

FOIA/PA NO: 2016-0043

RECORDS BEING RELEASED IN THEIR ENTIRETY



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

November 9, 2004

SECRETARY

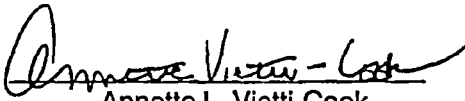
COMMISSION VOTING RECORD

DECISION ITEM: SECY-04-0191

TITLE: WITHHOLDING SENSITIVE UNCLASSIFIED
INFORMATION CONCERNING NUCLEAR
POWER REACTORS FROM PUBLIC
DISCLOSURE

The Commission (with all Commissioners agreeing) approved the subject paper as recorded in the Staff Requirements Memorandum (SRM) of November 9, 2004.

This Record contains a summary of voting on this matter together with the individual vote sheets, views and comments of the Commission.


Annette L. Vietti-Cook
Secretary of the Commission

Attachments:

1. Voting Summary
2. Commissioner Vote Sheets

cc: Chairman Diaz
Commissioner McGaffigan
Commissioner Merrifield
OGC
EDO
PDR

VOTING SUMMARY - SECY-04-0191

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
CHRM. DIAZ	X				X	10/29/04
COMR. McGAFFIGAN	X				X	11/3/04
COMR. MERRIFIELD	X				X	10/28/04

COMMENT RESOLUTION

In their vote sheets, all Commissioners approved the staff's recommendation and provided some additional comments. Subsequently, the comments of the Commission were incorporated into the guidance to staff as reflected in the SRM issued on November 9, 2004.

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: CHAIRMAN DIAZ
SUBJECT: **SECY-04-0191 - WITHHOLDING SENSITIVE UNCLASSIFIED INFORMATION CONCERNING NUCLEAR POWER REACTORS FROM PUBLIC DISCLOSURE**

Approved ^{w/comments} *[Signature]* Disapproved Abstain
Not Participating

COMMENTS:

See attached comments.

[Signature]

SIGNATURE
Oct 29, 04

DATE

Entered on "STARS" Yes ___ No ___

Chairman Diaz' Comments on SECY-04-191

I approve staff's recommendations related to the handling of sensitive unclassified information. I am pleased that the staff has brought forward the important guidance requested in the Staff Requirements Memorandum dated May 7, 2004. As a result of the temporary shutdown of the public access to ADAMS, staff should move expeditiously to complete the necessary determinations and restore public access to the appropriate documents.

A handwritten signature in black ink, appearing to be "M.D.", is located to the right of the main text block.

NOTATION VOTE

RESPONSE SHEET

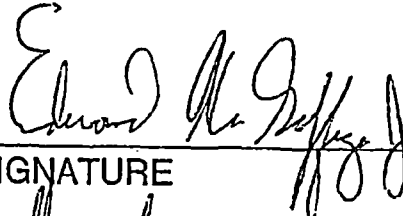
TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER MCGAFFIGAN
SUBJECT: **SECY-04-0191 - WITHHOLDING SENSITIVE
UNCLASSIFIED INFORMATION CONCERNING
NUCLEAR POWER REACTORS FROM PUBLIC
DISCLOSURE**

Approved Disapproved Abstain

Not Participating

COMMENTS:

See attached comments.



SIGNATURE

November 3, 2004

DATE

Entered on "STARS" Yes No

Commissioner McGaffigan's Comments on SECY-04-0191

I approve the staff's guidance in SECY-04-0191 related to the handling of sensitive unclassified information regarding NRC regulated facilities and materials. The staff has provided an acceptable approach to determining what information "could reasonably be expected to be useful to potential adversaries," as set forth in the general framework to be used in developing specific guidance for different types of facilities or materials.

I also approve the specific guidance to be used with respect to nuclear power reactors, which is set forth in Attachment 1, "Handling of Sensitive Unclassified (Nonsafeguards) Information on Nuclear Power Reactors That Could Reasonably Be Expected to Be Useful to a Potential Adversary." The staff should routinely update the examples provided in the specific power reactor guidance to address common questions or differences in applying the guidance that may arise among members of the staff.

However, I believe more work needs to be done in the area of emergency planning information. I agree with the guidance in the table, "Control of Information by Subject Matter," that emergency planning documents will be profiled as non-public and will be reviewed upon request, but I am concerned about the last sentence that notes that some States and local governments consider parts of their emergency plans to be sensitive. I have no problem with this judgment. Indeed, I commend it. However, if the staff makes differing judgments, a situation could exist whereby information is available about some facilities, but not others. It would be better if the staff could work with the States to derive uniform guidance about which emergency planning information is sensitive.

NMSS should develop similar guidance, based on the overall framework contained in SECY-04-0191, for the handling of sensitive unclassified information with respect to materials and NRC-licensed facilities that could reasonably be expected to be useful to a potential adversary. In this regard, I continue to have concerns about the availability of the sealed source and device database without at least password protection. For the 1300 licensees that possess high-risk radioactive sources controlled under the IAEA Code of Conduct, the staff should consider previous stakeholder comments. These comments indicated a concern with the amount of information about such licensees that is available to the public. I believe NMSS has good guidance in with respect to Yucca Mountain information, which was worked out jointly with DOE.

There is no legal requirement within the Freedom of Information Act or other applicable statute for the NRC to voluntarily make sensitive unclassified (non-SGI) information public if the information could be useful to a potential adversary. The NRC should not on its own initiative make such information public. Should such information be sought under a Freedom of Information Act request, the staff should continue its practice of withholding such information under applicable FOIA exemptions.

The availability of this guidance is timely. On October 25, 2004, the NRC blocked public access to ADAMS in order to conduct a security review of publicly available documents so that sensitive information that could be useful to a terrorist planning a potential attack would be inaccessible to the public. The staff, in conducting its security review, should use the guidance in SECY-04-0191, to the extent practicable, recognizing that complete specific guidance has not yet been developed with respect to non-power reactor licensees. The entire staff should be made aware of the guidance so that once the sensitive material is removed from ADAMS, it is not mistakenly released to the public. Specific training should be provided to those members of the staff who deal with incoming and outgoing documents on a frequent basis.

EMG

NOTATION VOTE

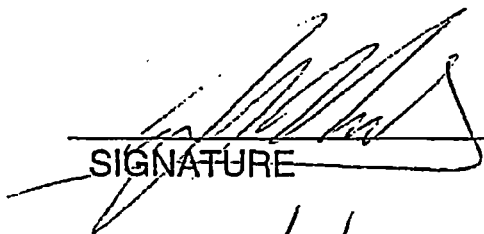
RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER MERRIFIELD
SUBJECT: **SECY-04-0191 - WITHHOLDING SENSITIVE UNCLASSIFIED INFORMATION CONCERNING NUCLEAR POWER REACTORS FROM PUBLIC DISCLOSURE**

Approved Disapproved Abstain
Not Participating

COMMENTS:

See Merrifield comments.



SIGNATURE
10/28/04

DATE

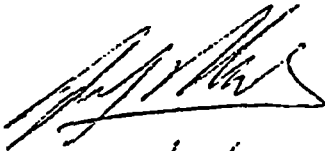
Entered on "STARS" Yes No

Commissioner Merrifield's Comments on SECY-04-0191

I approve the staff's general framework for making decisions on withholding information that could reasonably be expected to be useful to an adversary. I further approve the staff's specific guidance included as Attachment 1 to SECY-04-0191. The criteria set forth in the guidance strikes the proper balance between the need to withhold information because of security concerns and the public's need for information about the NRC's activities. I support the staff's plan to conduct public meetings and issue the guidance to the staff, licensees, and stakeholders as soon as practical. The entire staff should receive training on the types of information to be withheld, with special emphasis placed on the training of staff and managers who are responsible for corresponding with licensees or other members of the public.

I continue to strongly encourage the staff to keep in mind that while certain information must be withheld from the public, there is great benefit in interacting with the public as openly as possible. The staff should make every effort to draft documents in such a way that allows disclosing as much information as possible concerning our regulatory decisions.

On October 25, 2004, the NRC temporarily suspended public access to the records in ADAMS to allow the staff to review the database to ensure that potentially sensitive information is not available to an adversary. This is the second time the agency has taken action to remove information from the public domain since the terrorist attacks of September 11, 2001. I believe that it is important for the staff to ensure that a thorough review of the information is performed and any remaining questionable documents are removed this time.



10/22/04