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GOVERNMENT ACCOUNTABILITY PROJECT

1612 K Street, NW, Suite #1100

Washington, DC 20006

(202) 457-0034 | info@whistleblower.org

April 11, 2018

U.S. Nuclear Regulatory Commission  
FOIA/PA Privacy Act Officer  
Washington, DC 20555-0001  
(via Email: [FOIA.Resource@NRC.gov](mailto:FOIA.Resource@NRC.gov))

RE: Freedom of Information Act Request

Dear FOIA Officer:

Pursuant to the Freedom of Information Act, 5 U.S.C. 552, as amended, and 10 CFR 9.23 of the Commission's regulations, The Government Accountability Project (GAP) requests that the US Nuclear Regulatory Commission (NRC) provide any and all records described in the numbered paragraphs below.

In the absence of guidance from the Trump Administration, the current presidential guidance comes from President Obama's 2009-Jan-21 memo, in which he declared the following policy for Executive Branch agencies such as the US NRC:

*The Freedom of Information Act should be administered with a clear presumption: In the face of doubt, openness prevails. ... All agencies should adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA, and to usher in a new era of open Government. The presumption of disclosure should be applied to all decisions involving FOIA.*

The President's policy of openness was reiterated in guidelines issued on March 19, 2009 by Attorney General Eric Holder. Contained in those guidelines was the following direction:

*First, an agency should not withhold information simply because it may do so legally. I strongly encourage agencies to make discretionary disclosures of information. An agency should not withhold records merely because it can demonstrate, as a technical matter, that the records fall within the scope of a FOIA exemption.*

In recognition of the FOIA policy declared by the President and the guidelines promulgated by the Attorney General, GAP expects that all records requested below will be released in their entirety except where release is prohibited by law. That is, GAP expects the NRC to act in a manner such that the "presumption of disclosure" is applied "to all decisions involving FOIA" and such that the agency will "not withhold records merely because it can demonstrate, as a technical matter, that the records fall within the scope of a FOIA exemption". However, GAP

does not desire the release of the name of any individual who, prior to providing information to the agency, specifically requested confidentiality or anonymity; as such you can consider the names of such individuals—but not the information they provided—as outside the scope of this FOIA request.

For the requests in the numbered paragraphs below we are requesting any and all records, including, but not limited to, reports, studies, test results, digital or tape recordings of interviews or interrogations, correspondence, memoranda, meeting notes, meeting minutes, working papers, graphs, charts, diagrams, notes from drop-in visits, summaries of conversations and interviews, computer records, transcripts, emails, and any other electronic or hardcopy documents or recorded audio or video.

For the requests that reference earlier FOIA requests, GAP requests unredacted copies of records that were assembled in response to those request and not the redacted versions released under the request. GAP expects all information not prohibited from release by law and that redactions will not be made “*merely because [the NRC] can demonstrate, as a technical matter, that the records fall within the scope of a FOIA exemption.*” GAP also desires all portions of the records assembled and not just those portions that the NRC decided fell in the scope. That is, nothing should be marked as “Out of Scope” except, as mentioned above, for cases of the appearance of the name of an individual specifically granted confidentiality. When referencing earlier FOIA requests, the scope of this request is all records assembled and not the subset of records released.

Some of the requested records refer to NRC employee Lawrence Criscione. As detailed in the fee waiver request below, GAP is seeking to understand how the NRC has handled Mr. Criscione’s concerns regarding Callaway Plant and Generic Issue 204. GAP is also seeking to determine whether or not Mr. Criscione’s outspokenness on these issues have resulted in any retaliation from the NRC. Mr. Criscione is aware of this FOIA request and has consented to the release of any information regarding him and contained in the records sought below to GAP. Mr. Criscione has been copied on this request. We have provided a signed Privacy Act release form from him in an earlier FOIA request (FOIA 2018-0003) and he has indicated a willingness to renew that release in the event that this FOIA request uncovers records pertaining to him and the agency requires an additional release.

1. NRC ADAMS document ML17352A430, *Study of Reprisal and Chilling Effect for Raising Mission-Related Concerns and Differing Views*.
2. All records pertaining to the authoring of, review of, and response to ML17352A430.
3. All records pertaining to the ACRS External Hazards Working Group Report, including all internal and external communications.
4. All records pertaining to OIG files #A10-06606, #A11-06702, #C11-023, #A11-06828, #A12-06876, #A12-07079, #A12-07080, #C12-080, #A14-07479, #A13-07114, C13-005, #A12-07094, #C12-079, #A13-07251, #A14-07512, #A11-06735, #C11-031, #A12-07095, #C13-001, #A13-07258, #C13-045, #C11-037, #A11-06752, #A13-07105, #A13-07209, #A13-07267, #A13-07296, #C13-055, #A14-07527, #A14-07534.
5. Any and all studies possessed or reviewed by the NRC pertaining to both internal and external security threats at dams upstream of nuclear reactor plants or dams composing the ultimate heat sink for nuclear reactor plants. Include any studies regarding design basis threat assessments for dam and regarding vetting of visitors and workers to dams. Include any and all studies reviewed by the NRC that were done for or by the Tennessee Valley Authority, the US Army Corps of

- Engineers, the Federal Energy Regulatory Commission, the Department of Homeland Security or any other federal, state or private concern that operates dams or is concerned with their security.
6. All records pertaining to the 2012-Dec-18 letter from the Chairman of the Senate Committee on Homeland Security & Governmental Affairs (Sen. Joseph Lieberman) to the NRC Inspector General (Hubert Bell) including all studies or investigations done in response to that letter and all follow up correspondence with the Senate Committee on Homeland Security & Governmental Affairs. Some of these records may have been assembled under FOIA/PA 2015-0451.
  7. Any and all records pertaining to the following FOIA/PA requests, appeals and lawsuits: 2013-0013, 2013-0008, 2013-0127, 2013-0262, 2013-0239, 2013-0010A, 2013-0015A, 2013-0018A, 2013-0022A and lawsuit 1:13-cv-00942-RMC (PEER v. NRC). Some of these records may have been assembled under FOIA/PA 2013-0262 and 2015-0331.
  8. The following information regarding all OIG Allegations since the start of fiscal year 2007 that pertain to Callaway Plant, Lawrence Criscione, release of official information, violation of Information Technology policies, involvement of or assistance from the Computer Crime Unit or the Cyber Crime Unit (CCU), unprofessional behavior, misuse of government position, employees working on projects outside of their official duties, time and attendance fraud, or referral for prosecution to an Assistant US Attorney: Allegation Number & Name, Date Received, Date Dispositioned, Disposition, Case number, Program Office, Agent.
  9. The following information regarding all OIG Cases since the start of fiscal year 2007 that pertain to Callaway Plant, Lawrence Criscione, release of official information, violation of Information Technology policies, involvement of or assistance from the Computer Crime Unit or the Cyber Crime Unit (CCU), unprofessional behavior, misuse of government position, employees working on projects outside of their official duties, time and attendance fraud, or referral for prosecution to an Assistant US Attorney: Allegation Number & Title, Date Opened, Date Due, Date Closed, Case Type, Case Agent, Program Office, Primary Classification, Disposition.
  10. All records pertaining to Lawrence Criscione and contained in NRC-18 Privacy Act System of Records (Office of the Inspector General Investigative Records). Some of these records were assembled under FOIA/PA 2014-0327 and 2016-0132.
  11. All records pertaining to Allegations RIV-2007-A-0028, RIV-2007-A-0048, RIV 2007-A-0093, RIV-2007-A-0096, RIV-2007-A-117, RIV-2007-A-0130, RIV-2009-A-0036 and RIV-2009-A-0037 and to OI Cases 4-2007-049, 4-2008-004 and 4-2009-43F. Some earlier NRC FOIA requests under which the NRC may have processed records falling under these allegations FOIA/PA 2009-0009, 2009-0011, 2009-0095, 2009-0102, 2009-0115, 2009-0222, 2009-0223, 2010-0055, 2010-0109, 2010-0152, 2010-0223, 2010-0225, 2010-0226, 2010-0227, 2010-0311, 2010-0312, 2010-0338, 2010-0343, 2014-0490 and 2016-0137.
  12. All correspondence between Ameren Corporation and the NRC since February 26, 2010 regarding the 2003-Oct-21 reactor shutdown. Some of these records may have been assembled under FOIA/PA 2010-0324.
  13. All correspondence between the NRC and elected representatives, appointed regulators or employees of the state of Missouri regarding the 2003-Oct-21 reactor shutdown at Callaway Plant. Some of these records may have been assembled under FOIA/PA 2012-0080, 2012-0081 and 2012-0082.
  14. All records, including correspondence between the NRC and Ameren Corporation and including notes from phone calls and drop-in visits, pertaining to the 10 CFR 2.206 petitions submitted by Lawrence Criscione on 2010-Apr-27, 2010-Apr-30, 2010-Sep-17, 2011-Oct-7 and 2012-Aug-15.
  15. All Memoranda of Understanding between the NRC and any outside organization concerning access to information on dams and/or flooding. Some of these records were assembled under FOIA/PA 2016-0455.
  16. All records concerning interactions between the NRC and the Army Corps of Engineers concerning flooding, dam failures and the release of flooding or dam failure data and/or studies. Some of these records were assembled under FOIA/PA 2013-0129 and 2016-0455.

17. All records pertaining to the NRC's decision to restrict access to flooding and dam failure information from employees not specifically assigned duties requiring the use of that information.
18. All records related to NRC guidance and policies concerning "need-to-know" as it pertains to unclassified non-safeguards information. We are specifically concerned with restrictions regarding the sharing of nuclear-safety related information (e.g. flooding at nuclear power plants) and you may exclude any guidance strictly pertaining to limiting access to Personally Identifiable Information or the identity of alleged.
19. All records related to the NRC decision to withdraw NRC ADAMS document ML13084A022, *03/25/2013 Slides From Meeting With Duke Energy Carolinas, LLC, Oconee Nuclear Station Units 1, 2, and 3, Concerning the Flooding Hazard Reevaluation Report*, from the public domain. Specifically GAP seeks the affidavit required under 10 CFR 2.390(b)(1). If the NRC waived the affidavit requirements, then GAP seeks any and all records pertaining to the NRC decision to withdraw ML13084A022 from the public domain.
20. All records pertaining to US Office of Special Counsel Case File No. DI-15-5254.

Please note that items 4 through 20 were included in FOIA 2018-0003. They have been re-included here in the event that the NRC has generated any new records (that is, any records generated since accepting FOIA 2018-0003 in October 2017). Records pertaining to items 4-20 that fall within the scope of FOIA 2018-0003 need not be provided under this FOIA. We are seeking any and all records that might have been excluded from the scope of FOIA 2018-0003.

GAP expects the NRC to provide all the requested records within 20 working days as set forth in the Freedom of Information Act and 10 CFR 9.25. If it is not possible for the NRC to process every record within the time limits set forth in the FOIA and in its own regulations, then GAP expects the NRC to make every effort to provide every record possible within the prescribed time limits and to regularly provide partial requests as records become available for release. For any and all requested records that cannot be reasonably processed with the statutory 20 working day time limit, GAP expects a detailed time table from the NRC stating when we can expect the undelivered records. Although the number of records requested is large, GAP wishes the NRC to recognize that the majority of the records sought have been assembled and processed under earlier FOIA requests submitted by others. As such, most of the records desired should already be in the possession of the NRC's FOIA office and a timely release of those records is expected. However, please note that GAP desires unredacted copies of all records sought and not the redacted versions provided to earlier requesters.

For any portion of the request that you deem appropriate to deny, GAP requests that you provide an index itemizing and describing the withheld information. Pursuant to the holding of *Vaughn v. Rosen*, such an index should provide a detailed justification for claiming a particular exemption that explains why each such exemption applies to the withheld information.

In the latest Presidential guidance to Executive Branch agencies on the FOIA, the President stated that "*All agencies should use modern technology to inform citizens about what is known and done by their Government.*" In line with that directions, GAP desires that the NRC release the requested records through its Agency-wide Documents Access and Management System (ADAMS), and/or provide the documents in a digital format to GAP. As such GAP does not expect there to be any duplication fees. **Do not provide records as paper copies.** Please send all correspondence concerning this request to Jack Kolar (primary point of contact) at [JackK@whistleblower.org](mailto:JackK@whistleblower.org) with a copy to Tom Devine at [TomD@whistleblower.org](mailto:TomD@whistleblower.org).

GAP requests that all fees incurred in connection with the attached request be waived, because “disclosure of the information is in the public interest and is not primarily in the commercial interest of the requester.” 5 U.S.C. §552 (a)(4)(A)(iii).

Please begin processing this request at the same time you are processing the request for a fee waiver. If you disallow our fee-waiver request, I pledge to pay the price of the FOIA request up to \$25. Alert me if it exceeds this price.

**(1) Purpose of request:**

The purpose of the request is to gather and make public information on NRC oversight, agency enforcement actions, agency internal Safety Culture, and agency transparency as pertaining to the handling of the October 21, 2003 shutdown at Callaway Plant and the flooding concerns due to upstream dam failures.

**(2) Extent to which GAP will extract and analyze the substantive content of the records:**

GAP’s staff will read every word of every document requested and, as necessary, seek outside expertise to analyze the documents.

GAP intends to use some of these records to assess what occurred during the October 21, 2003 shutdown at Callaway Plant, to assess how the utility responded to the incident and whether that response met their commitments under GL 82-04, and to assess the NRC’s investigation of it.

GAP intends to use some of these records to assess whether the NRC has inappropriately downplayed the October 21, 2003 shutdown to avoid embarrassing the utility.

GAP intends to use some of these records to assess the NRC’s response to flooding concerns at Oconee Nuclear Station once they became aware of those concerns in 2006. GAP also intends to assess the NRC’s response to the generic implication of those flooding concerns.

GAP intends to use some of these records to assess the manner in which the NRC kept the Oconee flooding concerns—and its generic implications—from public scrutiny and the NRC’s response to criticism that it has not been transparent with regard to the issues surrounding flooding concerns.

GAP intends to review these records to understand the NRC’s response to the concerns brought forth in Lawrence Criscione’s 2012-Sep-18 letter to NRC Chairman Allison Macfarlane and to later letters to NRC oversight committees.

GAP intends to use some of these records to understand why it took the NRC more than 11 months to release the 19-page letter requested under FOIA/PA 2013-0008 and to assess whether or not the requirements of the Freedom of Information Act were intentionally violated by the agency.

GAP intends to use some of these records to determine how often Lawrence Criscione has been the subject of NRC investigations, the basis for those investigations, the manner in which those investigations were conducted, the results of those investigations, and how those investigations compare to those of other individuals accused of similar conduct. GAP is trying to determine if Lawrence Criscione has been unduly singled out for special scrutiny as a result of his pursuit of resolution to various nuclear safety concerns.

For the US NRC Office of the Inspector General investigations that do not directly involve Mr. Criscione, GAP intends to review these investigative cases to determine if they have any commonality to the manner in which the NRC has addressed Lawrence Criscione's concerns regarding flooding and the 2003-Oct-21 atypical shutdown at Callaway Plant.

**(3) Nature of the specific activity or research in which the records will be used and GAP's qualifications to utilize the information for the intended use in such a way that it will contribute to public understanding:**

GAP is qualified to make use of the requested information. Its staff has demonstrated the ability to accurately interpret information and communicate that information in a form comprehensible to the general public. GAP is quoted in the media and has been cited as a reliable source of information in electronic and print media including newspapers such as the Washington Post and the New York Times. GAP is recognized and utilized as a reliable source of information in the electronic and broadcast media of television and radio.

GAP has a working relationship with nuclear engineers, physicists, nuclear plant operators, and other respected professionals who contribute to the full understanding of NRC oversight and enforcement actions.

Using the requested information, GAP intends to prepare press releases and reports on: (1) the NRC's ability/inclination to ensure that the operators it licenses to operate nuclear reactor plants are both competent and honest, (2) the NRC's ability/inclination to ensure that its licensees adequately identify problems and implement appropriate resolution, (3) the NRC's ability/inclination to ensure that—in accordance with the requirements of Generic Letter 82-04—its licensees actively participate in providing noteworthy Operating Experience to the Institute of Nuclear Power Operations (INPO), (4) the NRC's ability/inclination to address flooding concerns at nuclear power plant sites, (5) the NRC's ability/inclination to ensure nuclear safety related information—and particularly information regarding flooding and dam failures—is readily available to its technical staff and adequately disseminated to ensure a wide and diverse review, (6) the NRC's ability/inclination to ensure important nuclear safety information is transparently shared with the public, (7) the NRC's ability/inclination to ensure that its staff does not illegally obstruct the release of information under the Freedom of Information Act, and (8) the NRC's ability/inclination to ensure that its staff is not retaliated against for pursuing adequate resolution to nuclear safety concerns.

**(4) Likely impact on the public understanding of the subject as compared to the level of understanding of the subject prior to disclosure:**

Nuclear safety relies primarily upon the workers at nuclear facilities who are tasked with ensuring the plant is prepared to respond to an accident and responding to accidents when they occur. These workers need to be able to report concerns to the NRC and rely on the NRC to competently evaluate and address their concerns. Similarly, NRC staff need to be able to rely on their superiors to competently evaluate and address their concerns. GAP believes that a thorough accounting of the manner in which the NRC addressed (or failed to address) Lawrence Criscione's concerns regarding the 2003-Oct-21 shutdown at Callaway Plant and the flooding vulnerabilities at Oconee will greatly impact the public understanding of the challenges nuclear workers and NRC staff face in getting their management to address nuclear safety concerns. GAP desires the requested records in order to thoroughly review this topic and provide an accurate account of it.

**(5) Size and nature of the public whose understanding a contribution will be made:**

GAP is funded from approximately 20,000 donors and reaches approximately 18,000 readers via our newsletter. We have 65,772 active supporters on email, 15,466 on twitter and 15,657 between three affiliated Facebook sites.

GAP provides resource material to electronic and print media outlets with very broad outreach to the interested public at large so the actual public exposure to information potentially released as part of this FOIA request could be in the millions. Additionally, GAP maintains a web site and news blog at [www.whistleblower.org](http://www.whistleblower.org) where posts about the requested material will be publicly available.

**(6) Means of distribution of the requested information:**

GAP will use its publications and media contacts in both electronic and print media outlets to provide very broad outreach to the public on this issue. GAP will also share information with other interested parties and individuals concerned about NRC oversight and enforcement actions that pertain to the licensing of reactor operators, the sharing of operating experience throughout the nuclear industry, protection of reactor plants from flooding due to upstream dam failures, and protection of internal NRC whistleblowers from retaliation. Additionally, GAP will make information pertaining to the request available through its social media outlets (Facebook, Twitter, etc.).

**(7) Whether free access to information will be provided:**

GAP will provide the information without charge to all members of the public. Information from the FOIA request will be prepared for printed material and electronically posted on the web site for downloading free of charge. GAP will make the information publicly available to all interested public without charge.

**(8) No commercial interest by GAP or any other party:**

The sole interest of GAP is to promote a policy debate regarding how the NRC regulates nuclear utilities and how it ensures protection of internal whistleblowers.

Disclosure of this information by GAP is in no way connected with any commercial interest since GAP is a non-profit, tax-exempt organization under § 501 (c)(3) of the IRS Code. The information we are seeking is crucial to advance public knowledge and will not be put to any commercial use.

**The Government Accountability Project's Public Interest Status and History**

GAP is a non-profit, non-partisan, public interest organization chartered under IRS Code §501 (C)(3) as a non-profit, educational and charitable organization. We seek to serve the public through achieving governmental accountability by protecting and encouraging federal and corporate employees who observe or are victimized by wrongdoing, gross waste of public funds, threats to public health and safety, environmental contamination, corruption, abuse of the public trust and other abuses of power.

GAP accomplishes these goals primarily by conducting advocacy campaigns before Congress, through the media, and for the general public and by providing legal representation to whistleblowers to combat the retaliation they have suffered in exercising their right of occupational free speech. Our twin aims are to promote corporate and government accountability and to expose, investigate, and correct substantive problems that formed the basis of protected whistleblowing disclosures. GAP's role is well-recognized by the courts and, as an organization, has informational standing under the First Amendment protecting its receipt of disclosed information. *Taylor v. RTC*, 56 F.3d 1437 (D.C. 1995); *United States v. Garde*, 573 F. Supp. 604 (D.D.C. 1987); generally *Virginia Pharmacy Bd. v. Virginia Consumer Council*, 425 U.S. 748, 756-57 (1976).

GAP has a 20-year history of working in the public interest. GAP does not take individual cases based on the client's ability to pay, how much money GAP believes it can recover in legal fees through litigation or any other commercial interest.

GAP takes cases of legitimately harassed whistleblowers, often pro-bono (without charge), that further public policy or legislative changes that make the law stronger for workers who witness and choose to tell the truth about corporate and taxpayer-financed wrongdoing and to pursue exposure and resolution of the wrongdoing.

GAP has, among other things, pushed for enactment of several whistleblower protection statutes, exposed unhealthy food at supermarket chains, pushed for independent reviews of the safety of the Alaska pipeline, exposed the threat of explosion in waste tanks at the Hanford nuclear site, and pushed for policy reform within numerous executive agencies. All this activity is done primarily with the interest of the public in mind.



Respectfully submitted,

A handwritten signature in cursive script, reading "Tom Devine". The signature is written in dark ink and is positioned above a horizontal line.

Tom Devine

Jack Kolar