FOIA/PA REQUEST
Case No.: 2014-0052
Date Rec'd: 11/20/13
Specialist: Dennis
Related Case: 2013-03226

Judicial Watch
Because no one is above the law!

November 19, 2013

VIA CERTIFIED MAIL & FACSIMILE

Deborah Dennis
U.S. Nuclear Regulatory Commission
Mail Stop T-5 F09
Washington, DC 20555-0001
301-415-5130

Re: Freedom of Information Act Request

Dear Ms. Dennis:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, Judicial Watch, Inc. hereby requests that the Nuclear Regulatory Commission (NRC) produce the following within twenty (20) business days:

1. Any and all records of the NRC's 2010 safety evaluation report at it relates to high level waste at Yucca Mountain.

2. Any and all records of communication concerning, regarding, or relating to the NRC's 2010 safety evaluation report between the NRC and the following entities:
   a. United States Congress;
   b. The White House;
   c. The Executive Office of the President.

   The time frame for this request runs from January 1, 2010 to the present.

We call your attention to President Obama's January 21, 2009 Memorandum concerning the Freedom of Information Act, in which he states:

> All agencies should adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA...The presumption of disclosure should be applied to all decisions involving FOIA.[1]

[1] Freedom of Information Act. Pres. Mem. of January 21, 2009, 74 Fed. Reg. 4683.

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The memo further provides that "The Freedom of Information Act should be administered with a clear presumption: In the case of doubt, openness prevails."

Nevertheless, if any responsive record or portion thereof is claimed to be exempt from production under FOIA, please provide sufficient identifying information with respect to each allegedly exempt record or portion thereof to allow us to assess the propriety of the claimed exemption. *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), *cert. denied*, 415 U.S. 977 (1974). In addition, any reasonably segregable portion of a responsive record must be provided, after redaction of any allegedly exempt material. 5 U.S.C. § 552(b).

For purposes of this request, the term "record" shall mean: (1) any written, printed, or typed material of any kind, including without limitation all correspondence, memoranda, notes, messages, letters, cards, facsimiles, papers, forms, telephone messages, diaries, schedules, calendars, chronological data, minutes, books, reports, charts, lists, ledgers, invoices, worksheets, receipts, returns, computer printouts, printed matter, prospectuses, statements, checks, statistics, surveys, affidavits, contracts, agreements, transcripts, magazine or newspaper articles, or press releases; (2) any electronically, magnetically, or mechanically stored material of any kind, including without limitation all electronic mail or e-mail; (3) any audio, aural, visual, or video records, recordings, or representations of any kind; (4) any graphic materials and data compilations from which information can be obtained; and (5) any materials using other means of preserving thought or expression.

Judicial Watch also hereby requests a waiver of both search and duplication fees pursuant to 5 U.S.C. §§ 552(a)(4)(A)(ii)(II) and (a)(4)(A)(iii). Judicial Watch is entitled to a waiver of search fees under 5 U.S.C. § 552(a)(4)(A)(ii)(II) because it is a member of the news media. *Cf. National Security Archive v. Department of Defense*, 880 F.2d 1381, 1387 (D.C. Cir. 1989)(defining news media within FOIA context). Judicial Watch has also been recognized as a member of the news media in other FOIA litigation. *See, e.g., Judicial Watch, Inc. v. U.S. Department of Justice*, 133 F. Supp.2d 52 (D.D.C. 2000); and, *Judicial Watch, Inc. v. Department of Defense*, 2006 U.S. Dist. LEXIS 44003, *1 (D.D.C. June 28, 2006). Judicial Watch regularly obtains information about the operations and activities of government through FOIA and other means, uses its editorial skills to turn this information into distinct works, and publishes and disseminates these works to the public. It intends to do likewise with the records it receives in response to this request.

Judicial Watch also is entitled to a complete waiver of both search fees and duplication fees pursuant to 5 U.S.C. § 552(a)(4)(A)(iii). Under this provision, records:

> shall be furnished without any charge or at a charge reduced below the fees established under clause (ii) if disclosure of the information is in the public interest

> because it is likely to contribute significantly to public understanding of the operations or activities of government and is not primarily in the commercial interest of the requester.

5 U.S.C. § 552(a)(4)(A)(iii).

In addition, if records are not produced within twenty (20) business days, Judicial Watch is entitled to a complete waiver of search and duplication fees under Section 6(b) of the OPEN Government Act of 2007, which amended FOIA at 5 U.S.C. § (a)(4)(A)(viii).

Judicial Watch is a 501(c)(3), not-for-profit, educational organization, and, by definition, it has no commercial purpose. Judicial Watch exists to educate the public about the operations and activities of government, as well as to increase public understanding about the importance of ethics and the rule of law in government. The particular records requested herein are sought as part of Judicial Watch's ongoing efforts to document the operations and activities of the federal government and to educate the public about these operations and activities. Once Judicial Watch obtains the requested records, it intends to analyze them and disseminate the results of its analysis, as well as the records themselves, as a special written report. Judicial Watch will also educate the public via radio programs, Judicial Watch's website, and/or newsletter, among other outlets. It also will make the records available to other members of the media or researchers upon request. Judicial Watch has a proven ability to disseminate information obtained through FOIA to the public, as demonstrated by its long-standing and continuing public outreach efforts.

Given these circumstances, Judicial Watch is entitled to a public interest fee waiver of both search costs and duplication costs. Nonetheless, in the event our request for a waiver of search and/or duplication costs is denied, Judicial Watch is willing to pay up to $350.00 in search and/or duplication costs. Judicial Watch requests that it be contacted before any such costs are incurred, in order to prioritize search and duplication efforts.

In an effort to facilitate record production within the statutory time limit, Judicial Watch is willing to accept documents in electronic format (e.g. e-mail, .pdfs). When necessary, Judicial Watch will also accept the "rolling production" of documents.

If you do not understand this request or any portion thereof, or if you feel you require clarification of this request or any portion thereof, please contact us immediately at 202-646-5172 or jmccarthy@judicialwatch.org. We look forward to receiving the requested documents and a waiver of both search and duplication costs within twenty (20) business days. Thank you for your cooperation.

Sincerely,

Justin McCarthy
Judicial Watch

From: Dennis, Deborah
To: Dennis, Deborah
Subject: FW: Additional Clarification Needed for NRC FOIA Request
Date: Tuesday, November 19, 2013 2:16:38 PM

From: Justin McCarthy [mailto:JMcCarthy@JUDICIALWATCH.ORG]
Sent: Tuesday, November 19, 2013 2:04 PM
To: Dennis, Deborah
Subject: RE: Additional Clarification Needed for NRC FOIA Request

The Yucca Mountain SER

From: Dennis, Deborah [mailto:Deborah.Dennis@nrc.gov]
Sent: Tuesday, November 19, 2013 2:00 PM
To: Dennis, Deborah; Justin McCarthy
Subject: RE: Additional Clarification Needed for NRC FOIA Request

I think I misunderstood you, are you still wanting communications to Congress, etc. regarding the Yucca Mountain SER along with the SER, or just the SER.

From: Dennis, Deborah
Sent: Tuesday, November 19, 2013 12:31 PM
To: 'Justin McCarthy'
Cc: Dennis, Deborah
Subject: RE: Additional Clarification Needed for NRC FOIA Request

Justin,

Once I receive your revised request, for administrative purposes we are going to close out 2013-0326 and create a new request. I don't know if you are aware, but the SER was previously released in 2011 and can be found in ADAMS at ML110480651. Our staff is currently reviewing it again for release.

From: Dennis, Deborah
Sent: Tuesday, November 19, 2013 9:52 AM
To: 'Justin McCarthy'
Subject: RE: Additional Clarification Needed for NRC FOIA Request

If you don't mind, please send another revised request indicating you only want the "safety evaluation report" Thanks!

From: Justin McCarthy [mailto:JMcCarthy@JUDICIALWATCH.ORG]
Sent: Tuesday, November 19, 2013 9:49 AM
To: Dennis, Deborah
Subject: RE: Additional Clarification Needed for NRC FOIA Request

We'll just go with the SER.

From: Dennis, Deborah [mailto:Deborah.Dennis@nrc.gov]
Sent: Tuesday, November 19, 2013 9:48 AM
To: Justin McCarthy
Subject: RE: Additional Clarification Needed for NRC FOIA Request

To clarify one more time, in regards to the records you seek involving communications between the NRC, Congress, etc. about Yucca Mountain; are you only seeking those communications regarding the SER or all communications? If it's the latter, then you are talking about a very voluminous amount of records.