



RESPONSE TO FREEDOM OF INFORMATION ACT (FOIA) REQUEST

2017-0472

1

RESPONSE TYPE

INTERIM

FINAL

REQUESTER:

Julian Tarver

DATE:

06/02/2017

DESCRIPTION OF REQUESTED RECORDS:

Copy of all court records of Office of General Counsel maintains on court case "Criscione v. NRC 13-cu-00942-RMC" (D.D.C.).

PART I. - INFORMATION RELEASED

You have the right to seek assistance from the NRC's FOIA Public Liaison. Contact information for the NRC's FOIA Public Liaison is available at <https://www.nrc.gov/reading-rm/foia/contact-foia.html>

- Agency records subject to the request are already available on the Public NRC Website, in Public ADAMS or on microfiche in the NRC Public Document Room.
- Agency records subject to the request are enclosed.
- Records subject to the request that contain information originated by or of interest to another Federal agency have been referred to that agency (see comments section) for a disclosure determination and direct response to you.
- We are continuing to process your request.
- See Comments.

PART I.A - FEES

NO FEES

AMOUNT*

*See Comments for details

- You will be billed by NRC for the amount listed.
- You will receive a refund for the amount listed.
- Fees waived.

- Minimum fee threshold not met.
- Due to our delayed response, you will not be charged fees.

PART I.B - INFORMATION NOT LOCATED OR WITHHELD FROM DISCLOSURE

- We did not locate any agency records responsive to your request. *Note:* Agencies may treat three discrete categories of law enforcement and national security records as not subject to the FOIA ("exclusions"). 5 U.S.C. 552(c). This is a standard notification given to all requesters; it should not be taken to mean that any excluded records do, or do not, exist.
- We have withheld certain information pursuant to the FOIA exemptions described, and for the reasons stated, in Part II.
- Because this is an interim response to your request, you may not appeal at this time. We will notify you of your right to appeal any of the responses we have issued in response to your request when we issue our final determination.

You may appeal this final determination within 90 calendar days of the date of this response by sending a letter or e-mail to the FOIA Officer, at U.S. Nuclear Regulatory Commission, Washington, D.C. 20555-0001, or FOIA.Resource@nrc.gov. Please be sure to include on your letter or email that it is a "FOIA Appeal." You have the right to seek dispute resolution services from the NRC's Public Liaison, or the Office of Government Information Services (OGIS). Contact information for OGIS is available at <https://ogis.archives.gov/about-ogis/contact-information.htm>

PART I.C COMMENTS (Use attached Comments continuation page if required)

Signature - Freedom of Information Act Officer or Designee

Stephanie A. Blaney

Digitally signed by Stephanie A. Blaney
DN: c=US, o=U.S. Government, ou=U.S. Nuclear Regulatory Commission, ou=NRC-PIV, cn=Stephanie A. Blaney, o.9.2342.10200000.100.1.1=200001997
Date: 2017.06.02 11:07:26 -0400

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

LAWRENCE CRISCIONE)	
1412 Dial Court)	
Springfield, IL 62704)	
)	
Plaintiff,)	
)	
v.)	Civil Action No.
)	
U.S. NUCLEAR REGULATORY)	
COMMISSION)	
11545 Rockville Pike)	
Rockville, MD 20852)	
)	
Defendant.)	
<hr/>		

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

1. This is an action under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, as amended, and the Privacy Act of 1974 ("Privacy Act"), 5 U.S.C. § 552(a) challenging the failure of the U.S. Nuclear Regulatory Commission ("NRC") to release records pertaining to and requested by plaintiff.

2. This case seeks declaratory relief that the NRC is in violation of the FOIA and Privacy Act for failing to release records responsive to plaintiff's request for records and injunctive relief ordering defendant NRC to immediately release the requested records in their entirety.

JURISDICTION AND VENUE

3. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the NRC pursuant to 5 U.S.C. § 552(a)(4)(B) and 5 U.S.C. § 552a(g). This Court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331. Venue lies in this district under 5 U.S.C. § 552(a)(4)(B) and 5 U.S.C. § 552a(g)(5).

PARTIES

4. Lawrence Criscione is an individual employed by the NRC. Mr. Criscione is a resident of Springfield, Illinois.

5. Defendant NRC is an agency within the meaning of 5 U.S.C. § 552(f) and 5 U.S.C. § 702. The NRC is the federal agency with possession and control of the requested records and is responsible for fulfilling plaintiff's FOIA request.

FACTS UNDERLYING PLAINTIFF'S PRAYER FOR RELIEF

6. On January 17, 2013, Lawrence Criscione was interrogated by special agents from the NRC's Office of Inspector General concerning a release of NRC documents he had given to the U.S. Special Counsel and select committees in the House of Representatives and the Senate. During the interview, Mr. Criscione was informed by Special Agents William Walls and Special Agent Daniel Esmond that he would be able to review the transcript of the interview for accuracy. However, at no time since the interview has he been provided the opportunity to conduct this review.

7. By e-mail dated March 3, 2013, Lawrence Criscione submitted a FOIA/Privacy Act request for "[a] copy of the digital or tape recording of my 2013-01-17 interrogation by Special Agents William Walls and Daniel Esmond concerning OIG Investigation 2013-001."

8. By letter dated March 4, 2013, the NRC FOIA Office acknowledged Mr. Criscione's request. The request was assigned case number FOIA/PA-2013-00153.

9. By letter dated March 14, 2013, the NRC denied Mr. Criscione's request pursuant to FOIA Exemption 7(A). No Privacy Act exemption was provided. Mr. Criscione was given administrative appeals rights.

10. By letter dated March 15, 2013, Mr. Criscione submitted an administrative appeal of the NRC denial. Mr. Criscione noted that he made a Privacy Act request not a FOIA request as he sought records pertaining to the interrogation of him.

11. By letter dated March 18, 2013, the NRC acknowledged Mr. Criscione's administrative appeal and assigned it FOIA/PA-2013-0008A.

12. By letter dated April 2, 2013, Hubert Bell, Inspector General of the NRC denied Mr. Criscione's appeal. Initially, Mr. Bell stated that the records are exempt pursuant to Exemption (j)(2) of the Privacy Act. Mr. Bell then stated that the records are exempt pursuant to Exemption (7)(A) of the FOIA.

13. Mr. Criscione's own statements to NRC OIG Special Agents are not withholdable from him pursuant to Exemption 7(A) of the FOIA and have been wrongfully withheld from him.

CLAIM ONE

(Failure to Produce Records Under the FOIA)

14. Plaintiff re-alleges and incorporates by reference all preceding paragraphs.

15. Plaintiff properly asked for records within the custody and control of the NRC.

16. Plaintiff is entitled by law to access to the records requested under the Privacy Act and FOIA, unless defendant makes an explicit and justified statutory exemption claim.

17. Plaintiff has exhausted administrative remedies with respect to the NRC's wrongful withholding of the requested records.

18. Plaintiff is entitled to injunctive and declaratory relief with respect to the release and disclosure of the requested documents.

CLAIM TWO

19. Plaintiff re-alleges and incorporates by reference all preceding paragraphs.

20. Plaintiff is entitled by law to access the records requested under the Privacy Act, 5 U.S.C. § 552a.

21. Defendant NRC is in violation of the Privacy Act, 5 U.S.C. § 552a, by failing to fully and lawfully fulfill Plaintiff's March 3, 2013, request for records pertaining to his interview of January 3, 2013.

PRAYER FOR RELIEF

WHEREFORE, plaintiff respectfully requests that this Court:

(1) Issue a declaration that defendant NRC has violated the FOIA by failing to lawfully satisfy plaintiff's FOIA/Privacy Act request of March 3, 2013;

(2) Order defendant to disclose the requested records and make copies available to plaintiff at no cost to plaintiff;

(3) Award plaintiff reasonable attorney fees and litigation costs in this action pursuant to 5 U.S.C. § 552(a)(4)(F); and

(4) Grant such other and further relief as the Court may deem just and proper.

Respectfully submitted,

Scott A. Hodges (D.C. Bar 430375)
P.O. Box 42002
Washington, D.C. 20015
Phone: (301) 404-0502
Fax: (413) 641-2833

Dated: June 21, 2013

Attorney for Plaintiff

*to about
10/28/13*

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

LAWRENCE CRISCIONE,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No.: 13-0942 (RMC)
)	
U.S. NUCLEAR REGULATORY)	
COMMISSION,)	
)	
Defendant.)	

STIPULATION OF SETTLEMENT AND DISMISSAL

Plaintiff Lawrence Criscione ("Plaintiff") and the U.S. Nuclear Regulatory Commission ("NRC") ("Defendant") hereby settle and compromise the above-entitled lawsuit brought under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, as amended, on the following terms:

1. Plaintiff agrees to dismiss this suit with prejudice with each side bearing its own fees and costs, based on the terms set forth below.
2. Within five working days of the closure of NRC's Office of Inspector General's ("OIG") Investigation 13-001 and 13-005 or within 12 months of the date of this agreement, whichever is sooner, the Defendant shall release to Plaintiff an un-redacted digital copy of the recording of the requested January 17, 2013 interview regarding OIG Investigations 13-001 and 13-005 (the "recording"). Defendant will notify Plaintiff once both OIG Investigations 13-001 and 13-005 are closed. Notification to the Plaintiff will entail the NRC sending a letter by certified mail to the Plaintiff at 1412 Dial Court, Springfield, IL 62704 ("Plaintiff's mailing address") and including in the letter instructions for whom to contact to arrange timely receipt of the digital recording. This notification letter will be postmarked within five working days of the

ML13305A279

closure of OIG Investigations 13-001 and 13-005. If Plaintiff's mailing address changes after the signing of this agreement but before receipt of the recording, Plaintiff will notify the NRC's Office of Inspector General of any change in address. For purposes of this paragraph, "closure" means notice from the agency to OIG of management's decision concerning agency action. If on the one year anniversary of the date of this agreement the Plaintiff has not yet received an un-redacted digital copy of the recording, then by the end of the next working day the Defendant will send the un-redacted recording to the Plaintiff via certified mail to the Plaintiff's mailing address. For the purposes of this agreement, "certified mail" includes any government or private postal or parcel service which entails signing for the receipt of the document or package. Email transmission or personal pick-up at the NRC's FOIA desk in Rockville, MD (i.e. the methods traditionally used by the Plaintiff to receive documents from the NRC under the Freedom of Information Act) may, and should, be used in lieu of certified mail if the parties can agree to less formal arrangements for receipt of the un-redacted digital recording at the time it is available for release.

3. At the time Plaintiff receives an un-redacted copy of the digital recording, any and all obligations as set forth under paragraph 2 will be satisfied.

4. This Stipulation of Settlement constitutes the full and complete satisfaction of any and all claims arising from (a) the allegations set forth in the complaint filed in this lawsuit and (b) any litigation or administrative proceeding that Plaintiff has brought, could bring, or could have brought regarding Plaintiff's FOIA/Privacy Act request in this case with the exception of enforcing the settlement agreement.

5. This Stipulation of Settlement does not constitute an admission of liability or fault on the part of Defendant, the United States, its agents, servants, or employees, and is entered into

by all parties for the sole purpose of compromising disputed claims and avoiding the expenses and risks of further litigation.

6. This Stipulation of Settlement is binding upon and inures to the benefit of the parties hereto and their respective successors and assigns.

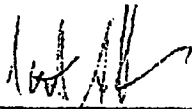
7. The Court retains jurisdiction over enforcement of any other provisions of this Stipulation of Settlement.

(remainder of this page left intentionally blank)

8. The execution and filing of this Stipulation of Settlement by counsel for Plaintiff and by counsel for Defendant constitutes a dismissal of this lawsuit, with prejudice, pursuant to Rule 41(a)(1)(A)(ii).


Dated: October 28, 2013

Respectfully submitted,

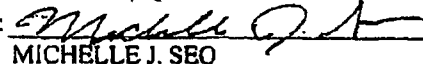


SCOTT A. HODES
D.C. Bar # 430375
P.O. Box 42002
Washington, D.C. 20015
(301) 404-0502
infoprivacylaw@yahoo.com

Attorney for Plaintiff

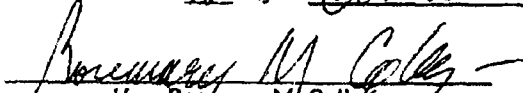
RONALD C. MACHEN JR., D.C. Bar #447889
United States Attorney 

DANIEL F. VAN HORN, D.C. Bar #924092
Chief, Civil Division 

By: 
MICHELLE J. SEO
Special Assistant United States Attorney
555 4th Street, N.W.
Washington, D.C. 20530
(202) 252-2633
michelle.seo@usdoj.gov

Attorneys for Defendant

It is SO ORDERED on this 29 day of October, 2013.


Hon. Rosemary M. Collyer
UNITED STATES DISTRICT JUDGE

closure of OIG Investigations 13-001 and 13-005. If Plaintiff's mailing address changes after the signing of this agreement but before receipt of the recording, Plaintiff will notify the NRC's Office of Inspector General of any change in address. For purposes of this paragraph, "closure" means notice from the agency to OIG of management's decision concerning agency action. If on the one year anniversary of the date of this agreement the Plaintiff has not yet received an un-redacted digital copy of the recording, then by the end of the next working day the Defendant will send the un-redacted recording to the Plaintiff via certified mail to the Plaintiff's mailing address. For the purposes of this agreement, "certified mail" includes any government or private postal or parcel service which entails signing for the receipt of the document or package. Email transmission or personal pick-up at the NRC's FOIA desk in Rockville, MD (i.e. the methods traditionally used by the Plaintiff to receive documents from the NRC under the Freedom of Information Act) may, and should, be used in lieu of certified mail if the parties can agree to less formal arrangements for receipt of the un-redacted digital recording at the time it is available for release.

3. At the time Plaintiff receives an un-redacted copy of the digital recording, any and all obligations as set forth under paragraph 2 will be satisfied.

4. This Stipulation of Settlement constitutes the full and complete satisfaction of any and all claims arising from (a) the allegations set forth in the complaint filed in this lawsuit and (b) any litigation or administrative proceeding that Plaintiff has brought, could bring, or could have brought regarding Plaintiff's FOIA/Privacy Act request in this case with the exception of enforcing the settlement agreement.

5. This Stipulation of Settlement does not constitute an admission of liability or fault on the part of Defendant, the United States, its agents, servants, or employees, and is entered into

by all parties for the sole purpose of compromising disputed claims and avoiding the expenses and risks of further litigation.

6. This Stipulation of Settlement is binding upon and inures to the benefit of the parties hereto and their respective successors and assigns.


7. The Court retains jurisdiction over enforcement of any other provisions of this Stipulation of Settlement.

(remainder of this page left intentionally blank)

8. The execution and filing of this Stipulation of Settlement by counsel for Plaintiff and by counsel for Defendant constitutes a dismissal of this lawsuit, with prejudice, pursuant to Rule 41(a)(1)(A)(ii).

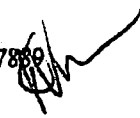
Dated: October 28, 2013

Respectfully submitted,

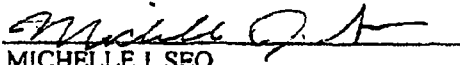


SCOTT A. HODES
D.C. Bar # 430375
P.O. Box 42002
Washington, D.C. 20015
(301) 404-0502
infoprivacylaw@yahoo.com

Attorney for Plaintiff

RONALD C. MACHEN JR., D.C. Bar #447889 
United States Attorney

DANIEL F. VAN HORN, D.C. Bar #924092
Chief, Civil Division 

By: 

MICHELLE J. SEO
Special Assistant United States Attorney
555 4th Street, N.W.
Washington, D.C. 20530
(202) 252-2633
michelle.seo@usdoj.gov

Attorneys for Defendant

It is SO ORDERED on this ____ day of _____, 2013.

Hon. Rosemary M. Collyer
UNITED STATES DISTRICT JUDGE