



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

NOV 16 2017

IN RESPONSE REFER TO:
FOIA/PA-2018-00007A
FOIA/PA-2017-00677

Mr. Samuel Miranda
2212 Forest Glen Road
Silver Spring, MD 20910

Dear Mr. Miranda:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am responding to your letter dated November 6, 2017, in which you appealed the agency's October 30, 2017 response related to your September 6, 2017 Freedom of Information Act (FOIA) request, FOIA/PA-2017-00677. You appealed the denial of information¹.

Acting on your appeal, I have reviewed the records and have determined that the partial withholdings under exemptions 5 and 6 that you are challenging were appropriate for the reasons set forth below. Therefore, I have denied your appeal.

The most commonly invoked privilege incorporated within exemption 5 is the deliberative process privilege. The deliberative process privilege is designed to protect the decision-making processes of government agencies. This privilege protects not merely records, but also the integrity of the deliberative process itself where the exposure of that process would result in harm. In order for the deliberative process privilege to apply, two requirements must be met. First, the communication must be predecisional, *i.e.*, it is antecedent to the adoption of an agency policy. Second, the communication must be deliberative, *i.e.*, a direct part of the deliberative process in that it makes recommendations or expresses opinions on legal or policy matters. The portions of the records withheld on this basis include a draft of the Safety Evaluation, various analyses of, and recommendations for responding to, certain issues raised by your 2.206 petition, comments on a draft set of slides prepared for use in an upcoming internal briefing, and the preparation of questions and answers that may be used in handling public inquiries on various backfitting-related matters. Records, or portions of records, that reflect upon the give-and-take prior to an agency determination, which expose the opinions, recommendations, and suggested draft language offered by various NRC staff in the course of that agency decision-making, have long been held to be protected by exemption 5 and the deliberative process privilege.

¹ In the October 30, 2017 response, portions of the records responsive to your request were withheld on the basis of FOIA exemptions 4 (for proprietary information), 5 (for predecisional and deliberative information), and 6/7C (for personally identifiable information of third parties whose names appeared in the records). We read your appeal letter to challenge only the denial of the predecisional and deliberative information withheld under exemption 5 and the name or names of individual(s) redacted on two pages of the records released to you on the basis of exemption 6. We note that the box corresponding to exemption 6 on Part II of the Form 464 response was inadvertently not checked.

Your appeal letter suggests that more discriminating redactions could be made to the withheld portions without jeopardizing the agency's deliberative process. Agencies may withhold factual material in an otherwise deliberative record if those facts were selectively culled by the author out of a larger group of facts since the very act of selection is deliberative in nature, or when such facts are so thoroughly integrated with deliberative material that its disclosure would expose or cause harm to the agency's deliberations. Moreover, agencies are not required to commit significant time and resources to the separation of disjointed words, phrases, or even sentences which, taken separately or together, have minimal or no information content. For these reasons, I conclude that the withholding of these redacted portions on the basis of exemption 5 and the deliberative process privilege is proper.

Your appeal letter also takes issue with the redaction of the name (or names) of the individual(s) on the basis of exemption 6 on two pages of the released records. You question why this NRC employee receives a higher level of privacy protection than the other employees whose names were not redacted. While the NRC routinely discloses the identities of its technical staff as they perform their official duties, we do ascribe greater privacy protection to those employees encumbering "criminal investigating" job positions; *i.e.*, the special agents from the Offices of Investigation and the Inspector General. Public identification of criminal investigators could conceivably subject them to harassment or annoyance in the conduct of their official duties and in their private lives. As such, the redaction of this OIG investigator's name is appropriate.

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.

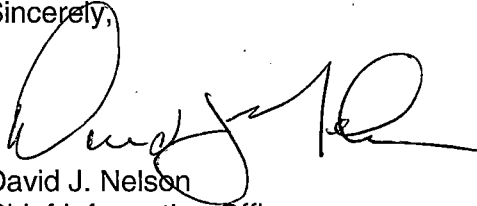
The 2007 FOIA amendments created the Office of Government Information Services (OGIS) to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a nonexclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. You may contact OGIS in any of the following ways:

Miranda, S.

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Office of Government Information Services
National Archives and Records Administration
732 North Capitol Street, NW
Washington, D.C. 20401
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", written over a large, stylized, circular flourish.

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