

August 10, 2012

Bruce Busby, CHP
FHCR EH&S
BioSafety and Radiation Safety Officer
P.O. Box 19024
J3-200 1100 Fairview Ave. N
Seattle, WA 98109

Dear Mr. Busby:

I am responding to your letter to former Chairman Jaczko. In your letter you request that the U.S. Nuclear Regulatory Commission (NRC) Office of the General Counsel (OGC) provide its views on who can process and receive Federal Bureau of Investigation (FBI) criminal history records information (CHRI) on behalf of a licensee. Based on your review of FBI regulations and procedures, you believe that licensee contractor security consultants may review and process such information when carrying out their official duties on behalf of a licensee.

The Department of Justice (DOJ) is responsible for implementing the criminal history records information program. The NRC must defer to the DOJ interpretation of the statutes implementing that program and the authority granted to DOJ in administering that program. On October 24, 1997, the Department of Justice (DOJ) FBI Criminal Justice Information Service (CJIS) advised the NRC in a written memorandum that CHRI could not be provided to third party private contractors working for the NRC or for an NRC licensee. CJIS determined that use of such third party private contractors to receive and process CHRI is prohibited by 28 U.S.C. § 534 and 42 U.S.C. § 2169.

In response to your original inquiry to the NRC's Office of Federal and State Materials and Environmental Management Programs (FSME), OGC and the NRC's Office of Nuclear Security and Incident Response consulted with CJIS to determine if the 1997 determination remains in effect. CJIS advised that the 1997 DOJ determination remains in effect and that FBI CHRI can only be provided to the NRC and its licensees. Accordingly, licensee contractors and outside entities (non-licensees) may not have access to FBI CHRI.

Consistent with this determination, in an email dated June 15, 2012, Mr. Gaudreau informed you that the NRC and its licensees are prohibited from sharing FBI CHRI with a contractor. Mr. Gaudreau further advised that a contractor cannot receive and review CHRI on behalf of a licensee. This advice accurately reflects the DOJ requirements for the processing and handling of CHRI by the NRC and its licensees.

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Should you have any further questions, please feel free to contact Norman St. Amour at (301) 415-1589.

Sincerely,

/RA/Mitzi A. Young
Assistant General Counsel for High-Level
Waste, Fuel Cycle and Nuclear Security