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FREEDOM OF INFORMATION  
ACT REQUEST  
FOIA REQUEST  
RECEIVED  
REC'D 7-1

June 27, 1980

Executive Secretary  
Office of Administration  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

Re: Freedom of Information Act Request No. 79-483

Dear Sir or Madam:

I am writing on behalf of John Woliver who has requested copies of the following documents under the Freedom of Information Act (FOIA):

- (1) the 1969 Sargent & Lundy Engineers report to the Cincinnati Gas and Electric Company entitled, "An Economic Evaluation of Alternatives";
- (2) any cover or transmittal letter which accompanied the report identified in paragraph (1); and
- (3) the companion summary report which was included in the transmittal identified in paragraph (2).

Mr. Woliver has been denied access to all of this information on the grounds that it is exempt from public disclosure under Exemption 4 of the FOIA which pertains to trade secrets and confidential commercial or financial information. 5 U.S.C. §552(b)(4).

Mr. Woliver appealed the denial of his request on January 19, 1980 (copy attached). The requested information has not been disclosed. He has therefore exhausted his administrative remedies under the Act and has asked me to seek an injunction in federal district court for the release of the documents. I am fully prepared to do so should the agency persist in withholding the documents. However, in the interest of avoiding unnecessary litigation, I again request that the documents be disclosed.

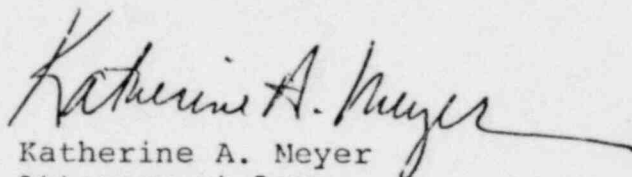
8009300//3

For all of the reasons set forth in Mr. Woliver's appeal, it is clear that the 1969 report cannot be withheld under the standards articulated in National Parks and Conservation Assoc. v. Morton, 498 F. 2d 765 (D.C. Cir. 1974). Although the government has the burden of proof that the documents are exempt from disclosure, the NRC has yet to identify the nature and likelihood of competitive harm which will befall the submitter of the information if it is publicly disclosed. Nor has the NRC made any showing that disclosure will impair its ability to obtain necessary information in the future. Moreover, although the agency is obligated to disclose any reasonably segregable portions of the requested records (5 U.S.C. §552 (b)), the NRC has refused to make any of the information available.

Under all of these circumstances, if it is necessary to pursue this action in court, I would seek a written finding pursuant to 5 U.S.C. §552(a)(F), that agency personnel have acted arbitrarily and capriciously in withholding these documents.

I request you to reconsider your denial of Mr. Woliver's FOIA request and to release the documents to him promptly. If you wish to discuss this matter further, please do not hesitate to call me. However, if I do not receive a reply within ten days, I will be forced to seek judicial review of your denial.

Sincerely,

  
Katherine A. Meyer  
Attorney at Law

Enc.

cc: Quin Shea  
Director, Office of Privacy and  
Information Appeals

John Woliver  
Dept. of Justice



# Legal Aid Society of Clermont County

a branch office of the Legal Aid Society of Cincinnati

550 KILGORE STREET P.O. BOX 47

BATAVIA, OHIO 45103

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January 19, 1980



A United Appeal agency

Executive Director for Operations  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Re: Appeal from Initial FOIA Decision  
79-483

Dear Sir:

Enclosed please find my appeal from the above-referenced FOIA decision.

Sincerely,

John Woliver

DUPLICATE DOCUMENT

Entire document previously  
entered into system under:

ANO 8003040346

No. of pages: 5