

2012-0113

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

FINAL



PARTIAL

REQUESTER

Abraham Payton

DATE

OCT 19 2012

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**
C 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**
D 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**
D 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 *

\$

0.00



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)

The incoming request can be located in ADAMS at ML12013A286.

Records with an ML accession number are available in the NRC's Public Electronic Reading Room at www.nrc.gov/reading-rm/adams.html. For assistance in obtaining any records, please contact the NRC's Public Document Room (PDR) at 1-800-397-4209 or by email at pdr.resource@nrc.gov.

SIGNATURE - FREEDOM OF INFORMATION ACT AND PRIVACY ACT OFFICER

Donna L. Sealing

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

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PART II.A -- APPLICABLE EXEMPTIONS

APPENDICES

D

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 4702(b), 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 McCrary	Director, Office of Investigations	Appendix D	<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 C
RECORDS ALREADY PUBLICALLY AVAILABLE

<u>NO.</u>	<u>DATE</u>	<u>ACCESSION NO.</u>	<u>DESCRIPTION/(PAGE COUNT)</u>
1	02/09/1993	9302190202	Forwards safety inspection report 30-05985/93-01 on 930201-02. Enforcement conference re violations will be held on 930104. Microform Addresses: 64844:344-64844:360. (2 pages)
2	03/29/1993	9304070005	Discusses inspection report 30-05985/93-01 on 930201-02 & forwards notice of violation & proposed imposition of civil penalty in amount of \$7,500. NRC concerned that source in exposed position for approximately 20 minutes w/o radiographer present. Microform Address: 74460:167-74460:181. (5 pages)
3	03/29/1993	9304070009	Notice of violation & proposed imposition of civil penalty in amount of \$7,500. Violations noted: neither licensee radiographer nor radiographer assistant maintained direct surveillance over radiographic operation. Microform Address: 74460:172-74460:181 (10 pages)
4	07/29/1996	9705210340	Forwards partially deleted status of escalated enforcement actions as of 960729, for info. Microform Address: 93077:332-93077:334 (3 pages)
5	11/05/1997	9711070242	Discusses inspection report 30-33792/97-01 on 970717-18 w/continuing review through 970725 & forwards NOV re failure to directly supervise assistant radiographer performing radiographic operations within fixed facility on PSI premises. Microform Address: A1043:216-A1043:223 (4 pages)

**APPENDIX C
RECORDS ALREADY PUBLICALLY AVAILABLE**

<u>NO.</u>	<u>DATE</u>	<u>ACCESSION NO.</u>	<u>DESCRIPTION/(PAGE COUNT)</u>
6	11/05/1997	9711070245	Notice of violation from inspection on 970717-18. Violations noted: assistant radiographer operated radiographic exposure devices & conducted radiation surveys at licensee fixed facility in Pittsburgh, PA w/o supervision of radiographer. Microform Address: A1043:220-A1043:223 (4 pages)
7	08/05/1999	9908110069	Discusses investigation conducted on 990406-0622 to determine if personnel deliberately violated NRC requirements for industrial radiography which resulted in possible excessive radiation exposures to client workers. Microform Address: A8902:313-A8902:319 (7 pages)
8	10/22/1999	ML003729792	Notice of violation and proposed imposition of civil penalty - \$8,000 (NRC Office of Investigations Report No. 4-1999-016). (194 pages)

**APPENDIX D
RECORDS BEING WITHHELD IN PART**

<u>NO.</u>	<u>DATE</u>	<u>DESCRIPTION/PAGE COUNT/EXEMPTION</u>
1	06/22/1999	Professional Service Industries, Inc.: Deliberate Violation of Two-Man Rule and Possible Overexposure (Case No. 4-1999-016) (1 page)/Ex. 7C
2	06/22/1999	U.S. NRC Report of Investigation Professional Service Industries, Inc.: Deliberate Violation of Two-Man Rule and Possible overexposure (Case No. 4-1999-016) (28 pages)/Ex. 7C
3		Investigation Status Record Case No. 4-1999-016 (1 page)/7C ; Memo to: Allegation File (RIV-1999-A-0065) From: Ray Mullikin, Subject: Record of Conversation with Alleger (2 pages)/Ex. 7C
4	04/06/1999	Telephone Conversation re: Possible incident involving Eaton employees entering an area in which radiography was being conducted. (2 pages)/Ex. 7C
5	05/04/1999	Report of Interview re: Case No.: 4-1999-016. (2 pages)/Ex. 7C
6	05/03/1999	Report of Interview re: Case No.: 4-1999-016. (2 pages)/Ex. 7C
7	05/03/1999	Report of Interview re: Case No.: 4-1999-016. (2 pages)/Ex. 7C
8	05/04/1999	Report of Interview re: Case No.: 4-1999-016. (2 pages)/Ex. 7C
9	05/04/1999	Report of Interview re: Case No.: 4-1999-016. (2 pages)/Ex. 7C
10	05/05/1999	Report of Interview re: Case No.: 4-1999-016. (2 pages)/Ex. 7C
11	05/05/1999	United States of America Nuclear Regulatory Commission Office of Investigations Statement (6 pages)/Ex. 7C
12	05/07/1999	Report of Interview re: Case No.: 4-1999-016. (3 pages)/Ex. 7C
13	09/17/1998	Memo to: Christ Smith re: Professional Service Industried, Inc. (1 page)/Ex. 7C
14	01/11/1999	Eaton Metal Products Company Pocatello Plant Safety Meeting. (1 page)/Ex. 7C

**APPENDIX D
RECORDS BEING WITHHELD IN PART**

<u>NO.</u>	<u>DATE</u>	<u>DESCRIPTION/PAGE COUNT/EXEMPTION</u>
15		Professional Service Industries, Inc.: Radiation Safety Training Programs for Industrial Radiographers Certification re: Case No. 4-99-016. (1 page)/Ex. 7C
16		Professional Service Industries, Inc.: Radiation Safety Training Programs for Industrial Radiographers Certification re: Case No. 4-99-016. (1 page)/Ex. 7C
17		Investigation Status Record Case No.: 4-1999-016 (3 pages)/Ex. 7C
18	07/22/1999	Enforcement Action Worksheet (1 page)/Ex. 7C & 6
19		Case Chronology (2 pages)/Ex. 7C
20	07/22/1999	Enforcement Action Worksheet RIII re: Case No.: 4-1999-016 (7 pages)/Ex. 7C & 5
21	03/27/2001	Inspection 03033792/2001-001, Professional Service Industries, Inc., Pittsburgh and Harrisburg, Pennsylvania, and Notice of Violation (17 pages)/Ex. 4
22	02/20/2002	Email from: David Vito to: Andrea Kock re: Potential Allegation Referral (1 page)/Ex. 7C