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OFFICE OF THE
SECRETARY

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

May 13, 1981

Robert R. Belair, Esq.
Christopher B. Hanback, Esq.
Hill, Christopher and Phillips, P.C.
1900 M Street, N.W.
Washington, D.C. 20036

IN RESPONSE REFER
TO FOIA-81-A-6C
(FOIA-81-84)

Dear Messrs. Belair and Hanback:

Subject: Appeal from Initial FOIA Decision: FOIA-81-84

The Commission has reviewed your Freedom of Information Act appeal filed on April 23, 1981 and has denied it. Each of the documents sought consists of predecisional advice, opinion, recommendations and draft orders. This material is exempt from public disclosure pursuant to Exemption (5) of the FOIA and 10 CFR 9.5(a)(5). There is no segregable information which falls outside this exemption. The Commission has determined that disclosure of the material is contrary to the public interest because it would inhibit candid communications between the General Counsel and the Commission, and between the Commissioners and their personal staffs on sensitive matters, such as how to handle allegations of attorney misconduct raised in NRC proceedings. The Commission's Order of February 20, 1981 adequately explains the Commission's decision.

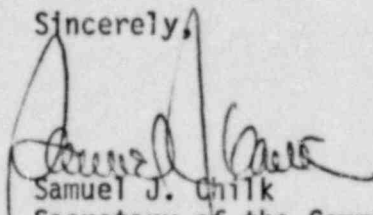
In response to your appeal the Commission is providing you a more detailed description of the documents that are being denied. The primary document is SECY-81-76, a memorandum from Leonard Bickwit, Jr., the Commission's General Counsel, to the Commission dated January 28, 1981. In that memorandum the General Counsel selectively summarizes the pertinent information contained in the December 30, 1980 decision of the Atomic Safety and Licensing Appeal Board, and the hearing transcripts of November 13-15, 1980. The document sets forth and analyzes various options available to the Commission, and recommends a course of action. A draft order was attached to the memorandum for Commission consideration. The February 12, 1981 memorandum from Mr. Bickwit to the Commission is a revised draft order which incorporates Commissioner comments on the earlier draft. The memorandum from Administrative Judge Salzman to James Fitzgerald, Assistant General Counsel, provides the Appeal Board's identification of the portions of its December 30 Order which allegedly contain protected physical security information. That information had been requested by the Office of the General Counsel. Solicitation of that information from the Appeal Board does not violate the Commission's rules regarding separation of functions or ex parte communications. All of the remaining documents are memoranda from the legal assistants on the personal staffs of the various Commissioners to their respective Commissioner commenting on the memoranda and draft orders prepared by the Office of the General Counsel, or Commissioner vote sheets providing views on the draft Orders.

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The Commission would also like to clarify one other matter. In the initial denial of March 24, 1981 you were advised that each of the documents being denied had been provided to each Commissioner, the General Counsel and to the Secretary. That statement was erroneous. Documents 4, 6, 8, and 9 were not distributed outside of Commissioner Bradford's office. Documents 10 and 11 were not distributed outside of Chairman Hendrie's office, and document 16 was not distributed outside of Commissioner Ahearne's office.

This letter represents the final action of the Commission in this matter. Judicial review of this decision is available in a district court of the United States in the district in which you reside or have your principal place of business, or in the District of Columbia.

Sincerely,



Samuel J. Chilk
Secretary of the Commission

Attachment:
List of documents

Appendix

1. SECY-81-76, "Review of an Appeal Board Decision Involving Attorney Conduct in Physical Security Proceedings," from Leonard Bickwit, Jr. to the Commission, dated 1/28/81
2. Memo fm Bickwit to Comm. re SECY-81-75, dated 2/12/81
3. Memo fm Richard Salzman to James Fitzgerald re protected information, dated 2/13/81
4. An undated handwritten memo to Commissioner Bradford from Bill Clements
5. Commissioner Bradford's response sheet re: SECY-81-76, dated 1/30/81
6. Handwritten note to Commissioner Bradford from Bill Clements re SECY-81-76, dated 2/12/81
7. Memo to the Commissioners from Bill Clements re SECY-81-76, circulating Comm. Bradford's dissenting views, dated 2/19/81
8. Handwritten note to Commissioner Bradford from Bill Clements re SECY-81-76, dated 2/10/81
9. An undated document containing Comm. Bradford's handwritten modifications to his separate views in SECY-81-76
10. Commissioner Hendrie's note and Donald Hassell's note on L. Bickwit memo of 2/12/81
11. Memo from Donald Hassell to Commissioner Hendrie re SECY-81-76, dated 2/2/81
12. Commissioner Hendrie's Response Sheet for SECY-81-76, dated 2/2/81
13. Commissioner Ahearne's vote on SECY-81-76, dated 2/4/81
14. Commissioner Ahearne's vote on SECY-81-76, dated 2/12/81
15. Commissioner Ahearne's vote on SECY-81-76, dated 2/19/81
16. Memo fm Vicki Harding to John Ahearne re SECY-81-76, dated 1/30/81
17. Commissioner Gilinsky's response sheet on SECY-81-76, dated 2/4/81

No. **80 - 3282**

Logging Date _____

NRC SECRETARIAT

- TO: Commissioner _____ Date _____
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- Cong. Liaison Solicitor
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Incoming: _____

From: _____

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Prepare reply for signature of:

- Chairman
- Commissioner _____
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