



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

APR 27 2017

IN RESPONSE REFER TO:
FOIA/PA-2017-00145A
FOIA/PA-2017-00190

Andrew DeSalvo
Post Office Box 1515
Santa Fe, NM 87504

Dear Mr. DeSalvo:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am responding to your letter dated April 3, 2017, in which you appealed the agency's February 2, 2017, response related to your December 2, 2016, Freedom of Information Act (FOIA) request, FOIA/PA-2017-00190. You appealed the denial of information withheld under exemption (b)(7)(F).

Acting on your appeal, I have reviewed Attachment 3 to the Request for Enforcement Discretion for Technical Specification 3/4.7.4, Ultimate Heat Sink¹, which was withheld in its entirety, and have determined that the exemption applied was appropriate. Therefore, I have denied your appeal.

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 withheld document contains information that may provide potential adversaries with insight into Turkey Point's security-related vulnerabilities and emergency actions. In *Electronic Privacy Information Center v. Department of Homeland Security*, 2015 WL 525183 (D.C. Cir. Feb. 10, 2015), at *1, the Court of Appeals for the District of Columbia Circuit found that exemption (b)(7)(F) could be used to withhold a protocol used during critical emergencies. As such, disclosure of such information can reasonably be expected to undermine the physical security at the NRC, thereby creating a risk of harm to security personnel and other individuals, and the information was properly withheld under Exemption (b)(7)(F).

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:

¹ The ML numbers for the publicly available documents, *Request for Extension of Enforcement Discretion TS 3.4.7.4* (ML14214A520), *Request for Enforcement Discretion TS 3/4.7.4., Ultimate Heat Sink* (ML14204A083), and *Request for Revision of Enforcement Discretion TS 3/4.7.4* (ML14210A005) were provided to you in the final response. They were incorrectly identified in your incoming appeal as the withheld information.

DeSalvo, A.

- 2 -

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,

A handwritten signature in black ink, appearing to read "David J. Nelson". The signature is fluid and cursive, with a large initial "D" and "N".

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