regulations.

This is the NRC's final decision. 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. Judicial review can also be had in the district in which the agency's records are situated or in the District of Columbia.

Sincerely,

A handwritten signature in black ink, appearing to read "Martin J. Virgilio". The signature is fluid and cursive, with a large initial "M" and a long, sweeping underline.

Martin J. Virgilio
Deputy Executive Director for Materials, Waste,
Research, State, Tribal, and Compliance Programs
Office of the Executive Director for Operations

Enclosures: As stated

This is the NRC's final decision. 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. Judicial review can also be had in the district in which the agency's records are situated or in the District of Columbia.

Sincerely,

Original Signed by Martin J. Virgilio for

Martin J. Virgilio
Deputy Executive Director for Materials, Waste,
Research, State, Tribal, and Compliance Programs
Office of the Executive Director for Operations

Enclosures: As stated

Distribution: FOIA Subj, MJRaphael, EDO Rdg, RES, PDR

DOCUMENT NAME: G:

To receive a copy of this document, indicate in the box: "C" = Copy without enclosures "E" = Copy with enclosures "N" = No copy

OFFICE	FOIA	FOIA	RES	OGC	OIS Corr
NAME	MJRaphael	DLSealing			
DATE	02/1/09	02/10/09	02/11/09	02/1/09	02/1/09

OFFICE	DEDMRT				
NAME	MJVirgilio				
DATE	02/1/09	02/1/09	02/1/09	02/1/09	02/1/09

OFFICIAL RECORD COPY

Copies have been made for OEDO and for those highlighted. Please make remaining distribution.

Thanks. Denise
OEDO 2/26/09