



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

JAN 08 2018

IN RESPONSE REFER TO:
NRC-2018-000211
FOIA-2018-0049

Mr. 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 26, 2017, in which you appealed the agency's November 13, 2017 response related to your November 9, 2017 Freedom of Information Act (FOIA) request, FOIA-2018-0049, which sought a copy of the draft version of the FOIA chapter of the Management Directives Handbook. You appealed the denial of information.

Acting on your appeal, I have considered the matter and have determined that the full denial of the draft FOIA chapter was appropriate. 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 expresses opinions on, or makes recommendations about, legal or policy matters.

The FOIA chapter of the Management Directives handbook remains in draft form. In its current state, it contains language that has been proposed for, but not yet adopted in, FOIA Management Directive (MD) 3.1. The language in the current draft reflects differing points of view of, and comments exchanged among, various program offices within the NRC. 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.

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.

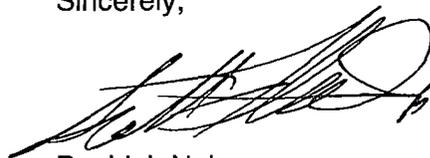
Tarver, J.

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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
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", with a stylized flourish at the end.

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