

9717



DOCKET NUMBER 50-498/499
AND R. I/TSL. FAC.

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

DOCKETED
USNRC

JAN 22 1990

'90 JAN 23 P4:35

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

Samuel J. Chilk
Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

In the Matter of
HOUSTON LIGHTING AND POWER COMPANY
(South Texas Nuclear Power Plant)
Docket Nos. 50-498 and 50-499

Dear Mr. Chilk:

On December 27, 1989, the NRC Staff served the "NRC Staff Response to Motion to Modify Subpoena and Motion for Protective Order" in this matter. In Footnote 1, the Staff noted that certain Freedom of Information Act (FOIA) fee waiver requests were pending before the Staff. On January 12, 1990, the Staff made a determination with regard to these matters. A copy of the letter to Billie Pirner Garde, attorney for John Corder, from Donnie H. Grimsley, Director of the Division of Freedom of Information and Publications Services, is attached.

Sincerely,

Richard K. Hoefling
Senior Attorney
Office of the General Counsel

cc w/Attachment: Billie Pirner Garde

9001260161 900122
PDR ADOCK 0500047B
G PDR

D507

JAN 12 1990

Billie Pirner Garde, Esquire
Robinson, Robinson, Peterson, Berk
Randolph, Cross & Garde
103 East College Avenue
Appleton, WI 54911

IN RESPONSE REFER
TO FOIA-89-431 AND
FOIA-89-532

Dear Ms. Garde:

I am responding to your letter dated December 11, 1989, in which you asked for a waiver of fees for a Freedom of Information Act (FOIA) request submitted by Linda Bauman dated September 28, 1989, (FOIA 89-431). You concurrently asked for a fee waiver for a new FOIA request you submitted on December 11, 1989, (FOIA 89-532). Both the September 28 and December 11 requests seek all records "relevant to and/or generated in connection with John Corder's concerns and allegations about the South Texas Project (STP) from June 1986 to the present." On November 3, 1989, Linda Robinson of my staff advised you that advance payment of fees in the amount of \$304.29 would be required prior to processing the September 28 request.

I have reviewed your request for waiver of fees for both requests and have determined that you do not qualify for a waivers of fees because the use of the records will primarily be for a private purpose. Under the 1986 amendments of the FOIA (5 U.S.C. 552(a)(4)(A)(iii) a waiver of fees can be granted "if disclosure of the information is in the public interest because it is likely to contribute significantly to the public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." I have reviewed your request for a waiver of fees and find that it will not be in the public interest because the use of the records will be primarily for a private purpose.

In reaching my determination, I have relied on the following. The first request dated September 28 was submitted by Ms. Bauman on your law firm letterhead. No statement was made that the request was being made on behalf of the Government Accountability Project (GAP). A statement was made to the effect that the request was made "as a part of an ongoing monitoring project of the NRC's efforts to protect the public health and safety at and near nuclear processing plants and radioactive waste facilities." However, on the same date of September 28, 1989, you also wrote to the NRC that Mr. Corder had allegations and would give those to the NRC on certain conditions. One of those conditions was that the NRC had to comply with the FOIA request you submitted on September 28. Thus the request was categorized for fee purposes as a request which was being made by Ms. Bauman for and behalf of Mr. Corder.

Your December 11 request essentially resubmits the September 28 request as a representative of GAP. In your December 11 fee waiver request you have addressed the factors that NRC regulations at 10 CFR 9.41b require to be submitted for evaluation. I have considered your request and find that the information provided in regard to factor 8 does not appear to represent all your interests or those of GAP in the requested records. In a Motion to Modify Subpoena and Motion for Protective Order dated December 11, 1989, which you submitted to the Commission you specifically stated that ... "Mr. Corder requests that the deposition be stayed until such time as the NRC staff has provided a substantive response to FOIA request 89-431. The response to this request will enable Mr. Corder to prepare for the deposition by reviewing prior transcripts of interviews between himself and the NRC in order to identify all of his concerns, and to determine whether or not the NRC has addressed them."

On the dates you submitted the two FOIA requests to the NRC you also submitted other documents to the agency which specifically state that the requested records are needed by Mr. Corder to prepare for meeting with the NRC. The fact that you resubmitted the request on behalf of GAP does not, according to your statements in the December 11 motion, change the principal reason why you have requested the records. It is clear to me that your December 11 request is principally to serve the private interest of Mr. Corder who, you state, needs the records to respond to an NRC subpoena to submit to a deposition. Even though GAP may in fact review the records for other purposes, the circumstances in this case clearly reflect that your principal interest in the records is to assist Mr. Corder. Thus, for this reason, your fee waiver for both the September 28 request submitted by Linda Bauman and the December 11 request submitted by you on behalf of GAP is denied.

This denial of your fee waiver request may be appealed to the Executive Director for Operations within 30 days of the receipt of this letter. Any such appeal must be in writing, addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should clearly state that it is an "Appeal to an Initial Fee Waiver Denial."

Sincerely,

15/

Donnie H. Grimsley, Director
Division of Freedom of Information
and Publications Services
Office of Administration