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August 19, 1980

10-1-80

J. M. Felton, Director
Division of Rules & Records
Office of Administration
Nuclear Regulatory Commission
Washington, D.C. 20555

FREEDOM OF INFORMATION
ACT REQUEST

FOIA-80-500
REC'D 10-6-80

Dear Sir:

This is a request under the freedom of information act as amended
(5 U.S.C. section 552).

I write to request a copy of the first record you are able to locate which contains information identifying the date when, and the authority by which, an employee of your agency "discarded" the March 24, 1976 issue of NRC's "Weekly Highlights" publication.

To avoid any possible misunderstanding, I received one page of the March 24, 1976 issue of the "Weekly Highlights" in a letter dated January 29, 1980 (FOIA No. 80-32). Twenty-seven (27) working days later I requested a copy of all issues of "Weekly Highlights" for the years 1974, 1975 and 1976, in a letter dated March 8, 1980. You informed me in a letter dated March 27, 1980 (FOIA No. 80-125) that all 1976 reports had been discarded, but failed to address the matter of the March 24, 1976 issue, of which I had already received a portion. On March 31, 1980 I repeated my request for the 1976 issues, alluding specifically to the March 24, 1976 issue. On April 14, 1980 (FOIA No. 80-194) you informed me in a letter that the March 24, 1976 report "is just one particular 1976 report that was maintained by a member of the staff," and that there were no other reports for 1976, but you again failed to give me a copy of the March 24, 1976 issue. In a letter dated April 16, 1980, I requested for the third time that you send me a copy of the March 24, 1976 issue. Finally, on May 15, 1980 (FOIA No. 80-239), you managed to address my request directly, for the first time in nearly five months. In your May 15th letter you informed me "we have been advised by the office that had maintained this report that it has been discarded." You did not tell me when the report was discarded or why.

The March 24, 1976 issue was obviously not discarded on January 29, 1980, since on that date you provided me a portion of it. Was the issue discarded between January 29th and March 8th? On what authority? Was the issue discarded after March 8th and before March 27th? Your April 14th letter described that particular issue, but did not state it had been discarded. Was it discarded some time after April 14th but before May 15th? Any discarding by your agency in either of the latter two periods, March 8th to 27th or April 14th to May 15th, or intervening dates, would have been directly in derogation of my rights under the act since I had already requested the item at that time. Unless your agency can provide a record proving that discarding

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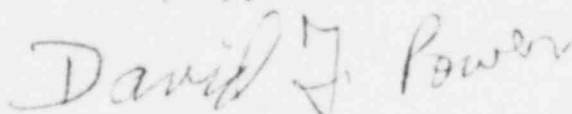
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of the March 24, 1976 issue occurred before March 8, 1980, and a record proving that this discarding was authorized, I am forced to conclude that the discarding was arbitrary and capricious and damaged my opportunity to exercise my rights under the freedom of information act. If you fail to respond adequately to this request, I intend to bring your agency's arbitrary and capricious conduct to the attention of the Special Counsel to the Merit System Protection Board, who has jurisdiction to impose sanctions on the responsible employee(s).

I reserve my right to appeal your decisions on this request. As provided in the act, I expect to receive a reply within ten (10) working days.

Sincerely,



David F. Power