



OFFICE OF THE  
SECRETARY

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

*Duplicate copy for  
microfiche*

July 23, 1980

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

IN RESPONSE REFER  
TO 80-A-18(80-48)

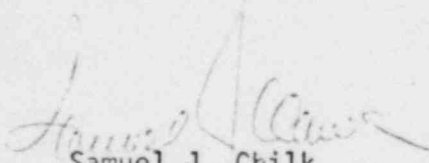
Dear Dr. Welt:

This is in response to your letter of June 6, 1980, appealing the initial decision to withhold document one, SECY-A-79-90, as identified in Appendix A of Mr. Felton's letter of February 15, 1980. Because you did not appeal the initial determination that document one is withholdable, that determination was not considered by the Commission.

Your letter of June 6, 1980 appealing the initial decision to withhold document one under Exemption (5) of the Freedom of Information Act is untimely under the requirements of 10 CFR 9.11(a). However, even if it had been timely the Commission would have denied your appeal on the merits. Document one was identified as a memorandum from the Office of the General Counsel to the Commission containing an analysis of the Appeal Board's decision in ALAB-567, the filings of the petitioner and the NRC staff, and legal advice. The document is clearly pre-decisional and contains analyses, opinions, conclusions, and recommendations, the release of which would adversely affect the ability of the Commission and its legal staff to freely discuss and deliberate the merits of a proceeding prior to its decision. Exemption (5) was intended to permit the agency's withholding of such documents to preserve the free and candid internal dialogue essential to the careful formulation of agency decisions. Therefore, the Commission has determined that release of this document would adversely affect the agency's deliberative process to the detriment of the public's interest in reasoned decisionmaking. Accordingly, your appeal as to this document is denied.

The determination in regard to the above document is a final agency action. As set forth in the Freedom of Information Act (5 U.S.C. 552(a)(4)(B)), judicial review is available in a district court of the United States in either the district in which you reside or in the District of Columbia.

Sincerely,

  
Samuel J. Chilk  
Secretary of the Commission

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