

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

2011-0221

1

RESPONSE TYPE FINAL PARTIAL

REQUESTER
Randy Paige

DATE
AUG - 8 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 & C 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 & C 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)

In a telephone conversation on May 24, 2011, with Natalie Brown of my staff, you clarified/narrowed the scope of the request to 1) copies of the Office of Investigations' reports 4-2001-005 and 4-2007-0016; and, 2) a printout of all inspection reports dealing with fire issues at the San Onofre and Diablo Canyon nuclear power plants since 2000.

The records identified on enclosed Appendix A are already publicly available in the NRC electronic reading room (ADAMS) at www.nrc.gov/reading-rm/html. If you need assistance accessing the records in ADAMS please contact the NRC Public Document Room at (800)397-4209, or (301)415-4737.

Since you are entitled to 100 free pages, the record identified on Appendix B, and the released portions of the records identified on Appendix C are enclosed.

The incoming request is in ADAMS at Accession No. ML11133A380.

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

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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 practices of NRC.
- 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 wrong doing or a violation of NRC requirements from investigators).
 - (C) Disclosure could 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
Cheryl L. McCrary	Director, Office of Investigations	Appendix C	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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 A
RECORDS ALREADY PUBLICLY AVAILABLE**

Diablo Canyon Fire Related findings

ML110380214 - 05000275/2010005, 05000323/2010005
ML103050315 - 05000275/2010004, 05000323/2010004
ML101190411 - 05000275/2010002, 05000323/2010002
ML092540205 - 05000275/2009008; 05000323/2009008
ML093000274 - 05000275/2009004, 05000323/2009004
ML083080113 - 05000275/2008004, 05000323/2008004
ML082180882 - 05000275/2008003, 05000323/2008003
ML081220464 - 05000275/2008002, 05000323/2008002
ML080360630 - 05000275/2007005, 05000323/2007005
ML063040654 - 05000275/2006004, 05000323/2006004
ML051360248 - 05000275/2005002, 05000323/2005002
ML050450591 - 05000275/2004005, 05000323/2004005
ML040630371 - 05000275/2003008, 05000323/2003008
ML033110669 - 05000275/2003007, 05000323/2003007
ML031220751 - 05000275/2003002; 05000323/2003002
ML022140209 - 05000275/2002003; 05000323/2002003
ML003737325 - 05000275/2000009; 05000323/2000009
ML003716464 - 05000275/2000003; 05000323/2000003

SONGS Fire Related Findings

Triennial fire protection reports – whole report is fire protection:

ML013240092 - 05000361/2001-015; 05000362/2001-015
ML042820687 - 05000361/2004-008; 05000362/2004-008
ML072060253 - 05000361/2007-008; 05000362/2007-008
ML103370306 - 05000361/2010-007; 05000362/2010-007

Reports that relate to the falsified fire watch issue and the resulting follow-up:

ML072760128 - 05000361/2007-016; 05000362/2007-016
ML083390399 - 05000361/2008-012; 05000362/2008-012
05000361/2011-008; 05000362/2011-008 (Attached)

Other reports with fire protection-related findings:

ML003674442 - 05000361/1999-016; 05000362/1999-016
ML003694311 - 05000361/2000-002; 05000362/2000-002
ML003738416 - 05000361/2000-007; 05000362/2000-007
ML010720122 - 05000361/2001-002; 05000362/2001-002
ML01130225 - 05000362/2001-005
ML012420280 - 05000361/2001-008; 05000362/2001-008
ML052940132 - 05000361/2005-004; 05000362/2005-004
ML063080009 - 05000361/2006-004; 05000362/2006-004

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ML063420342 - 05000361/2006-009; 05000362/2006-009
ML083390399 - 05000361/2008-012; 05000362/2008-012
ML092120548 - 05000361/2009-003; 05000362/2009-003
ML100420026 - 05000361/2009-005; 05000362/2009-005
ML101240946 - 05000361/2010-002; 05000362/2010-002
ML102810670 - 05000361/2010-006; 05000362/2010-006
ML111250473 - 05000361/2011-002; 05000362/2011-002
05000361/2011-008; 05000362/2011-008 (Attached)

**APPENDIX B
RECORD BEING RELEASED IN ENTIRETY**

<u>NO.</u>	<u>DATE</u>	<u>DESCRIPTION/(PAGE COUNT)</u>
1.	02/10/11	Letter from Elmo Collins, NRC Region IV, to Peter Dietrich, Southern California Edison Company, subject: San Onofre Nuclear generating Station – Closure of Action Required by Confirmatory Order EA-07-232 (Inspection Report 05000361/2011008 and 05000362/2011008) 5 pages

APPENDIX C
RECORDS WITHHELD IN PART

<u>NO.</u>	<u>DATE</u>	<u>DESCRIPTION/(PAGE COUNT)/EXEMPTION</u>
1.	11/05/2001	Report of Investigation, Case No. 4-2001-005/(47 pages)/5 & 7C.
2.	07/18/2007	Report of Investigation, Case No. 4-2007-016/(20 pages)/7C.