

September 21, 2016

Mr. Paul Blanch  
135 Hyde Road  
West Hartford, CT 06117

Mr. David Lochbaum, Director  
Nuclear Safety Project  
Union of Concerned Scientists  
PO Box 15316  
Chattanooga, TN 37415

Dear Mr. Blanch and Mr. Lochbaum:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am responding to your letter dated July 13, 2016, regarding Freedom of Information Act (FOIA) concerns. The FOIA is a law that gives any person the right to request access to records in the possession or under the control of a Federal agency. The agency must provide the requester access to responsive records, except to the extent that such a record falls under one of the FOIA disclosure exemptions.

In your letter, you questioned whether the NRC properly relied on FOIA Exemption 7(F) when responding to a FOIA request submitted by Mr. Paul Blanch on June 17, 2016, a request that the NRC has designated FOIA/PA-2016-0532. You also stated that the NRC may be improperly relying on Exemption 7(F) in other cases.

The NRC responded to FOIA/PA-2016-0532 consistent with the processes described in our FOIA regulations and in NRC Management Directive 3.1, "Freedom of Information Act." When the NRC reviews a FOIA request, it is not uncommon for a FOIA specialist to communicate with the NRC's subject-matter experts or our attorneys to gain a clearer understanding of any concerns regarding the release or withholding of responsive records. In this case, the e-mail exchange to which you refer reflects the NRC staff's awareness of security-related concerns regarding certain information. The e-mail exchange also includes a suggestion that a specific NRC office be consulted for its views on disclosure, and, ultimately, the exchange reflects some uncertainty about whether the NRC may invoke a FOIA exemption. In other words, the e-mail exchange provides a few snapshots from the NRC's deliberations on whether Exemption 7(F) would apply to records covered by this request. It did not reflect any final decision on how to respond to the FOIA request or any authoritative or definitive assessment of whether prior NRC FOIA responses were appropriate.

In your letter, you also state:

During [a] June 8, 2016, public meeting, the NRC staff stated that it had evaluated the pipelines near Indian Point and concluded they posed no undue risk of harm. The NRC staff cited the requested records as evidence supporting their conclusion. But when the records are sought via a FOIA request, the NRC staff contends that their release could pose undue harm. It is clearly not clear how the NRC staff could arrive at opposite conclusions. If the pipelines truly do pose harm, the NRC staff should have said so clearly during the June 8 public meeting. If, as the NRC staff stated then, the pipelines truly pose no undue harm, the NRC staff should stick to its story and release the requested records via FOIA. We do not readily understand how harmless information in June became harmful in July.

There is no inconsistency between the NRC's statements during the June 8 meeting and its reliance on Exemption 7(F) in response to FOIA/PA-2016-0532. The potential vulnerability analyzed by the NRC may not have turned out to present a safety risk. The relevant question now, however, is whether the *report* contains information that, if released, would present a safety risk. Importantly, a vulnerability analysis, in the course of determining that a particular potential threat is not actually a threat, may still reveal information that could facilitate development of a plan that *would* pose a threat. Here, the NRC has concluded that some of the information in the report, if disclosed, would present the sort of risks that Exemption 7(F) is intended to address, notwithstanding the ultimate conclusions reached regarding the pipeline itself.

Should you wish to engage further on the use of Exemption 7(F) when responding to FOIA/PA-2016-0532, please note that the Office of Government Information Services (OGIS) offers mediation services to resolve disputes between FOIA requesters and Federal agencies. You may contact OGIS or the NRC Public Liaison in any of the following ways:

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

NRC Public Liaison  
[Robert.Webber@nrc.gov](mailto:Robert.Webber@nrc.gov)  
301-415-6054

Sincerely,

**/RA/**

David J. Nelson  
Chief Information Officer  
Office of the Chief Information Officer

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 Telephone: 202-741-5770  
 Toll-free: 1-877-684-6448  
 Fax: 202-741-5769

NRC Public Liaison  
[Robert.Webber@nrc.gov](mailto:Robert.Webber@nrc.gov)  
 301-287-0763

Sincerely,

**/RA/**

David J. Nelson  
 Chief Information Officer  
 Office of the Chief Information Officer

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