

2012-0126

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

RESPONSE TYPE FINAL PARTIAL

REQUESTER
Yanmei Xie

DATE **OCT 26 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 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)

The incoming FOIA request can be located in ADAMS at accession number ML12030A138.

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
C&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 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	See Appendix C	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Roy P. Zimmerman	Director, Office of Enforcement	See Appendix D	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Elmo E. Collins, Jr.	Regional Director, Region IV	See Appendix C	<input checked="" 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**

<u>NO.</u>	<u>DATE</u>	<u>ACCESSION NO.</u>	<u>DESCRIPTION/PAGE COUNT/E</u>
1.	8/11/06	ML062280197	Letter to C. Naslund, subj: Callaway Plant – NRC Inspection Report 05000483/2006010, (15 pgs)
2.	4/5/07	ML071150504	Letter to C. Naslund, subj: Closure of Investigations OI 4-2006-025 & OI 4-2006-0035

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

<u>NO.</u>	<u>DATE</u>	<u>DESCRIPTION/PAGE COUNT</u>
1.	6/2/10	Records released under FOIA/PA-2010-0232/0233/0234 (2 pgs)
2.	4/26/07	Closure Letter & Allegation File Checklist, 1 pg
3.	4/26/06	Email from D. White, subj: Sensitive Allegation Material ***4/25/06 Emergent ARB Minutes, 1 pg
4.	6/8/06	Email from H. Freeman, subj: RIV-2006-A-0033, 1 pg
5.	8/15/07	Email from H. Freeman, subj: RIV-2006-A-0033 Meeting August 15, 2007, 1 pg
6.	8/20/07	Email from J. Walker, subj: Callaway FOIA Request, 1 pg
7.	8/20/07	Email from K. Fuller, subj: FWD: Callaway FOIA Request, 1 pg

APPENDIX C
RECORDS BEING WITHHELD IN PART

**NOTE: All records are subject to FOIA Exemption 7(C). **

<u>NO.</u>	<u>DATE</u>	<u>DESCRIPTION/ (PAGE COUNT)/EXEMPTIONS</u>
1.	Undated	Handwritten notes, (1 pg)
2.	Undated	ARB Summary, (4 pgs)
3.	4/18/06	Memo to A. Gody, subj: Review of Allegation Material RIV-2006-A-0033, (9 pgs)
4.	4/26/06	Email, Subject: OOU: Follow Up ARB Meeting April 25 th , 1 page
5.	5/11/06	Letter to Allegor from NRC, Subject: Allegation No. RIV-2006-A-0033, 5 pages
6.	5/23/06	Email to R4Allege, Subject: 06033 Phone Record 052206, 1 page
7.	5/23/06	Email to R4Allege, Subject: Allegation Related Information, 4 pages
8.	5/26/06	Email to R4Allege, Subject: Re: Fwd: 06033 Phone Record 5/24/06, 1 page
9.	Undated	ARB Summary, 4 pgs
10.	6/6/06	Letter to Allegor from NRC, Subject: Allegation No. RIV-2006-A-0033, 3 pages
11.	10/16/06	Email to R4Allegation, Subject: Callaway Concern Closure, 2 pages
12.	12/8/06	Letter to Allegor from NRC, Subject: Allegation No. RIV-2006-A-0033, 3 pages
13.	2/12/07	Email to OI-R Dist of unsub OI reports, Reactors, Subject: OI Report 4-2006-025, Callaway, Unsubstantiated, 1 page
14.	2/26/07	Email to R4Allegation, Subject: Closure of Allegation 2006-A-0033, 6 pages
15.	4/16/07	Letter to Allegor from NRC, Subject: Allegation No. RIV-2006-A-0033, 6 pages

APPENDIX C
RECORDS BEING WITHHELD IN PART

<u>NO.</u>	<u>DATE</u>	<u>DESCRIPTION/ (PAGE COUNT)/EXEMPTIONS</u>
16.	8/8/07	Email, Subject: Documentation of conversation, 2 pages
17.	8/15/07	Email to R4Allegation, Subject: Fwd: Alleger's allegations, 2 pages
18.	8/17/07	Email to R4Allegation No. RIV-2006-A-0033, 1 page
19.	8/17/07	Email, Subject: Discussion with Alleger, 1 page
20.	Undated	ARB Disposition Record, 3 pgs
21.	11/15/07	Letter to Alleger from NRC, Subject: Allegation Nos. RIV-2006-A-0033 & RIV-2007-A-0124, 4 pgs
22.	3/18/08	Email to R4Allegation, Subject: **Sensitive Allegation Material** Review of OI Investigation Report, ref RIV-2006-A-0033, 3 pgs, Ex. 5/Ex. 7C
23.	7/2/08	Letter to Alleger from NRC, Subject: Allegation Nos. RIV-2006-A-0033 & RIV-2007-A-0124, 4 pgs,
24.	12/08/08	OI Report 4-2006-0025, 9 pgs
25.	2/19/09	Memorandum to Allegation Coordinator from Operations Branch, Subject: Callaway Allegation No. RIV-2006-A-0033, Concern 1, 2 Pages
26.	3/26/09	Letter to Alleger from NRC, Subject: Concern You Raised to the Nuclear Regulatory Commission (NRC) Regarding Callaway Plant, 3 Pages
27.	4/7/09	Letter to Mr. Adam C. Heflin from NRC, Subject: Closure of Investigation (OI 4-2006-0025), 2 pgs
28.	4/27/06	Email from M. Peck, subj: Sensitive Allegation Material – Follow-up April 25 th ARB, 6 pgs

APPENDIX D
RECORDS BEING WITHHELD IN THEIR ENTIRETY

<u>NO.</u>	<u>DATE</u>	<u>DESCRIPTION/PAGE COUNT/EXEMPTION</u>
1.	3/29/09	Records released under FOIA-2009-0115, Ex. 4/Ex. <i>7c</i>

APPENDIX E
RECORDS BEING GLOMARED

The NRC can neither confirm nor deny the existence of the following records:

<u>NO</u>	<u>RECORDS REQUESTED</u>
1.	Confidential Settlement Agreements of Named Individuals, Ex. 4/Ex. <i>7c</i>
2.	Transcript of Named Individual Re; OI-4-2009-043F, Ex. <i>7c</i>