



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

DEC 01 2015

IN RESPONSE REFER TO:
FOIA/PA-2016-00028A
FOIA/PA-2016-00040

Julian Tarver, (b) (6)

Dear Mr. Tarver:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am responding to your letter dated November 6, 2015, in which you appealed the agency's October 28, 2015 response related to your September 30, 2015 Freedom of Information Act (FOIA) request, FOIA/PA-2016-00040. You appealed the denial of information.

Acting on your appeal, I have reviewed your request, which asked for copies of the "initial request, agency response and records released in CON-2015-0001," and the agency's full denial of the eight pages of consultation-related records deemed responsive to your request. I have denied your appeal.

The FOIA request involved in CON-2015-0001 was directed to another agency, the Office of Personnel Management (OPM). The request that OPM received was from an individual seeking his own, Privacy Act-covered, records arising from a background investigation conducted by the OPM's Federal Investigative Services. During the course of that background investigation, the NRC was contacted and provided certain information to OPM. As agencies commonly do when they locate records or information originating with other agencies in their files, which they determine to be responsive to the FOIA requests they receive, OPM/Federal Investigative Service's FOIA Office sent a consultation request to the NRC's FOIA Office. Thus, the records in NRC's possession as a result of this consultation request, and which are the subject of your appeal, consist of: (1) OPM/Federal Investigative Service's consultation request letter (one page); (2) the individual's Freedom of Information Act/Privacy Act Record Request Form (two pages); and (3) the OPM/Federal Investigative Service's Report of Investigation (four pages); and (4) the OPM/Federal Investigative Service's task order form pertaining to the conduct of the background investigation.

The NRC's initial response appropriately claimed FOIA exemptions 5 and 7(C). The NRC's consultation response constituted a recommendation to OPM/Federal Investigative Service's FOIA Office, based upon its equities in the information, and not a final determination, thereby falling within exemption 5 and the deliberative process privilege. In addition, these records are maintained by the OPM/Federal Investigative Services in a system of records that is available (in part) only to the individual to whom they pertain. See "Personnel Investigation Records", OPM Central-9, which may be found at <https://www.opm.gov/information-management/privacy-policy/sorn/opm-sorn-central-9-personnel-investigations-records.pdf>. Upon receipt of your

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appeal, the NRC FOIA Office contacted its counterpart at the OPM/Federal Investigative Services and confirmed that, absent written authorization from the individual, or proof of that individual's death, all of these pages would be withheld from a third party requester, such as yourself, on the basis of FOIA exemption 7(C). Accordingly, the FOIA Office will not refer this request to the OPM/Federal Investigative Service's FOIA Office. Should you wish to make a request directly to that office, their mailing address is: OPM-Federal Investigative Services, ATTN: FOI/PA Office, 1137 Branchton Road, P.O. Box 618, Boyers, PA 16018.

This is the final agency decision. As set forth in the FOIA (5 U.S.C. 552(a)(4)(B)), you may seek judicial review of this decision in the district court of the United States in the district in which you reside or have your principal place of business. You may also seek judicial review in the district in which the agency's records are situated 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 as a nonexclusive alternative to litigation. Using OGIS 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
Email: ogis@nara.gov
Telephone: 202-741-5770
Toll-free: 1-877-684-6448
Fax: 202-741-5769

Sincerely,



Darren B. Ash
Chief Information Officer
Office of the Chief Information Officer