

September 19, 2014

Simone Aponte  
Executive Producer, Special Projects  
KTVU/Channel 2  
2 Jack London Square  
Oakland, CA 94607

IN RESPONSE REFER TO  
FOIA/PA-2014-0034A  
(FOIA/PA-2014-0378)

Dear Ms. Aponte:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am responding to your letter received on August 20, 2014. In your letter, you appealed the agency's August 12, 2014, decision to deny your August 8, 2014, Freedom of Information Act/Privacy Act (FOIA/PA) request (FOIA/PA-2014-0378). You had requested documents that you believe were "previously released and detailed...in FOIA #2014-0134."

The NRC did not release the documents requested in FOIA-2014-0134. In that underlying case (filed by a different requester than you), the NRC withheld all records in full and cited FOIA Exemption 5. In your appeal, you have argued that the NRC must provide a more complete justification for application of Exemption 5.

FOIA Exemption 5 concerns certain classes of communication, which are protected by legal privileges, and which occur inside an agency or between agencies. In FOIA-2014-0134, the NRC withheld all records in full from the original requester; that requester has not filed an administrative appeal.

Your FOIA request (FOIA/PA-2014-0378), sought documents you said the NRC released under a prior FOIA request. In the closure of your request (enclosed as Document 1), the agency informed you that "[t]here were no responsive records released in whole or in part in response to FOIA-2014-0134," and that "No agency records subject to the request have been located." In this instance, the NRC made the correct decision at the administrative level. Since the NRC did not release any records in that prior FOIA request, a "no document" response was appropriate. The NRC has not invoked any FOIA exemption in the processing of your request.

Acting on your appeal (enclosed as Document 2), I have carefully reviewed the record in the case. I have determined that the NRC properly denied your request because the agency did not release the records that you claim were released.

This is the NRC's final decision as to your appeal of the use of Exemption 5. As set forth in the FOIA (5 U.S.C. 552(a)(4)(B)), you can obtain judicial review of this decision in a district court of the United States in the district in which you reside or have your principal place of business. You can also obtain judicial review in the district in which the agency's records are situated or in the District of Columbia.

S. Aponte

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As part of the 2007 FOIA amendments, the Office of Government Information Services (OGIS) was created to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a nonexclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. If you are requesting access to your own records (which is considered a Privacy Act request), you should know that OGIS does not have the authority to handle requests made under the Privacy Act of 1974. You may contact OGIS in any of the following ways:

Office of Government Information Services  
National Archives and Records Administration  
Room 2510  
8601 Adelphi Road  
College Park, MD 20740-6001  
E-mail: [ogis@nara.gov](mailto:ogis@nara.gov)  
Telephone: 301-837-1996  
Facsimile: 301-837-0348  
Toll-free telephone: 1-877-684-6448

Sincerely,

*/RA/*

Darren B. Ash  
Deputy Executive Director  
for Corporate Management  
Office of the Executive Director for Operations

Enclosures:  
As stated

S. Aponte

- 2 -

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Darren B. Ash  
Deputy Executive Director  
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