



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

December 23, 2014

Mr. Lawrence Criscione
1412 Dial Court
Springfield, IL 62704
(sent via email)

IN RESPONSE REFER TO
FOIA Appeal 2015-00002A
(FOIA Request 2015-00044)

Dear Mr. Criscione:

On behalf of the U. S. Nuclear Regulatory Commission (NRC), I am responding to your November 24, 2014, email. In that email, you appealed the NRC's November 5, 2014, decision on your Freedom of Information Act (FOIA) request FOIA/PA-2015-00044 (dated November 2, 2014). In its decision, the NRC invoked exemption (b)(7)(F) to redact a diagram that includes design details for the Lake Jocassee Dam.

Please note that this letter only addresses your appeal of the agency's decision to withhold this diagram under exemption (b)(7)(F). Your email directed additional requests and questions to the NRC's Executive Director of Operations. These requests and questions fall outside of the FOIA appeal process and consequently will be addressed through separate correspondence.

The NRC denies your appeal in full. Exemption (b)(7)(F) permits the withholding of information compiled for law enforcement purposes that, if disclosed, could reasonably be expected to endanger the life or physical safety of an individual. The term "law enforcement purposes" has been interpreted broadly by federal courts to include the enforcement of civil matters and regulatory proceedings.¹ As to the endangerment finding required for this exemption, courts will defer to an agency's assessment of danger within limits.² Furthermore, of particular relevance to this appeal, the United States Court of Appeals for the District of Columbia Circuit has upheld the withholding of dam-related inundation maps under exemption (b)(7)(F).³ The court reached this conclusion after noting that (1) the maps would allow a person interested in causing harm to determine the areas and populations that would be most affected by dam failure and (2) a terrorist or criminal could use the map to assess whether it would be worthwhile to attack the dam and what the likely effect of a dam break would be.

The information withheld in the NRC's response to your FOIA request was compiled for law enforcement purposes because the information was compiled as part of the staff's efforts to analyze an issue related to a licensee's compliance with the regulations that the NRC has established to implement the Atomic Energy Act (AEA). Under the AEA, the NRC is charged

¹ *E.g., Tax Analysts v. IRS*, 294 F.3d 71, 77 (D.C. Cir. 2002); *Mapother v. DOJ*, 3 F.3d 1533, 1540 (D.C. Cir. 1993).

² *E.g., Amuso v. DOJ*, 600 F. Supp. 2d 78, 101 (D.D.C. 2009); *Levy v. U.S. Postal Serv.*, 567 F. Supp. 2d 162, 169 (D.D.C. 2008).

³ *Public Employees for Environmental Responsibility v. United States Section, International Boundary and Water Commission, U.S.-Mexico [PEER]*, 740 F.3d 195, 205 (D.C. Cir. 2014).

with establishing and enforcing regulations necessary to protect the public health and safety, as well as the common defense and security. Disclosure of the withheld information could reasonably be expected to endanger the life or physical safety of any individual because, if disclosed, the withheld information is expected to be useful to potential adversaries interested in executing an attack or other malevolent act affecting the Lake Jocassee Dam and those living near the dam. Therefore, release of this information could reasonably be expected to endanger the life or physical safety of the residents living downstream from the Lake Jocassee Dam.

This is NRC's final decision. As set forth in the FOIA (5 U.S.C. 552(a)(4)(B)), you may 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 may also obtain judicial review in the district in which the NRC's records are located or in the District of Columbia.

The 2007 FOIA amendments created the Office of Government Information Services (OGIS) to offer mediation services to resolve disputes between FOIA requesters and federal agencies. These mediation services are a nonexclusive alternative to litigation. In other words, using OGIS mediation services does not affect your right to pursue litigation. You may contact OGIS in any of the following ways:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road-OGIS
College Park, MD 20740
E-mail: ogis@nara.gov
Telephone: 202-741-5770
Fax: 202-741-5769
Toll-free: 1-877-684-6448

Sincerely,



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