



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

April 18, 2013

IN RESPONSE REFER
TO FOIA/PA-2013-00005A
(FOIA/PA-2013-0108)

Mr. Lawrence Criscione

(b)(6)

Dear Mr. Criscione:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am responding to your February 23, 2013, e-mail to the Freedom of Information Act/Privacy Act officer. You appealed the agency's February 7, 2013, response letter to your February 5, 2013, Freedom of Information Act (FOIA) request (FOIA/PA-2013-0108) for a copy of the document, "Communication plan for information request pursuant to 10 CFR 50.54 (f) related to external flooding, including failure of the Jocassee Dam," Agencywide Documents Access and Management System (ADAMS) Accession NO. ML082250166.

Specifically, you appealed the NRC's decision to withhold a portion of the record under FOIA Exemption 7(F), based on your assertion that nothing in the report indicates that the information was compiled for law enforcement purposes, nor is there anything which would indicate that disclosure could reasonably be expected to endanger the life or physical safety of an individual. Additionally, you claim that the withheld information "merely pertains to the nuclear safety hazard which deficiencies in the Oconee Station's flooding defenses pose to the American public." You also state that, "these safety risks are present due to the risks of natural disasters and latent engineering/construction flaws and have nothing specifically to do with terrorist activities."

You correctly point out that FOIA Exemption 7(F) can be used to withhold information that, if disclosed, could reasonably be expected to endanger the life or physical safety of an individual. In this case, the NRC is using FOIA Exemption 7(F) to withhold information which the agency reasonably believes may be beneficial to terrorists or saboteurs. However, you note that FOIA Exemption 7(F) can be applied in this case only if the information "pertains to security processes or hardware." The 1986 FOIA amendments created expanded categories and wider interpretations and thus broadened the use of FOIA Exemption 7(F). Now, FOIA Exemption 7(F) provides new avenues of protection for sensitive information that could prove deadly if obtained by those seeking to do harm to the public on a large scale. In fact, the courts have found FOIA Exemption 7(F) readily available to protect against disclosure of inundation maps that showed projected patterns in which downstream areas would be catastrophically flooded in the event of breaches in nearby dams. Please refer to the case *Living Rivers, Inc. v. United States Bureau of Reclamation*, 272 F. Supp. 2d 1313, 1321-22 (D. Utah 2003). See also *Public Employees for Environmental Responsibility v. United States Section, International Boundary and Water Commission*, 839 F. Supp. 2d 304, 327-28 (D.D.C. 2012).

Acting on your appeal, the NRC has reviewed the record and has determined that the agency will continue to withhold certain information under Exemption 7F; but additional information in attachment 2 may be released. The revised record is enclosed. Therefore, the NRC has denied your appeal in part and granted your appeal in part.

This is the NRC's final decision. As set forth in the FOIA (5 U.S.C. § 552 (a)(4)(B)), you may seek judicial review of this decision in a district court of the United States in the district in which you reside or have your principle place of business. You may also seek judicial review in the district in which the agency's records are located or in the District of Columbia.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Ash', written in a cursive style.

Darren B. Ash
Deputy Executive Director for Corporate
Management and Chief Freedom of Information
Act Officer
Office of the Executive Director for Operations

Enclosure: As stated