

**IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT**

NEW JERSEY ENVIRONMENTAL FEDERATION;)
SIERRA CLUB; NUCLEAR INFORMATION AND)
RESOURCE SERVICE; NEW JERSEY PUBLIC)
INTEREST RESEARCH GROUP; GRANDMOTHERS,)
MOTHERS AND MORE FOR ENERGY SAFETY)

Petitioners,)

v.)

No. 09-2567

UNITED STATES NUCLEAR REGULATORY)
COMMISSION and the UNITED STATES OF)
AMERICA)

Respondents,)

EXELON GENERATION COMPANY, LLC)

Intervenor.)

**PETITIONERS' REPLY TO RESPONDENTS' RESPONSE TO MOTION
TO COMPEL RESPONDENTS TO PROVIDE A COMPLETE RECORD
ON REVIEW AND FOR OTHER APPROPRIATE RELIEF**

Petitioners New Jersey Environmental Federation, Sierra Club, Nuclear Information and Resource Service, New Jersey Public Interest Research Group, and Grandmothers Mothers and More for Energy Safety ("Citizens"), respectfully submit this brief reply to address the arguments made by the Federal Respondents and Exelon.

Citizens moved this Court pursuant to Federal Rules of Appellate Procedure (“FRAP”) 16 and 17 to require Respondents to complete the record on review by adding all documents to which parties specifically referred in their pleadings below that were documents generated by the Nuclear Regulatory Commission (“NRC” or “Commission”) or its Staff. In their opposition, the Federal Respondents make much of the fact that one specific document in question was not physically appended to Citizens’ pleading and as such, is not part of the record. Fed Resps.’ Opp’n to Mot. at 8. Although this document was referenced in a pleading using the specific number and code assigned to the document by the NRC itself, the Federal Respondents maintain, without citing any authority, that this is insufficient. *Id.* The Federal Respondents then list the parade of horrors that will ensue if this Court orders the NRC to include the document (and others like it that are discovered) in the Certified Index. This hyperbole, however, is unwarranted, as the facts surrounding the nature in which the NRC keeps records and the ease with which records can be searched and located will reveal.

The Federal Respondents’ second argument—that to include a document that was specifically referenced in a pleading, in accordance with the procedure the parties to the proceeding had adopted throughout, would adversely affect judicial review—is flatly incorrect. The FOIA Response is part of the record before the agency, just as much as any other document that bore a unique identifying number

assigned to it by the NRC. To that end, it is improper to exclude it, or any other documents omitted by the Secretary. It is even more inappropriate to exclude documents that did not receive an accession number from the NRC due to what appears to be agency oversight.

The industry intervenor, Exelon, also opposes Citizens' motion. Exelon primarily rejects to Citizens alternative argument—namely, that if the NRC failed to consider all the relevant factors, then the Court should consider remanding that information to the agency for consideration in the first instance so that a proper record for review can be created. Exelon misconstrues Citizens motion as a request for summary and immediate relief. Int.'s Opp'n to Mot. at 5. Rather, Citizens simply requested that the Court consider remanding any claims or relevant information that it determines the NRC should have considered. Mot. to Compel at 8. There is nothing extraordinary in that request.

ARGUMENT

A. The Certified Index Is Incomplete and Should Be Completed

Citizens have requested that the Certified Index in this matter be completed to accurately reflect the documents in the record before the NRC. In its opposition, the NRC has taken the position, essentially, that the Certified Index is adequate—that to ask or expect the agency to do anything further would be unduly burdensome. Fed. Resps.' Opp'n to Mot. at 8. The NRC's arguments have no

bearing in this specific case. None of the adverse consequences to which the NRC points will occur if the Court grants Citizens' motion. In at least one instance, the improperly excluded document has been identified and including it in no way burdens the NRC.

The NRC makes many documents available to the public. Those documents can be readily searched and retrieved. Freedom of Information Act ("FOIA") requests and responses are among those categories of documents that the NRC generally makes available. A review of NRC's own Freedom of Information Act Guide ("FOIA Guide") reveals that the NRC makes available in its "Electronic Reading Room" FOIA and Privacy Act requests.¹ The FOIA Guide states that the NRC "makes available for public inspection and copying non sensitive FOIA requests and responses to those requests."² Thus, it is a clearly stated policy of the NRC to generally make FOIA requests and responses publicly available by assigning to them accession numbers and including them in NRC's Agency Documents Access and Management System ("ADAMS").³

As the NRC readily concedes, the parties in the proceedings before the agency routinely referred in their papers to an "accession number" given to

¹ NRC, Freedom of Information Act Guide, *available at* <http://www.nrc.gov/reading-rm/foia/foia-request.html> (excerpt attached as Exhibit 1).

² *Id.*

³ The parties have already briefed the Court on the NRC's Agency Documents Access and Management System (ADAMS), which provides access to publicly available documents. Fed. Resps.' Opp'n to Mot. at 5 fn 4.

documents by the NRC, rather than attaching copies of documents. Fed. Resps.’ Opp’n to Mot. at 5. Only the NRC can assign accession numbers to documents and include them in ADAMS; thus, it is NRC that controls this process—when it happens and whether it happens at all. Clearly, based on the protocol established by the parties, had the NRC assigned to the FOIA Response an accession number, it would have been included in the Certified Index.

If the NRC had followed its standard protocol, then the FOIA Response would have received an accession number and be available on ADAMS. The NRC has never asserted, and does not now assert, that the FOIA Response had been deemed sensitive, and thus intentionally excluded from ADAMS. Bolstering the fact that the request was not sensitive, a Weekly Information Report, dated August 4, 2008, prepared for the Commissioners of the NRC plainly states that during the week of July 18, 2008 through July 24, 2008, the NRC received a FOIA request relating to “Oyster Creek recirculation outlet nozzle, all metal fatigue analyses” and assigned to it identifier FOIA/PA-2008-0283.⁴ Further, by way of illustration, a simple search of ADAMS for Freedom of Information Act Responses for the month of August 2008 performed by following the instructions provided in the FOIA Guide yields at least two FOIA responses, both of which indicate that the

⁴ Excerpt from Memorandum from Vonna L. Ordaz, NRC, to NRC Commissioners, Weekly Information Report-Week Ending July 25, 2008, dated August 4, 2008 (SECY-08-0112) ML082180329 (attached as Exhibit 2)

incoming request is located in ADAMS.⁵ The lack of an accession number, which is the deciding factor as to whether a referenced document is part of the record and thus appears in the Certified Index, appears to be due to agency error and oversight in this instance. This oversight can be remedied by granting Citizens motion.

B. The Commissions' Refusal to Consider Relevant Information Is Not a Basis to Exclude the Information from the Record

One of the claims to be raised in this appeal is that the NRC unlawfully constricted Citizens' right to a hearing pursuant to Section 189(a) of the Atomic Energy Act ("AEA"), 42 U.S.C. § 2239(a), by *inter alia* allowing the NRC Staff to impede Petitioners' access to certain analyses regarding metal fatigue. One of the impediments was to make pertinent information unavailable, as evidenced in part by the FOIA Response. The NRC argues that because the FOIA Response was not physically appended to the papers, "this Court cannot presume NRC to have considered (or even read)" the material. Fed. Resps.' Opp'n to Mot. at 9. Thus, the NRC argues that the FOIA Response is new material and should be treated as extra record evidence. *Id.* Exelon similarly argues that Citizens' pleading is not part of the record. Int.'s Opp'n to Mot. at 4. Both arguments are unpersuasive.

First, the Commission's refusal to consider information submitted to it does not mean that the information was not before the agency at the time it made its

⁵ FOIA/PA-2008-0268 Response to Robert Lawrence, dated August 13, 2008, ML082260962 (attached as Exhibit 3); FOIA/PA-2008-0302 Response to Eric T. Riggs, dated August 22, 2008, ML082380168 (attached as Exhibit 4).

decision. If this were the manner in which the record for review was compiled, it would make a mockery of judicial review. Because the FOIA Response is an agency document to which Citizens specifically referred in a pleading before the Commission, it was directly or indirectly considered and is therefore part of the record. *See Bar MK Ranches*, 994 F.2d at 739 ("An agency may not unilaterally determine what constitutes the Administrative Record."); *Miami Nation of Indians of Indiana v. Babbitt*, 979 F. Supp. 771, 777 (N.D. Ind. 1996) (rejecting the agency's argument that "items are not part of the administrative record unless they were reviewed in some fashion by the ultimate decisionmaker," in part, because "a document need not literally pass before the eyes of the final agency decision maker to be considered part of the administrative record."); *Environmental Defense Fund, Inc. v. Blum*, 458 F. Supp. 650, 661 (D.D.C. 1978) (rejecting EPA's attempt "to exclude from consideration pertinent material submitted as an integral part of the rulemaking process or otherwise located in EPA's own files"). Petitioners, therefore, respectfully request that the Court grant this motion and order the NRC to include the FOIA Response in the Certified Index as part of the record.

Second, the facts and the Certified Index itself do not support Exelon's arguments about the contents of the record for review. Exelon maintains that because the Commission stated in a footnote that it was not considering an October 15, 2008 letter from Citizens to be part of the record before it with respect to

pending motions and appeals, any pleadings relating to that letter are also not part of the record. Int.'s Opp'n to Mot. at 4. Because the FOIA Response is referred to in such a later filed pleading, therefore, Exelon argues it cannot be part of the record. *Id.* To the contrary, the Secretary of the NRC has already certified that the record contains the October 15, 2008 letter (Index No. 541), the NRC Staff's Motion for Leave to Reply, dated October 27, 2008 (Index No. 542), and the Citizens' Answer to NRC's Motion, dated November 5, 2008 (Index. No. 544). For these reasons, Exelon's arguments should be rejected. The focus is whether Citizens' reference to the FOIA Response in its November 5, 2008 pleading was sufficient to identify it and thus make it part of the record. For the reasons articulated in the preceding section, Citizens' maintain that it is.

C. Remand Is Appropriate In Certain Instances

Under well-settled principles of administrative law this Court's review of Federal Respondents' actions and inactions must "be based on the full administrative record that was before" the agency at the time of its decision. *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 420 (1971). *See also James Madison Ltd. v. Ludwig*, 82 F.3d 1085, 1095 (D.C. Cir. 1996); *Environmental Defense Fund v. Costle*, 657 F.2d 275, 284 (D.C. Cir. 1981). When the Court determines that the agency has not considered all relevant factors or the record is inadequate to evaluate a claim, it is appropriate for the Court to remand

those matters to the agency for consideration so that a record can be developed to allow for judicial review. *Fla. Power & Light Co. v. Lorion*, 470 U.S. 729, 744 (1985). Exelon suggests, without citing any authority, that this is an extraordinary remedy. Int.'s Opp'n to Mot. at 5. To the contrary, in cases where the administrative record is inadequate, the Supreme Court has looked favorably on the appellate courts remanding cases to the agencies. *See Harrison v. PPG Industries, Inc.*, 446 U.S. 578, 594 (1980); *Solar Turbines, Inc. v. Seif*, 879 F.2d 1073, 1085-86 (3d Cir. 1989). Whether the record compiled by the agency is adequate to adjudicate the claims raised by Citizens is for this Court to determine in due course. 446 U.S. at 594 fn 11.

CONCLUSION

For the foregoing reasons, Citizens respectfully request this Court to direct the NRC to file a complete administrative record by adding all documents to which parties specifically referred in their pleadings below that were documents generated by the Commission or its Staff, including the FOIA Response. In the event this Court determines that the record is inadequate to adjudicate Citizens' claims, a remand to the agency would be appropriate.

Respectfully Submitted,

s/ Richard Webster

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Dated: August 26, 2009

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PETITIONERS' REPLY TO
RESPONDENTS' RESPONSE
TO MOTION TO COMPEL

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U.S. NRC
UNITED STATES NUCLEAR REGULATORY COMMISSION

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Privacy Act Systems of
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Annual FOIA Reports

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Center, and Public Liaisons

Related Information:

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Information

Public Document Room

Certification of Reading
Room in Compliance with the
FOIA

Home > Electronic Reading Room > FOIA and Privacy Act > Freedom of Information Act Guide

Freedom of Information Act Guide

The following guidance is intended to familiarize you with the procedures for submitting a request to the U.S. Nuclear Regulatory Commission (NRC) under the Freedom of Information Act (FOIA).

Printable Version 

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- How to Make a FOIA Request
- Processing Your FOIA Request
- Response Times
- Expedited Processing
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To submit a FOIA/Privacy Act request:

Mail:

U.S. Nuclear Regulatory
Commission
FOIA/Privacy Officer
Mailstop: T-5 F09
Washington, DC 20555-
0001

Fax: 301-415-5130

E-mail:

FOIA.resource@nrc.gov

Questions: 301-415-7169

Introduction

The Freedom of Information Act (FOIA), enacted in 1966, is a Federal law that is set forth in Title 5, Section 552, of the *United States Code* (5 U.S.C. 552), as amended. In enacting the FOIA, Congress established the presumption that any person has the right to submit a written request for access to records or information maintained by the Federal Government. In response to such written requests, Federal agencies must disclose the requested records, unless they are explicitly protected from disclosure by one or more of the FOIA exemptions and exclusions (defined later in this reference guide). In addition, the right to request access is enforceable in court, and the law provides administrative and judicial remedies for those who are denied access to records requested under the FOIA.

The FOIA does not apply to records that are maintained by State and local governments, or persons or organizations who receive Federal contracts or grants, or private organizations or businesses.

This reference guide is designed to familiarize you with the specific procedures for making a FOIA request to the NRC. The process is neither complicated nor time-consuming, and following the guidance presented on the following pages will ensure that you prepare your request properly and send your request to the proper NRC official so that we can promptly record and assign your request for action.

Before preparing your request, however, it is important to understand that the Federal

Government does not have a central office to process FOIA requests, and each agency responds to requests for its own records. Therefore, before sending a request to the NRC, you should determine whether we are likely to have the records you are seeking.

You should also note that the FOIA is a companion to the Privacy Act (5 U.S.C. 552a), which balances the Government's need for information about individuals with the need to protect those individuals against unwarranted invasions of their privacy by Federal agencies stemming from the collection, maintenance, use, and disclosure of personal information. In general, the Privacy Act (PA) allows individuals to learn how the Federal Government collects, maintains, uses, and disseminates records containing personal information. It also safeguards confidentiality by limiting or restricting disclosure of personally identifiable records maintained by Federal agencies. The PA allows individuals to gain access to their own personal records (unless the requested records are exempted from disclosure), and it allows individuals to seek correction or amendment of Federally maintained records that are inaccurate, incomplete, untimely, or irrelevant. As such, the PA establishes a "code of fair information practices," which requires Federal agencies to comply with statutory norms for collecting, maintaining, and disseminating records containing information about individuals.

Despite their similarities, the FOIA and the PA have different procedures and exemptions. Consequently, information that is exempt from disclosure under one Act may be disclosable under the other. In order to take maximum advantage of both Acts, you may cite *both* laws when submitting a request for access to NRC records that contain information only about yourself. However, when requesting NRC records that contain information about other individuals or entities, you may cite only the FOIA.

The NRC will automatically handle requests in a manner that maximizes the amount of information that is disclosable. If you have any doubt about which Act to use in requesting information from the NRC, always cite *both* the FOIA and the PA. While neither Act grants an absolute right to examine Government documents, both Acts give you the right to request records and to receive a response to your request. You also have the right to appeal the denial and, if necessary, to challenge it in court (as discussed in Judicial Review).

The formal regulations for making FOIA requests to the NRC are set forth in Title 10, Part 9, Subpart A, of the *Code of Federal Regulations* (10 CFR Part 9).

Another source of information on how to make a FOIA request is "Your Right to Federal Records **EXIT**," which is a joint publication of the U.S. General Services Administration and the U.S. Department of Justice. This pamphlet is available for \$1.50 per copy from the Consumer Information Center, Department 320R, Pueblo, Colorado 81009.

 TOP

Access to Records Without a FOIA Request [5 U.S.C 552(a)(1) & (2)]

The FOIA explicitly provides two distinct ways for the public to gain access to the records maintained by Federal agencies. Most people know that one way is to submit a written request for copies of records that are not routinely made available as part of the agency's public record. The FOIA mandates that Federal agencies must make certain types of records freely available (without a written request), as discussed in this section. Moreover, in 1996, Congress revised the statute by passing the Electronic Freedom of Information Act (EFOIA) amendments, which include provisions for public access to information in an electronic format, as well as establishment of electronic FOIA reading rooms through agency FOIA sites on the Internet. Furthermore, the E-Government Act of 2002 establishes a goal for certain information published or made publicly available be made available electronically. As a general rule, before making a FOIA request, you should peruse the information that the NRC makes available on its public Web site and through other conventional sources, as described in the following subsections.

Records Required To Be Publicly Available

The FOIA mandates that all Federal agencies must make certain types of records publicly available. Section (a)(1) of the FOIA requires agencies to publish in the *Federal Register* the following records and under the E-Government Act of 2002, agencies are to make these records accessible electronically. This information is included in NRC regulations at 10 CFR Parts 1-199.

- descriptions of its central and field organization and the established places at which, the

employees (and in the case of a uniformed service, the members) from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions;

- statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;
- rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;
- substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency; and each amendment, revision, or repeal of the foregoing.

Section (a)(2) of the FOIA requires that each agency, in accordance with published rules, make available for public inspection and copying--

- final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases (ASLBP Decisions, Commission Decisions - CLI; Board Decisions - LBP; Director Decisions - DD).
- those statements of policy which have been adopted by the agency and are not published in the *Federal Register*.
- administrative staff manuals and instructions to staff that affect a member of the public. These include Regulatory Guides, Consensus Standards, Generic Communications, Standard Review Plans, Agreements with an Agreement State, NRC Enforcement Manual, NRC Inspection Manual, and Management Directives that affect the Public.
- copies of all records, regardless of form or format, which have been released to any person in response to a FOIA request and which, because of the nature of their subject matter, the agency determines have become or are likely to become the subject of subsequent requests for substantially the same records; and a general Index to these records.

Access to NRC Records Routinely Made Publicly Available

The NRC releases several hundred documents to the public during each workday. The NRC makes these records available in its Agencywide Documents Access and Management System (ADAMS). Members of the public can use ADAMS to access a wealth of valuable information without filing a FOIA request. You may use ADAMS **Search** or **Advanced Search** to create an Index (list) of documents based on the criteria you select. From that Index (list) you may select specific documents you want to view.

In addition, NRC makes an extensive amount of information available on its Web site, as illustrated by the following examples:

- **About NRC:** organization; locations; planning, budgeting, and performance information; license fees; governing legislation; agency history and values; Commission direction-setting and policymaking, radiation protection, nuclear security and safeguards, key components of our regulatory program, etc.
- **Nuclear Reactors, Nuclear Materials, Radioactive Waste, and Nuclear Security:** technical information regarding the NRC's activities in these strategic arenas
- **Facility Information Finder:** names and locations of operating nuclear power reactors and fuel cycle facilities, as well as status reports, event notification reports, significant enforcement actions, and other facility information
- **Public Meetings & Involvement:** opportunities for public participation in the regulatory process, including meeting schedules, documents for comment, information quality guidelines, etc.
- **Electronic Reading Room:** basic references, options for electronic and conventional access to the NRC's document collections, FOIA/PA requests, and related links to the NRC's High-Level Waste Electronic Hearing Docket and Licensing Support Network
- **Report a Safety Concern**
- **Employment at the NRC and Business with the NRC**
- **Highlights and News Releases and Speeches**

- **Event Reports and Key Topics**

FOIA Requests and FOIA Responses on the NRC's Public Web Site



The NRC makes available for public inspection and copying non sensitive FOIA requests and responses to those requests. To locate these records from the NRC's public Web site, click the **Electronic Reading Room** tab. Then click **Documents in ADAMS**, and select **Web-Based Access**.

Select **Begin ADAMS Search**, in the **Search** block you may type any information you have about the request. For example, if you are interested in a specific FOIA/PA request and you know the related request number, you should type FOIA/PA, followed by the request number in quotation marks (e.g., FOIA/PA "2000-0103") and click the **Search** button or press the **Enter** key. If you are interested in a particular subject, you should type that subject name in the **Search** block and click the **Search** button or press the **Enter** key. Similarly, you can type the name of the person or organization who submitted the request and click the **Search** button or press the **Enter** key.

You may obtain better results by using **Advanced Search**. To do so, click on **Advanced Search**. The system will then display a window containing a number of fields in which you can enter information to narrow your search. For example, to search for completed requests within a specific date range, enter the beginning and ending dates in the **Document Date** field using the mmddyyyy-mmddyyyy format, and click the **Select from Known Values** button to the right of the **Document Type** field. Then scroll through the menu to highlight **FOIA/Privacy Act Response to Requester** and click the **Select Values** button. (You may define the date range in any search.) You may also use **Advanced Search** to search by the name of the requester by typing the person's name in the **Author** field. Similarly, if you are interested in requests by a particular organization or institution, you may enter the name into the **Author Affiliation** field.

You can also quickly review the subject matter headings of FOIA requests to which the NRC has responded since 1998. To do so from the NRC's public Web site, click the **Electronic Reading Room** tab. Then click **FOIA and Privacy Act Requests**, and select **Index of Closed FOIA/PA Requests by Subject**. From the index page, you can select a specific year for which the system will display a table that identifies the subject, request number, date received, and date closed for each request, and indicates whether the response is available. Clicking on the **Yes** displays all the documents associated with that particular FOIA Request.

Similarly, to view the subject of recent FOIA/PA requests that the NRC has received from the NRC's public Web site, click the **Electronic Reading Room** tab. Then click **FOIA and Privacy Act Requests**, and select **Recent FOIA Requests**. Again, the system will display a table that identifies the subject and request number of each FOIA/PA request received within the specified time frame.

Links from the **Freedom of Information Act and Privacy Act Requests** page provide additional resources, including access to the text of the Freedom of Information Act, the NRC's FOIA regulations, recent FOIA requests, an index to completed FOIA requests, a list of frequently requested records, the NRC's Annual FOIA Reports, and Government-wide FOIA guidance. In addition, this page provides access to related references to the Privacy Act program, as well as the "Citizen's Guide to U.S. Nuclear Regulatory Commission Information" and the Government Information Locator Service.

Other Sources of NRC Records

The NRC also offers a Public Document Room (PDR), which maintains a large collection of publicly available agency records and provides equipment and services to assist people who seek access to NRC records. The PDR is located at NRC headquarters at 11555 Rockville Pike, Rockville, Maryland 20852. In addition, certain NRC publications (staff-prepared NUREG-series reports) are available for subscription purchase from the National Technical Information Service (5285 Port Royal Road, Springfield, Virginia 22161) and the Government Printing Office (GPO). You may contact the GPO Access User Support Team by telephone (toll-free) at 1-888-293-6498 from 7:00 a.m. to 6:00 p.m. EST, Monday through Friday, excluding Government holidays. You can also contact the GPO Access User Support Team by e-mail at ContactCenter@gpo.gov or by fax at 202-512-2104.

Overview of Categories of NRC Records for Which a Specific Exemption May Apply

EXHIBIT 2

**PETITIONERS' REPLY TO
RESPONDENTS' RESPONSE
TO MOTION TO COMPEL**

August 4, 2008

SECY-08-0112

For: The Commissioners
From: Vonna L. Ordaz, Assistant for Operations, Office of the EDO
Subject: WEEKLY INFORMATION REPORT - WEEK ENDING
JULY 25, 2008

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Secretary	O
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*No input this week.

/RA/
Vonna L. Ordaz
Assistant for Operations, OEDO

Contact:
S. Bagley, OEDO

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SBagley VLOrdaz
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ML082180329

INFORMATION REPORT

August 4, 2008

SECY-08-0112

For: The Commissioners
From: Vonna L. Ordaz, Assistant for Operations, Office of the EDO
Subject: WEEKLY INFORMATION REPORT - WEEK ENDING
JULY 25, 2008

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Executive Director for Operations	Q*
Congressional Affairs	R

*No input this week.

/RA/

Vonna L. Ordaz
Assistant for Operations, OEDO

Contact:
S. Bagley, OEDO

Office of Information Services (OIS)
 Items of Interest
 Week Ending July 25, 2008

Freedom of Information Act (FOIA) and Privacy Act (PA) Requests Received During the Period of July 18, 2008 through July 24, 2008:

Allegation RIV-2005-A-107, Allegation RIV-2006-A-0084, including transcripts, witness statements, any and all records pertaining to the named individual	FOIA/PA-2008-0281
Investigations into breaches of security at plants owned by Entergy Corp, in 2008	FOIA/PA-2008-0282
Oyster Creek recirculation outlet nozzle, all metal fatigue analyses	FOIA/PA-2008-0283
Training course to provide an overview of the differences between the new reactor designs Westinghouse's AP1000, GE Nuclear Energy's Advanced Boiling Water Reactor, and Economic Simplified Boiling Water Reactor, as referenced in SECY-08-00096	FOIA/PA-2008-0284
GSA Market Tips Subscription, list names, addresses - Referral by GSA	CON-2008-0001*
Technical Input provided by Brookhaven National Lab (BNL) as consultants in a letter from R. E. Hall (BNL) to Vincent Panciera (NRC) dated 10-22-81	FOIA/PA-2008-0285
Records on named individual, March 1, 2004 through July 18, 2008	FOIA/PA-2008-0286

* CON = Consultation (referral) requests from other agencies: new DOJ requirement to track separately referrals from FOIA/PA requests.

July 25, 2008

ENCLOSURE H

PETITIONERS' REPLY TO
RESPONDENTS' RESPONSE
TO MOTION TO COMPEL

U.S. NUCLEAR REGULATORY COMMISSION

FOIA/PA

RESPONSE NUMBER

2008-0268

4



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

RESPONSE
TYPE



FINAL



PARTIAL

REQUESTER

Robert W. Lawrence

DATE

AUG 13 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 E** 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** 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 E** 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*

\$ 1339.81

* See comments for details



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.

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 actual fees for processing your request are:

4 hrs. professional search @ \$53.80 per hr. = \$215.20
 5.15 hrs. professional review @ \$53.80 per hr. = \$282.50
 2 hrs. clerical search @ \$26.23 per hr. = \$52.46
 1 hr. clerical review @ \$26.23 per hr. = \$26.23
 Duplication of 199 pages @ \$0.20 per page = \$39.80
 Total = \$616.19
 (LESS ADVANCE PAYMENT OF \$1,956.00 = \$1,339.81)

The incoming FOIA/PA-2008-0268 request is located in ADAMS at ML081830241.

SIGNATURE - FREEDOM OF INFORMATION ACT AND PRIVACY ACT OFFICER

Donna L. Sealing
Donna L. Sealing

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

<u>NO.</u>	<u>DATE</u>	<u>DESCRIPTION/(PAGE COUNT)</u>
1.	9/22/83	Memorandum for Dircks from Davis, EPA's Superfund National Priorities List (7 pages)

EXHIBIT 4

PETITIONERS' REPLY TO
RESPONDENTS' RESPONSE
TO MOTION TO COMPEL



U.S. NUCLEAR REGULATORY COMMISSION
**RESPONSE TO FREEDOM OF
INFORMATION ACT (FOIA) / PRIVACY
ACT (PA) REQUEST**

U.S. NUCLEAR REGULATORY COMMISSION

FOIA/PA

RESPONSE NUMBER

2008-0302

1

RESPONSE
TYPE



FINAL



PARTIAL

REQUESTER

Eric T. Riggs

DATE

AUG 22 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** 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** 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)

NRC has no other information on the GSA Contract GS-23F-0202L. You should request additional information directly from the General Services Administration at the address below.

Sharon V. Lighton
Administrative Policy Division (ACMA)
Office of Management Services, Room 6001
1800 F Street, N.W.
Washington, D.C. 20405
telephone number: (202) 501-2262
fax number: (202) 501-2727
e-mail address: gsa.foia@gsa.gov

The incoming request can be located in ADAMS at ML082310610.

SIGNATURE - FREEDOM OF INFORMATION ACT AND PRIVACY ACT OFFICER

Donna L. Sealing
Donna L. Sealing

CERTIFICATE OF SERVICE

Pursuant to Rule 25 of the Federal Rules of Appellate Procedure and Circuit Rules 25.1 and 113.4 of this Court, I hereby certify that I have this 26th day of August, 2009, served the foregoing document and the attached exhibits through the electronic filing system upon all the parties set forth on the list below.

s/ Richard Webster

Service List

Robert M. Rader, Esq.
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Washington, DC 20555-0001
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