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November 13, 1989

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

APPEAL OF DENIAL

89A32E(87-88)

Rec'd 11-20-89

RE: Appeal of FOIA 87-88

TO Executive Director for Operations:

This is an appeal pursuant to subsection a(6) of the Freedom of Information Act as amended (5 U.S.C. 552), of the actual denial of the Commission to release documents requested on 12-28-86 by the Government Accountability Project.

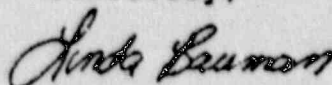
By letter dated 10-16-89, Donnie H. Grimsley, Director, Division of Freedom on Information and Publications Services, informed us that Appendix I is being withheld from disclosure in their entirety or in part, pursuant to FOIA Exemption 4, because the information is considered to be proprietary information pursuant to 10 C.F.R. 2.790(d)(1).

We believe we are entitled to the release of the documents being withheld.

We expect your response to this appeal within 20 working days of your receipt so that we can determine whether to pursue this matter further in the courts.

Thank you for your consideration of this appeal.

Sincerely,



Linda L. Bauman
FOIA Coordinator

9001290033 891113
PDR FOIA
BAUMAN89-A-32 PDR

FOIA - 87-88



RESPONSE TO FREEDOM OF INFORMATION ACT (FOIA) REQUEST

RESPONSE TYPE: FINAL, PARTIAL 5th
DATE: OCT 16 1989

DOCKET NUMBER(S) (if applicable)

REQUESTER: Bauman, Linda

PART I - AGENCY RECORDS RELEASED OR NOT LOCATED (See checked boxes)

- No agency records subject to the request have been located.
- No additional agency records subject to the request have been located.
- Requested records are available through another public distribution program. See Comments Section.
- Agency records subject to the request that are identified on Appendix(es) _____ are already available for public inspection and copying in NRC Public Document Room 2120 L Street, N.W., Washington, DC 20555.
- Agency records subject to the request that are identified on Appendix(es) I are being made available for public inspection and copying in NRC Public Document Room, 2120 L Street, N.W., Washington, DC, in a folder under this FOIA number and requester name.
- The nonproprietary version of the proposal(s) that you agreed to accept in a telephone conversation with a member of my staff is now being made available for public inspection and copying at the NRC Public Document Room 2120 L Street, N.W., Washington, DC, in a folder under this FOIA number and requester name.
- Agency records subject to the request that are identified on Appendix(es) _____ may be inspected and copied at the NRC Local Public Document Room identified in the Comments Section.
- Enclosed is information on how you may obtain access to and the charges for copying records placed in the NRC Public Document Room, 2120 L Street, N.W., Washington, DC.
- Agency records subject to the request are enclosed.
- Records subject to the request have been referred to another Federal agency(ies) for review and direct response to you.
- You will be billed by the NRC for fees totaling \$ _____.
- In view of NRC's response to this request, no further action is being taken on appeal letter dated _____ No _____.

PART II. A - INFORMATION WITHHELD FROM PUBLIC DISCLOSURE

- Certain information in the requested records is being withheld from public disclosure pursuant to the exemptions described in and for the reasons stated in Part II sections B, C, and D. Any released portions of the documents for which only part of the record is being withheld are being made available for public inspection and copying in the NRC Public Document Room, 2120 L Street, N.W., Washington, DC in a folder under this FOIA number and requester name.

COMMENTS

SIGNATURE, DIRECTOR, DIVISION OF FREEDOM OF INFORMATION AND PUBLICATIONS SERVICES

Warren H. Eberly

89-10200025 3pp

PART II B - APPLICABLE EXEMPTIONS

Records subject to the request that are described on the enclosed Appendixes I are being withheld in their entirety or in part under the Exemptions and for the reasons set forth below pursuant to 5 U.S.C. 552(b) and 10 CFR 9.17(a) of NRC Regulations.

- 1. The withheld information is properly classified pursuant to Executive Order (EXEMPTION 1)
- 2. The withheld information relates solely to the internal personnel rules and procedures of NRC (EXEMPTION 2)
- 3. The withheld information is specifically exempted from public disclosure by statute indicated: (EXEMPTION 3)

Sections 141-145 of the Atomic Energy Act which prohibits the disclosure of Restricted Data or Formerly Restricted Data (42 U.S.C. 2161-2165).

Section 147 of the Atomic Energy Act which prohibits the disclosure of Unclassified Safeguards Information (42 U.S.C. 2167).

- 4. The withheld information is a trade secret or commercial or financial information that is being withheld for the reason(s) indicated: (EXEMPTION 4)

The information is considered to be confidential business (proprietary) information.

- The information is considered to be proprietary information pursuant to 10 CFR 2.790(d)(1).

The information was submitted and received in confidence pursuant to 10 CFR 2.790(d)(2)

- 5. The withheld information consists of interagency or intraagency records that are not available through discovery during litigation. (EXEMPTION 5). Applicable Privilege:

Deliberative Process: Disclosure of predecisional information would tend to inhibit the open and frank exchange of ideas essential to the deliberative process. Where records are withheld in their entirety, the facts are inextricably intertwined with the predecisional information. There also are no reasonably segregable fact portions because the release of the facts would permit an indirect inquiry into the predecisional process of the agency.

Attorney work product privilege: (Documents prepared by an attorney in contemplation of litigation.)

Attorney-client privilege: (Confidential communications between an attorney and his/her client.)

- 6. The withheld information is exempted from public disclosure because its disclosure would result in a clearly unwarranted invasion of personal privacy. (EXEMPTION 6)

- 7. The withheld information consists of records compiled for law enforcement purposes and is being withheld for the reason(s) indicated: (EXEMPTION 7)

Disclosure could reasonably be expected to interfere with an enforcement proceeding because it could reveal the scope, direction, and focus of enforcement efforts, and thus could possibly allow them to take action to shield potential wrongdoing or a violation of NRC requirements from investigators. (EXEMPTION 7 (A))

Disclosure would constitute an unwarranted invasion of personal privacy. (EXEMPTION 7 (C))

The information consists of names of individuals and other information the disclosure of which could reasonably be expected to reveal identities of confidential sources. (EXEMPTION 7 (D))

OTHER

PART II C - DENYING OFFICIALS

Pursuant to 10 CFR 9.25(b) and/or 9.25(c) of the U.S. Nuclear Regulatory Commission regulations, it has been determined that the information withheld is exempt from production or disclosure, and that its production or disclosure is contrary to the public interest. The persons responsible for the denial are those officials identified below as denying officials and the Director, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management, for any denials that may be appealed to the Executive Director for Operations (EDO).

DENYING OFFICIAL	TITLE/OFFICE	RECORDS DENIED	APPELLATE OFFICIAL	
			SECRETARY	EDO
Stewart D. Ebner	Regional Administrator, Region 2	Portions - Appendix I		X

PART II D - APPEAL RIGHTS

The denial by each denying official identified in Part II C may be appealed to the Appellate Official identified in that section. Any such appeal must be in writing and must be made within 30 days of receipt of this response. Appeals must be addressed as appropriate to the Executive Director for Operations or to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should clearly state on the envelope and in the letter that it is an "Appeal from an Initial FOIA Decision."

APPENDIX 1
PORTIONS DELETED

1. 5/9/84 Letter to J. A. Long from J. Philip Stohr, w/enclosures.
re: Report No. 70-1113/84-05. (6 pages) - Exemption 4
2. 5/9/84 Letter to J. A. Long from J. Philip Stohr, w/enclosures,
re: Report No. 70-1113/84-06. (10 pages) - Exemption 4
3. 5/16/84 Memorandum to Charles N. Smith from Edward J. McAlpine, re:
Recommendation Resulting from Region II, Inspection Report Nos.
70-1113/83-28 and No. 70-1113/84-06 at General Electric
(011 84-06-04). (2 pages) - Exemption 4
4. 6/18/84 Letter to J. A. Long from J. Philip Stohr, w/enclosures,
re: Report No. 70-1113/84-06. (6 pages) - Exemption 4

GOVERNMENT ACCOUNTABILITY PROJECT

1555 Connecticut Avenue, N.W., Suite 202
Washington, D.C. 20036

(202) 232-8550

**GOVERNMENT ACCOUNTABILITY PROJECT
MIDWEST OFFICE
3424 MARCOS LANE
APPLETON, WISCONSIN 54911**

December 28, 1986

FREEDOM OF INFORMATION ACT REQUEST

Director
Office of Administration
U.S. Nuclear Regulatory Commission
Washington D.C. 20210

**FREEDOM OF INFORMATION
ACT REQUEST**

*FOIA-87-88
Rec'd 2-10-87*

TO WHOM IT MAY CONCERN:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. 552, the Government Accountability Project (GAP) requests copies of any and all agency records and information, including but not limited to notes, letters, memoranda, drafts, minutes, diaries, logs, calendars, tapes, transcripts, summaries, interview reports, procedures, instructions, engineering analyses, drawings, files, graphs, charts, maps, photographs, agreements, handwritten notes, studies, data sheets, notebooks, books, telephone messages, computations, voice recordings, computer runoffs, any other data compilations, interim and/or final reports, status reports, and any and all other records relevant to and/or generated in connection with the listed inspections of General Electric Company's, Wilmington, N.C. facility.

- 70-1113/82-18
- 70-1113/84-04
- 70-1113/84-05
- 70-1113/84-06
- 70-1113/84-13

This request includes all agency records as defined in 10 C.F.R. 9.3a (b) and the NRC Manual, Appendix 0211, Parts 1.A.2 and A.3 (approved October 8, 1980) whether they currently exist in the NRC "official, working", investigative or other files, or at any other location, including private residences.

If any records, as defined in 10 C.F.R. 9.3a(b), and the NRC Manual, supra and covered by this request have been destroyed and/or removed after this request, please provide all surrounding records, including but not limited to a list of all records which have been or are destroyed and/or removed, a description of the action(s) taken relevant to, generated in connection with, and/or issued in order to implement the action(s).

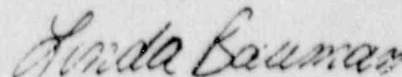
GAP requests that fees be waived, because "finding the information can be considered as primarily benefiting the general public," 5 U.S.C. 522 (a) (4) (a). GAP is a non profit, non-partisan public interest organization concerned with honest and open government. Through public outreach, the Project promotes whistleblowers as agents of government accountability. Through its Environmental Whistleblower Clinic, GAP offers assistance to local public interest and citizens groups and intervenors in the concern for safety at nuclear power plants.

We are requesting this information as part of an ongoing monitoring project of the NRC's efforts to protect public health and safety at and near nuclear processing plants and radioactive waste facilities.

For any documents or portions that you deny due to a specific FOIA exemption, please provide an index itemizing and describing the documents or portions of documents withheld. The index should provide a detailed justification of your grounds for claiming each exemption, explaining why each exemption is relevant to the document or portion of the document withheld. This index is required under Vaughn v. Rosen (I), 484 F2d 820 (D.C. Cir. 1973), cert. denied, 415 U.S. 977 (1974).

We look forward to your response to this request within ten (10) working days.

Sincerely,



Linda Bauman
FOIA Coordinator
Midwest Office

Responses to this request should be mailed to :

Government Accountability Project
Midwest Office
3424 Marcos Lane
Appleton, Wisconsin 54911