

80050128 041

Radiation Technology, Inc.

LAKE DENMARK ROAD, ROCKAWAY, N.J. 07866
(201) 627-2900



7-20133

TC: Mary J. England
11/13/80
JPP

February 25, 1980

APPEAL OF INITIAL FOIA DECISION

80-A-7683-48)
rec'd 2-28-80

Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

RE: Appeal from an Initial FOIA Decision

Dear Sir:

We are in receipt of your letter dated February 15, 1980, which we did not receive until February 22, 1980, which concerns your decision not to supply certain documents, No. 5-10, as shown in Appendix A of your letter. We take this opportunity to strongly appeal this decision as it is totally in contradiction to the purpose of the Freedom of Information Act as enacted by the Congress of the United States.

We further protest the time required by the NRC to respond to FOI requests. It is our understanding that all such requests must be answered within 10 days. This is the second time that we have been injured by a tardy reply. The reasons given for not disclosing the documents referred to above were that "their release would adversely affect the ability of the Commission and its legal staff to freely discuss and deliberate the merits of a case prior to a decision." This is truly an affront. The purpose of an impartial appeal is not to have staff counsel, i.e. the prosecution, discuss the case with the Appeal Tribunal, and in particular to do so without a member of defense being on hand. This is a totally improper procedure and was the same procedure that has been utilized in the appeal process with the Atomic Safety and Licensing Appeal Board. These factors, coupled with the persistent refusal of the NRC to comply with the Freedom of Information Act provisions, calling for the timely release of requested information, should in itself be proper grounds for a dismissal of all charges against our company and for both parties to go back to more productive business.

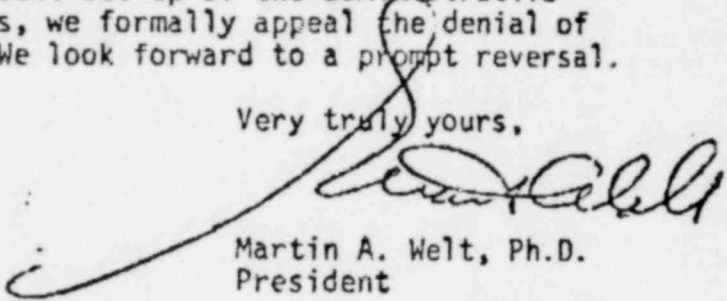
RADIATION TECHNOLOGY, INC.

Secretary of the Commission
U.S. Nuclear Regulatory Commission

February 25, 1980
Page -2-

We have questioned in the past the ability of a licensee to obtain a fair and impartial hearing and appeal due to the present set-up of the administrative appeal process within the NRC. Nevertheless, we formally appeal the denial of access to perfectly proper FOI documents. We look forward to a prompt reversal.

Very truly yours,



Martin A. Welt, Ph.D.
President

MAW:fb

cc: Congressman James Courter



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

February 15, 1980

Dr. Martin A. Welt, President
Radiation Technology, Inc.
Lake Denmark Road
Rockaway, NJ 07866

IN RESPONSE REFER
TO FOIA-80-48

Dear Dr. Welt:

This is in reply to your letter dated January 14, 1980 in which you requested, pursuant to the Freedom of Information Act, copies of all memoranda, summaries of any and all meetings, transcripts of meeting records, or records of telephone conversations that might pertain to the Commission's decision not to review your appeal.

In response to your request, we have identified the documents listed in Appendix A as subject to your request.

Document one is a memorandum from the Office of the General Counsel to the Commission containing an analysis of the Appeal Board decision, the filings of the petitioner and the NRC staff, and legal advice.

Documents two, three and four described as ALAB-567, your petition for review, and the NRC staff response, respectively, are attachments to Document one. These attachments are already in your possession and are a matter of public record.

Documents five through nine are individual vote sheets on which each Commissioner expressed his view on the question of Commission review of the Appeal Board decision on your case.

Document ten is a memorandum from the Secretary of the Commission to the General Counsel stating that the Commission had decided not to review the Appeal Board decision.

Documents one and five through nine are predecisional in character, and their release would adversely affect the ability of the Commission and its legal staff to freely discuss and deliberate the merits of a case prior to a decision. These documents are, therefore, being withheld in their entirety under Exemption (5) of the Freedom of Information Act, 5 U.S.C. 552(b)(5) and 10 CFR 9.5(a)(5) of the Commission's regulations. Document ten is withheld pursuant to these sections because it discloses the recommendation of the General Counsel in this case.

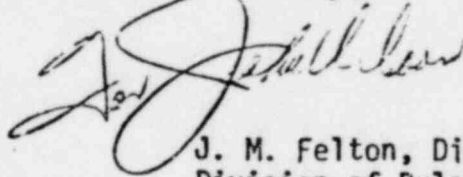
*Dupe of
80-2280419
3065*

Pursuant to 10 CFR 9.15 of the Commission's regulations, it has been determined that the information withheld is exempt from production or disclosure, and that its production or disclosure is contrary to the public interest. The person responsible for the denial of document one is Mr. Leonard Bickwit, Jr., General Counsel and the person responsible for the denial of documents five through ten is Mr. Samuel J. Chik, Secretary of the Commission.

This denial may be appealed to the Commission within 30 days from the receipt of this letter. Any such appeal must be in writing, addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should clearly state on the envelope and in the letter that it is an "Appeal from an Initial FOIA Decision."

This completes action on your request.

Sincerely,

A handwritten signature in cursive script, appearing to read "J. M. Felton".

J. M. Felton, Director
Division of Rules and Records
Office of Administration

APPENDIX A

1. December 6, 1979 SECY-A-79-90, Subject: ALAB-567 (In the Matter of Radiation Technology, Inc.) [Byproduct Material License No. 29-13613-02]
2. October 16, 1979 ALAB-567
3. November 2, 1979 Petition
4. November 19, 1979 Staff Answer
5. December 11, 1979 Commissioner Kennedy response sheet
6. December 12, 1979 Commissioner Ahearne response sheet
7. December 14, 1979 Commissioner Bradford response sheet
8. December 14, 1979 Commissioner Gilinsky response sheet
9. December 14, 1979 Chairman Hendrie response sheet
10. December 17, 1979 Memorandum for L. Bickwit, Jr., from S. J. Chilk, Subject: SECY-A-79-90-ALAB 567 (In the Matter of Radiation Technology, Inc.)