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CASE NO: NRC-2018-000711
DATE REC'D: 07/30/2018

JOHN M. CLIFFORD*
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* ADMITTED IN MD, DC
** ADMITTED IN TX, WI, DC

July 27, 2018

(Via Email: foia.resources@nrc.gov)

U.S. Nuclear Regulatory Commission
FOIA Officer
Mailstop: T-2 F43
Washington, DC 20555-0001

Re: Freedom of Information Act Request

To Whom It May Concern:

This is a request, pursuant to the Freedom of Information Act (FOIA), 5 USC 522(a), as amended, for all documents (including but not limited to: correspondence; letters; notices; Yellow Announcements; inter-agency memoranda; intra-agency memoranda including the Department of Labor (DOL) or Occupational Health and Safety Administration (OSHA); electronic mail or messages; congressional correspondence; rule-making documents; policies; procedures; studies; surveys; meeting minutes or agendas; training materials; fact sheets; etc.) reflecting, discussing, or relating in any way to: the decision in 2017 to revise NRC employee training "to remove all references to employee whistleblower protections under the Energy Reorganization Act (ERA) and OSHA...." (see "Study of Reprisal and Chilling Effect for Raising Mission-Related Concerns and Differing Views at the NRC", at pp. 18-19, ML17352A430).

More specifically this request seeks documents to help us determine:

- 1) The process followed (including notification to employees), the reasons for, and who made the decision to revise the training to remove any reference to NRC employees being protected from retaliation for engaging in protected activity, under the Energy Reorganization Act (ERA), as amended by Section 629 of the Energy Policy Act of 2005. (29 CFR Part 24, Appendix A, effective January 18, 2011 (76 FR 2808).
- 2) All documents reflecting the NRC's notification to its employees regarding this decision/revision and how the NRC addresses the confusion created by the revised training and 29 CFR Appendix A to Part 24 which lists the NRC as an employer covered by the ERA.

- 3) All documents that were changed to reflect this decision/revision, including but not limited to:
- a) Whether the NRC corrected the information provided by the NRC on October 4, 2007 to Thomas H. Armstrong, Assistant General Counsel for Appropriations Law, GAO, to the following inquiry: "1. Has NRC notified its employees that they are now covered by federal whistleblower protections? What has NRC done to educate its employees about whistleblower protections?"
 - b) Whether the NRC corrected NRC former Chairman Macfarlane's July 24, 2012, responses, on behalf of the Commission, to written questions by the House Energy and Commerce Committee Hearing, Subcommittee on Energy and Power and Subcommittee on Environment and the Economy (at p. 29) (ML12262A283), which stated:

"... The same whistleblower protections that apply to NRC licensee employees also apply to NRC employees and contractors. Section 629 of the Energy Policy Act of 2005 included NRC employees within the population of individuals covered under the Energy Reorganization Act (ERA) employee protection statute. (Section 211). It is illegal for the NRC to discriminate against an NRC employee or contractor who raises safety issues or otherwise engages in protected activities covered under Section 211 of the 1974 ERA, as amended."

As you must know, the validity of the statute is an important open legal issue on appeal to the DOL's Administrative Review Board in *Michael Peck v. NRC*, ARB No. 17-062; ALJ No. 2017-ERA-00005. We note that the NRC did not oppose the validity of the statute at any time since its passage, and seek through this FOIA to understand how and why the NRC changed its position before a final decision is rendered.

This request includes all agency records, whether they currently exist in the official "working" files, or at any other location. For any documents or portions of documents that you deny due to a specific FOIA exemption, please provide an index itemizing and describing the documents or portions of documents withheld. The index should provide a detailed justification of your grounds for claiming each exemption, explaining why each exemption is relevant to the document or portion of the document withheld.

Thank you for your attention to this request. We agree to pay any reasonable fees associated with processing this request. Please let us know in advance if such costs will exceed \$50.00.

We anticipate a complete or partial response to this request within 20 working days, as required by the FOIA.

Sincerely,

A handwritten signature in black ink, appearing to read "Billie P. Garde". The signature is written in a cursive style with a large initial "B" and a distinct "P" and "G".

Billie Pirner Garde