

June 17, 2011

Mr. Robert B. Bluey
The Heritage Foundation
214 Massachusetts Avenue, NE
Washington, DC 20002-4999

IN RESPONSE REFER
TO FOIA/PA-2011-0010A
(FOIA/PA-2011-0015)

Dear Mr. Bluey:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am responding to your letter dated March 7, 2011, to the Freedom of Information Act/Privacy Act Officer, in which you appealed the NRC's response to your October 22, 2010, Freedom of Information Act (FOIA) request for Volumes 2 and 3 of the safety evaluation report related to the disposal of high-level wastes in a geologic repository at Yucca Mountain, NV. Specifically, you appealed the NRC's decision to withhold portions of the records pursuant to Exemption 5 of the FOIA.

Acting on your appeal, I have reviewed the records in this case and have determined that the withheld information will continue to be withheld from disclosure. Therefore, your appeal is denied.

The withheld portions of the records consist of predecisional staff opinions and recommendations. For this reason, the agency is continuing to withhold the portions from public disclosure pursuant to Exemption 5 (5 U.S.C. 552 (b)(5)) and Title 10 of the Code of Federal Regulations (10 CFR) 9.17(a)(5).

Release of the redacted portions of Volumes 2 and 3 of the draft safety evaluation report during an ongoing adjudicatory proceeding could result in harm to the agency. It could prematurely disclose the preliminary views of the NRC staff before the NRC staff makes its final decision on whether the U.S. Department of Energy's license application meets the NRC's preclosure and postclosure requirements and it could inhibit the open and frank exchange of ideas essential to the deliberative process. In addition, release could create confusion regarding the agency's final decisions.

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,

/RA/

Darren B. Ash
Deputy Executive Director
for Corporate Management
Office of the Executive Director for Operations

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