



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

~~2018~~ 2-3-2018

IN RESPONSE REFER TO:
NRC-2018-000615
(NRC-2018-000318)

Mr. David A. Lochbaum
Union of Concerned Scientists
P.O. Box 15316
Chattanooga, TN 37415

Dear Mr. Lochbaum:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am responding to your June 29, 2018 letter, in which you appealed the agency's June 27, 2018, revised response related to your February 1, 2018, Freedom of Information Act (FOIA) request, NRC-2018-000318. In that request you sought, among other records not relevant herein, the "Study of Reprisal and Chilling Effect for Raising Mission-Related Concerns and Differing Views at the NRC" (study). Your appeal letter makes clear that you are only challenging the redactions to pages 13-14 of the study and Appendix D, which were made under exemption 6 of the FOIA, 5 U.S.C. § 552.

Acting on your appeal, I have reviewed these redactions. I find that the redactions were appropriate for the reasons set forth below. Therefore, I am denying your appeal.

FOIA exemption 6 protects information about individuals in "personnel and medical files and similar files" when the disclosure of such information "would constitute a clearly unwarranted invasion of personal privacy." The purpose of exemption 6 is to protect individuals from the injury and embarrassment that can result from the unnecessary disclosure of personal information.

In determining whether information may be withheld under exemption 6, an agency must undertake a three-step analysis. First, the agency must determine if a substantial privacy interest would be compromised by the disclosure of the information. Second, if a privacy interest exists, the agency must then determine whether the release of the information would further the public interest by shedding light on the operations and activities of the government. Lastly, the agency must weigh the privacy interests it has identified against the public interest, if any, in order to determine whether release of the record would constitute a clearly unwarranted invasion of personal privacy.

The reprisal study generally, and the redacted information particularly, are "similar files" within the meaning of exemption 6. The information redacted from the study is derived from, and reflects the results of, individual survey responses submitted by NRC staff who had participated

in the NRC's Differing Professional Opinion (DPO) or Non-Concurrence Process (NCP) programs. Accordingly, this information relates closely to personnel matters, and the sections of the study containing the information can be considered "similar files" for purposes of exemption 6.

I also find that a substantial privacy interest would be compromised if this information were released. As you state in your appeal letter, the redacted information does not include the names of the individual survey respondents or details that, taken alone, would identify the individuals.¹ In conducting an exemption 6 analysis, however, an agency may look beyond the face of the record to examine whether the requested information, in combination with other available information, could lead to an invasion of privacy. As the NRC stated in our revised FOIA response, the universe of DPO and NCP submitters who were solicited to participate in the survey is very small. Moreover, many of the identities of the DPO and NCP submitters are publicly known. Even though the vast majority of DPO or NCP submitters may have consented to the NRC's release of their submissions (including their identities), their consents do not extend to their survey responses. To the contrary, the survey that the NRC sent to the DPO/NCP submitters stated that their responses would be confidential and anonymous. These assurances strengthen the conclusion that the submitters have a privacy interest extending to the redactions involved here.

In your appeal letter, you question the NRC's commitment to protecting a DPO/NCP submitter's privacy in light of the placement of the unredacted DPO/NCP case files and the unredacted study in ADAMS, where all NRC staff had access to these documents.² But NRC staff's access to this information is not tantamount to public access. As government employees, NRC staff must conform to rules governing the handling of sensitive information, and they cannot disclose such information publicly without obtaining prior approval from the appropriate delegated authority. See, e.g., NRC Management Directive 3.4, "Release of Information to the Public."

I next considered whether releasing the redacted information would further the public interest by shedding light on the operations and activities of the government. In your appeal letter, however, you do not discuss any public interest that might be served by releasing the redacted information. Moreover, the NRC itself has been unable to identify any legitimate public interest in the release of this information that has not already been served by our release of the redacted study. In fact, the release of this information would discourage candor and participation in surveys of this type in the future, to the detriment of the public interest.

¹ For example, to the extent the survey results reflect that "all" or "none" of the responding DPO/NCP submitters felt a certain way, such results could allow members of the public to readily discern that a particular DPO/NCP submitter held that belief.

² We note that, in response to an "Ask the EDO" question about this study, the EDO's answer included a link to the study. There are legitimate reasons why this identifying information is available to NRC staff, e.g., the study provides a perspective on the work environment of all NRC employees. However, that same interest does not apply to the public release of the information. Certainly, the public has an interest in knowing whether the NRC's safety culture may be affecting the staff's commitment to ensuring public safety. But that public interest is served through the trend and characterization provided in the study's narrative, which was not redacted.

Because there is no identified public interest in releasing the redacted information, there is no need to proceed to the third step of the exemption 6 analysis. Rather, I find that the DPO/NCP submitters' privacy interests prevail, and that the NRC should continue withholding the redacted information.

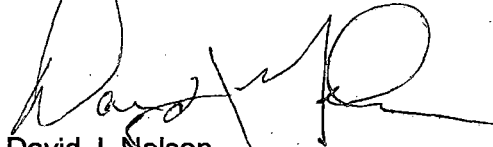
This is the final agency decision. As set forth in the FOIA (5 U.S.C. § 552(a)(4)(B)), you may seek judicial review of this decision in the district court of the United States in the district in which you reside or have your principal place of business. You may also seek judicial review in the district 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.

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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 horizontal line.

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