

U.S. Nuclear Regulatory Commission Public Meeting Summary

October 7, 2014

Title: Public Meeting to Discuss the FOIA Process

Meeting Identifier: 20141699

Date of Meeting: Tuesday, October 7, 2014

Location: NRC Two White Flint North, T-2B3

Type of Meeting: Category 2

Purpose of the Meeting(s):

To provide an overview of the Freedom of Information Act (FOIA) processes and procedures as well as the proactive disclosure practices that the U.S. Nuclear Regulatory Commission (NRC) uses in making disclosures to the public.

General Details:

The NRC conducted a Category 2 public meeting where members of the public met with NRC staff and asked questions related to the FOIA process and proactive disclosures. The meeting was scheduled from 1:00 - 4:30 p.m. EST. Five NRC staff members spoke, and there were a number of staff members present in the audience and assisting with the organization of the meeting. The meeting was facilitated by Lance Rakovan, an NRC in-house facilitator. The meeting began with an introduction of NRC presenters by Darren Ash, Deputy Executive Director for Corporate Management (DEDCM), and who indicated his pleasure at accepting the chance for a public meeting on the FOIA subject.

The presentations by the NRC focused on the accomplishments and highlights of the FOIA program, as well as the proactive disclosures and security considerations in creating and making a record available for public dissemination. The majority of the meeting was dedicated to receiving comments from members of the public, and answering questions regarding the FOIA process.

Approximately 13 people participated in the meeting, both in-person and remotely using a teleconference line. One non-presenting member of the public asked questions and 12 participants provided comments. In addition to members of the public who presented, meeting participants included one representative of the Office of Nuclear Reactor Regulation.

Summary of Presentations:

The Chief of the FOIA, Privacy, and Information Collections Branch (FPIB), Laura Pearson, presented and indicated the agency's interest in improving performance. A listing of the five goals for 2014 was provided. These included:

1. Elimination of the Backlog
2. Increasing Agency Training
3. Improving Customer Service
4. Addressing Staffing Issues
5. Fostering Better Engagement

As to the first goal, the backlog was at 77 cases at the beginning of the fiscal year, and grew to 98 cases in January 2014. However, since that time, the backlog was reduced until it was at 24 cases at the end of the fiscal year on September 30, 2014.

For the second goal, the agency increased its training schedule from one FOIA training session for the agency in 2013 to six agency training sessions performed in 2014.

The third goal, which focused on improving customer service, was outlined with the process improvements for the branch, including improved communication with requesters and improving FOIA processes, such as fee estimates issued by email, weekly communication with requesters, and narrowing overly broad requests.

The fourth goal, addressing staffing issues, was illustrated by the hiring of the new FOIA Officer and other staff.

Lastly, the goal of better engagement was illustrated with the lower ratio of backlogged cases compared to incoming cases.

The agency goals of transparency are met by setting the default response of the agency disclosure valve to "open" and continuing to uphold the agency core value of openness through the first-in first-out method of disclosure. There is a balance between accuracy versus timeliness of response, and a careful review of consistency is necessary to get the correct response to the requesters. Ms. Pearson emphasized the need for feedback from the public on the releases so that we can provide the best responses to requesters.

The Chief of the IT/IM Policy Branch, Margie Janney, presented on Proactive Disclosures. She pointed out the need for a balance between disclosure versus terrorist threats and the possible misuse of the information disclosed. The regulatory basis for proactive disclosures (10 Code of Federal Regulations [CFR] 9.21) and the interest in public health and safety was provided. The different avenues of records treatment of Sensitive Unclassified Non-Safeguards Information (SUNSI review, 10 CFR 2.390, and FOIA) were discussed in detail.

The security risks associated with release were itemized, including the proper method of preventing their release at the time of creation as outlined in 10 C.F.R. 2.390, and Ms. Janney reviewed the duties of segregation that the submission of a FOIA request triggers (10 CFR 9.19).

Ms. Janney pointed out that it is not feasible to conduct continued re-reviews of SUNSI material for proactive disclosure in an every-growing set of agency records.

Public Participation Themes:

During the public question and answer session of the meeting, NRC staff addressed questions on the following topics:

- Distinguishing security versus safety related records, and the decision of how to process for release;
- The significance of “Official Use Only” (OUO) markings, and other internal markings not outlined in 10 CFR 2.390 and how is the staff educated on their lack of impact during the FOIA process;
- The inconsistency of processing similar, or identical records, and balancing the need for protecting legitimately safety-related information, but still making records public that would ultimately be released in full pursuant to a FOIA request.

A sample of comments and concerns involving the processing of records for release by the NRC:

- The NRC is consistently marking documents as “Security Sensitive” or “OUO”, but when those same records are requested under a FOIA, they are releasable in their entirety, and should have been made publicly available in the first place;
- The inconsistent processing, and particularly the internal marking of documents that would otherwise be releasable, decreases confidence in the NRC and leads to decreased nuclear safety. The records need to be getting a proper up-front review at the time of the creation--otherwise it is just shifting the burden to the FOIA process;
- There is a lack of consistent policies, procedures, and training that is leading the same records to be processed differently, including examples from the Japan FOIA responses, Office of Public Affairs (OPA) talking points, and email chain recipient processing;
- The FOIA training efforts by the agency should be made publicly available; and
- Fees categories and waivers are being applied differently to substantively identical requesters seeking substantively identical records.

A complete accounting of the comments provided can be found in the meeting transcript (see below).

Action Items/Next Steps:

- Public presenters will provide additional specific non-Japan FOIA examples of processing inconsistencies.
- Public presenters will provide additional specific examples of fee category and waiver inconsistencies.
- NRC will consider looking at pending legislation requiring public releases be posted on the NRC website to determine if the agency should bring its FOIA processing standards into compliance with this legislation prior to its passage

Attachments:

- Meeting agenda - <http://adamswebsearch2.nrc.gov/webSearch2/view?AccessionNumber=ML14273A408>
- NRC staff presentations – ML14276A0006; ML14275A386

- Additional presentations referenced during the meeting – ML14309A655; FY2013 Annual FOIA Report, <http://www.nrc.gov/reading-rm/foia/annual-reports/annual-foia-report-fy2013.pdf>