



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

NUDDCS

Ms. Linda Bauman
FOIA Coordinator
Robinson, Robinson, Peterson, Berk,
Rudolph, Cross and Garde
103 East College Avenue
Appleton, WI 54911

FEB 21 1990

IN RESPONSE REFER
TO FOIA-90-A-1
(FOIA-89-428)

Dear Ms. Bauman:

This is in response to your letter dated November 13, 1989, in which you appealed Mr. Donnie H. Grimsley's response dated January 4, 1990. Your appeal letter was received January 17, 1990. Mr. Grimsley's response denied a record subject to your Freedom of Information Act (FOIA) request for copies of records related to Inspection Report Nos. 50-445/89-38 and 50-446/89-38 regarding the Comanche Peak plant. You specifically appealed the denial of the draft records identified on the enclosed Appendix D of Mr. Grimsley's response dated January 4, 1990.

Acting on your appeal, I have carefully reviewed the record in this case and have determined that the previously withheld information will continue to be withheld from public disclosure pursuant to Exemption (5) of the FOIA (5 U.S.C. 552(b)(5)) and 10 CFR 9.17(a)(5) of the Commission's regulations. Therefore, your appeal is denied. The draft predecisional records that continue to be withheld pursuant to Exemption (5) contain candid opinions, advice, and recommendations of the staff. Release of this information would tend to inhibit the open and frank expression of ideas essential to the deliberative process.

This is a final agency decision. As set forth in the FOIA (5 U.S.C. 552(a)(4)(B)), 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,

Hugh L. Thompson, Jr., Deputy Executive Director
for Nuclear Materials Safety, Safeguards
and Operations Support

Enclosure:
Appendix D

9002220664 900221
PDR FOIA
BAUMAN90-A-1 PDR

APPENDIX DRECORDS TOTALLY WITHHELDNUMBERDATEDESCRIPTION & EXEMPTION

- | <u>NUMBER</u> | <u>DATE</u> | <u>DESCRIPTION & EXEMPTION</u> |
|---------------|-------------|--|
| 1. | undated | Draft memo to C.I.
Grimes from B. Boser
with attached draft
NOV + draft inspection
report (21 pages) |



RESPONSE TO FREEDOM OF
INFORMATION ACT (FOIA) REQUEST

FOIA - 87-728

RESPONSE TYPE

☒ FINAL
DATE

☐ PARTIAL

JAN 6 - 1990

DOCKET NUMBER(S) (if applicable)

REQUESTER

Ms. Billie P. Hale

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 the NRC Public Document Room, 2120 L Street, N.W., Washington, DC 20555.
- ☒ Agency records subject to the request that are identified on Appendix(es) *C* 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.
- ☐ 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 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. *Appendix C*
- ☐ 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 B. 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

Thomas H. Kinsley

9441484344 (48)

PART B. B - APPLICABLE EXEMPTION

Records subject to the request that are described on the enclosed Appendix(es) D are being withheld in their entirety or in part under 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(g)(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 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 an enforcement effort, 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 B. 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	ED
<i>William T. Russell</i>	<i>Regional Admin.</i>	<i>011</i>		<input checked="" type="checkbox"/>
	<i>Region 1</i>			

PART B. D - APPEAL RIGHTS

The denial by each denying official identified in Part B. C may be appealed to the Appellate Official identified in that section. Any such appeal must be in writing and 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 C

RECORDS BEING PLACED INTO THE PDR UNDER THE ABOVE REQUEST NUMBER

<u>NUMBER</u>	<u>DATE</u>	<u>DESCRIPTION</u>
1.	Undated	Inspector's Report (2 pages)
2.	8/9/89	Fax from H. Kersh to H. Ziemer (7 pages)
3.	8/31/89	Memo to C.T. Grimes from B. A. Boyer re: WRC WOE Independent Measurements Inspection at Comanche Peak, Unit 1 (with attachments) (17 pages)

APPENDIX DRECORDS TOTALLY WITHHELDNUMBERDATEDESCRIPTION & EXEMPTION

- | <u>NUMBER</u> | <u>DATE</u> | <u>DESCRIPTION & EXEMPTION</u> |
|---------------|-------------|--|
| 1. | undated | Draft memo to C.I.
Grimes from B. Boyer
with attached draft
NOV + draft inspection
report (21 pages) |

Robinson,
Robinson, Peterson, Berk,
Rudolph, Cross & Garde

Mary Lou Robinson
Nila Jean Robinson
John C. Peterson
Avram D. Berk
Michael Rudolph
Dan Cross
Billie Firner Garde

Attorneys at Law
108 East College Avenue
Appleton, Wisconsin 54911
(414) 781-1817
Green Bay 494-9600
Fax 780-8841

September 27, 1989

FREEDOM OF INFORMATION ACT REQUEST

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

FREEDOM OF INFORMATION
ACT REQUEST

FOIA-89-428
Rec'd 10-3-89

TO WHOM IT MAY CONCERN:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. 552, as amended the ROBINSON, ROBINSON, PETERSON, BERK, RUDOLPH, CROSS AND GARDE LAW OFFICE 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, allegation summary sheets, interim and/or final reports, status reports, and any and all other records relevant to and/or generated in connection with the Inspection Report Docket 50-445/446, Report # 89-38, dated September 8, 1989.

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 implementing the action(s).

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

~~89-2140257~~
(28)

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 anticipate a complete or partial response to this request within ten working days, as required by the FOIA.

Sincerely,

Billie Pirner Garde (SB)

Billie Pirner Garde

BPG/llb
NRC/foia