



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

2009-0107

4

RESPONSE TYPE FINAL PARTIAL

REQUESTER

Judy Pasternak

DATE

JUN - 3 2009

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 **F,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 **F,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 *
\$

- 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)

One enclosure to record H/1 is copyrighted and therefore not enclosed. Should you wish to view this record, please contact the NRC's Public Document Room (PDR) at 301-415-4737, or 1-800-397-4209, or by e-mail to PDR.Resource@nrc.gov.

The incoming FOIA/PA-2009-0107 request is located in ADAMS at ML090680807.

SIGNATURE - FREEDOM OF INFORMATION ACT AND PRIVACY ACT OFFICER

Donna L. Sealing
Donna L. Sealing

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

2009-00107

JUN - 3 2009

PART II.A -- APPLICABLE EXEMPTIONS

APPENDICES
H

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
R. William Borchardt	Executive Director for Operations	Appendix H		✓	

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 F
RECORDS BEING RELEASED IN THEIR ENTIRETY**

<u>NO.</u>	<u>DATE</u>	<u>DESCRIPTION/(PAGE COUNT)</u>
1.	4/15/05	Letter to Diaz from Domenici (1 page)
2.	5/27/05	Letter to Diaz from Voinovich and Carper (6 pages)
3.	6/23/06	Letter to Diaz from Voinovich and Carper (6 pages)
4.	9/28/06	Letter to Walker from Voinovich, Carpet, Inhofe, Jeffords (3 pages)
5.	4/18/07	Letter to Klein from Carper and Voinovich (1 page)
6.	9/26/07	Letter to Klein from Carper and Voinovich (1 page)
7.	7/9/08	Letter to Klein from Carper and Voinovich (1 page)

**APPENDIX G
RECORDS BEING RELEASED IN THEIR ENTIRETY**

<u>NO.</u>	<u>DATE</u>	<u>ACCESSION NUMBER</u>	<u>DESCRIPTION</u>
1.	4/26/01	ML011210104	Letter to Meserve from Domenici And Murkowski , Invitation to testify At joint hearing to conduct oversight On the state of the nuclear power Industry and the future of the industry In a comprehensive energy strategy
2.	5/8/01		E-Mail from Smith, Post Hearing Questions From Domenici
3.	5/14/01		Post Hearing Q's from Senate Energy and Natural Resources Committee and Senate Energy and Water Development Appropriations Subcommittee 5/3/01 Hearings on Nuclear Energy
4.	6/5/01	ML011580050	Post Hearing Q's from the 5/8/01 Hearing On Terrorism
5.	3/3/03	ML030660008	Post Hearing Questions from the February 13, 2003 Hearing on Nuclear Safety
6.	6/18/03	ML031770272	Letter to Abraham from Domenici
7.	6/29/04		Letter to Diaz from Carper and Voinovich
8.	3/1/06	ML062080431	Letter to Diaz from Carper and Voinovich
9.	6/15/06	ML061710157	Letter to Diaz from Carper and Voinovich
10.	9/8/06	ML062550145	Letter to Reyes from Carper and Voinovich
11.	3/27/08	ML080940545	Post Hearing Qs from the March 12, 2008 Hearing on Protecting IT and Secure Sensitive Information
12.	1/20/09		Memorandum from Emanuel to Heads of Executive Departments and Agencies, Regulatory Review

**APPENDIX H
RECORDS WITHHELD IN PART**

<u>NO.</u>	<u>DATE</u>	<u>DESCRIPTION/(PAGE COUNT)</u>
1.	8/5/03	Letter to McCain, re: Palo Verde Nuclear Power Plant (1 page) Attaching 8/4/03 letter to McCain (1 page), 8/3/03 , Arizona Republic article, A-plant unit down after outage will resume Operation Monday (1 page) Copyright, Fax Cover Sheet to Angell (1 page), 8/7/03 letter to Vietti-Cook from Mackall Ex. 6
2.	9/13/05	Letter to Outlaw from McCain (4 pages) Ex. 6
3.	3/2/08	Letter to Schmidt from Obama (4 pages) (1 page released) Ex. 6