

2011-0055

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

RESPONSE TYPE FINAL PARTIAL

REQUESTER

Joe McDonald

DATE

MAY 5 2011

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 A 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 B 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 B 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.

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)

- 1. The incoming FOIA request is located in ADAMS at ML110041003.
2. Records identified on Appendix D were referred to the Department of Veterans' Affairs for review and release determination at the following address:

Mr. Gary Williams
Department of Veterans' Affairs
Veterans' Health Administration
2200 Fort Roots Drive
North Little Rock, AR 72114

SIGNATURE - FREEDOM OF INFORMATION ACT AND PRIVACY ACT OFFICER

Dorina L. Sealing

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

2011-0050

MAY 5 2011

PART II.A -- APPLICABLE EXEMPTIONS

APPENDICES
C

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
Roy P. Zimmerman	Director, Office of Enforcement	See Appendix C	✓		

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 C
RECORDS BEING WITHHELD IN THEIR ENTIRETY**

<u>NO.</u>	<u>DATE</u>	<u>DESCRIPTION/PAGE COUNT</u>
1.	Undated	Notes on VA Philadelphia Case, 1 page Ex. 5 – Deliberative Process
2.	2/26/09	Enforcement Panel Worksheet, (10 pages) Ex. 5 – Deliberative Process
3.	10/8/09	Enforcement Panel Worksheet, (13 pages) Ex. 5 – Deliberative Process

**APPENDIX D
RECORDS TO BE REFERRED TO DEPARTMENT OF VETERANS AFFAIRS**

**ATTN: Mr. Gary Williams
Department of Veterans' Affairs
Veterans' Health Administration
2200 Fort roots Drive
North Little Rock, AR 72114**

<u>NO.</u>	<u>DATE</u>	<u>ENTITY</u>	<u>DESCRIPTION (PAGE COUNT)</u>
1.	12/05/2003		Letter from Margaret B. Caplan, Associate Director, Department of Veterans Affairs to Lynn McGuire, NHPP, undated re: RCA for Prostate Seed Implant Patient with Enclosure – Root Cause Analysis (RCA) Form – Case ID: LA0458. (15 Pages)
2.	10/03/2005		Root Cause Analysis (RCA) Form Case ID: LA0852. (23 pages)
3.	06/04/2008		Exhibit 05: Prostate Brachytherapy Algorithm June 2008. (10 pages)
4.	06/04/2008		Report, Technical. Exhibit 10: Prostate Brachytherapy Algorithm Dated June 4, 2008. (10 pages)
5.	06/24/2008		Legal-Exhibit – Exhibit 02: VHA Issue Brief 06/24/2008. (5 pages)
6.	08/06/2008		Letter Transcript. Exhibit 15-3: Transcript of Interview and Statement of Employee Rights and Obligations. (42 pages)
7.	08/06/2008		Transcript. Exhibit 15-6: Transcript of Interview and Statement of Employee Rights and Obligations. (25 pages)
8.	08/06/2008		Transcript. Exhibit 15-7: Transcript of Interview and Statement of Employee Rights and Obligations. (22 pages)
9.	08/07/2008		Transcript. Exhibit 15-10: Transcript of Interview and Statement of Employee Rights and Obligations. (65 pages)

10. 08/07/2008 Report, Miscellaneous. Exhibit 15-10 – Addendum to Transcript of Interview. (228 pages)
11. 08/07/2008 Transcript. Exhibit 15-11: Transcript of Interview and Session and Statement of Employee Rights and Obligations (13 pages)
12. 08/07/2008 Transcript. Exhibit 15-12 – Transcript of Interview and Statement of Employee Rights and Obligations. (12 pages)
13. 08/07/2008 Transcript. Exhibit 15-13: Transcript of Interview and Statement of Employee Rights and Obligations. (16 pages)
14. 08/07/2008 Transcript. Exhibit 15-14: Transcript of Interview and Statement of Employee Rights and Obligations. (15 pages)
15. 08/07/2008 Transcript. Exhibit 15-15 Transcript of Interview and Statement of Employee rights and Obligations. (25 pages)
16. 08/08/2008 Legal-Exhibit Letter Transcript. Exhibit 15-17: Transcript of Interview and Statement of Employee Rights and Obligations. (20 pages)
17. 08/11/2008 Transcript. Exhibit 15-4: Transcript of Interview (20 pages)
18. 08/11/2008 Transcript. Exhibit 15-5: Transcript of Interview (13 pages)
19. 08/11/2008 Transcript. Exhibit 15-1: Transcript of Interview and addendum to the testimony. (35 pages)
20. 08/11/2008 Transcript. Exhibit 15-2: Transcript of Interview. (27 pages)
21. 08/11/2008 Transcript. Exhibit 15-8: Transcript of Interview. (38 pages)
22. 08/11/2008 Transcript. Exhibit 15-9: Transcript of Interview and Statement of Employee Rights and Obligations. (18 pages)
23. 08/13/2008 Transcript. Exhibit 15-16: Transcript of Interview and Statement of Employee Rights and Obligations. (34 pages)

24. 08/13/2008 Transcript. Exhibit 15-18: Transcript of Interview. (22 pages)
25. 08/13/2008 Transcript. Transcript of Interview and Statement of Employee Rights and Obligations (14 pages)
26. 08/13/2008 Report, Miscellaneous Transcript. Exhibit 16: Report of Contact-Interview with S. Hahn, MD-University of PA 8/13/08. (5 pages)
27. 09/05/2008 Memoranda – Department of Veterans Affairs 030-34325; VA Philadelphia, PA-ABI (Administration Board of Investigation (12 pages)
28. 10/16/2008 Memo to Director, VA Medical Center, Philadelphia, Pennsylvania from L. McGurie, Director, VHA National Health Physics Program, Subject: Radiation safety Program Inspection and Notice of Violation – Inspection Report 642-08-102 (18 Pages)
29. 10/17/2008 Letter – VA Medical Center Exhibits License No. 03-23853-01VA. (1 page)
30. 10/17/2008 Legal-Exhibit Letter – Exhibit 03: Review of Prostate Brachytherapy Program – Dr. S. Giri. (3 pages)
31. 10/17/2008 Calculation Graphics incl Charts and Tables Legal-Exhibit. – Exhibit 08: Exhibit VIII: Implant Data XRT0001 – XRT 114. (7 pages)
32. 10/17/2008 Legal-Exhibit Memoranda. Exhibit 09: Medical Center Policies. (42 pages)
33. 10/17/2008 Graphics incl Charts and Tables Legal-Exhibit. Exhibit 11: GK implants – Analysis (undated). (3 pages)
34. 10/17/2008 Legal-Exhibit. Exhibit 15-0: Transcripts. (1 page)
35. 05/03/2010 Department of Veterans Affairs, OIG Report: Review of Brachytherapy Treatment of Prostate Cancer at VA Medical Centers, (110 pages)

**APPENDIX A
RECORDS ALREADY PUBLICLY AVAILABLE**

<u>NO.</u>	<u>DATE</u>	<u>ACCESSION NO.</u>	<u>DESCRIPTION/PAGE COUNT</u>
1.	10/21/08	ML082950794	NRC Medical Consultant Letter – VA Philadelphia. (13 pages)
2.	12/22/08	ML083650335	NRC Medical Consultant Report, VA Philadelphia, (12 pages)
3.	5/26/09	ML091460732	Dr. Gary Kao, Demand for Information, (3 pages)
4.	5/26/09	ML091460745	Dr. Gary Kao, Demand for Information, (4 pages)
5.	8/28/09	ML092320381	Letter to Peter Crane, re; Prostate Cancer Treatment at VA Medical Center, Philadelphia (2 pages)
6.	10/12/09	ML093020636	NRC Medical Consultant Report, VA Philadelphia. (17 pages)
7.	10/13/09	ML092880478	Letter from Representative Edward J. Markey, Re; Commission's Regulations Involving the Treatment of Patients w/Radioisotopes, (5 pages)
8.	10/29/09	ML093080147	VA Final Patient Dose Assessment, (13 pages)
9.	11/17/09	ML093000017	Letter to Representative Edward J. Markey, re; Treatment of Patients w/Radioisotopes,(1 page)
		ML093030563	Enclosure – (9 pages)
10.	12/1/09	ML093380298	Letter to Chairman Jaczko, from Senator Arlene Spector, re; Brachytherapy Program at Philadelphia VA Medical Center, (1 page)

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

<u>NO.</u>	<u>DATE</u>	<u>DESCRIPTION/PAGE COUNT</u>
1.	Undated	Veterans Affairs Manual Prostate Brachytherapy Medical Events (1 page)
2.	Undated	Poster – “Reported Prostate Brachytherapy Medical Events...DVA Medical Center, Philadelphia, (1 page)
3.	Undated	Briefing Slides – Radiation Treatment of Prostate Cancer by Brachytherapy...(14 pages)
4.	Undated	Briefing Slides – Dept. of Veterans' Affairs Medical Center, Philadelphia, PA, Medical Events...(28 pages)
5.	6/23/09	Letter from Honorable Daniel Akaka, re; Request to Testify...(1 page)
6.	6/29/09	Statement of Gary Kao before Senate Committee of Veterans' Affairs, (10 pages)
7.	6/29/09	NRC Response to Post Hearing Questions... Steve Reynolds, Dir., Div of Nuclear Materials Safety, Region III, (8 pgs)
8.	7/8/09	Written Testimony of Steve Reynolds to House Subcommittee on Oversight and Investigations; (4 pages)
9.	7/22/09	Oral Statement of Steve Reynolds before House Subcommittee of Oversight and Investigations, (2 pages)
10.	12/14/09	Email from P. Pelke, subj: NRC Assessment of Patient Doses...(4 pages)
11.	2009	Veterans Affairs Medical Event Abstract (1 page)
12.	2010	Veterans Affairs Medical Event Abstract (1 page)
13.	5/24/10	Briefing Slides – Multiple Medical Events Involving Prostate Brachytherapy Treatments...(4 pages)