



RESPONSE TO FREEDOM OF INFORMATION ACT (FOIA) REQUEST

PI-37

RESPONSE TYPE

FINAL
DATE

PARTIAL

APR 5 - 1990

DOCKET NUMBER(S) (if applicable)

REQUESTER

Airozo, Dave

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 Appendixes: _____ 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 Appendixes: EFG, H 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 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 Appendixes: _____ 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

Additional records subject to your request have been identified in responses to your previous FOIA request, FOIA-90-3. Mr. Drimsley's responses to you are dated January 19, 1990, and March 1, 1990.

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

David W. Drimsley

9006050209 900405
PDR FOIA
AIROZO90-6 PDR

PART II. B - APPLICABLE EXEMPTIONS

Records subject to the request that are described on the enclosed Appendix(es) **FGHI** 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 factual 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	ICEDO
<i>Leo J. Norton</i>	<i>Assistant Inspector General for Investigations, Office of Inspector General</i>	<i>Appendix F</i>		<input checked="" type="checkbox"/>
<i>John C. Hoyle</i>	<i>Assistant Secretary of the Commission</i>	<i>Appendices G, H, I</i>		

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." **OR TO**

THE INSPECTOR GENERAL

APPENDIX E

Released Records

1. December 22, 1989 memorandum from Samuel Chilk to Chairman Carr subj: COMKC-89-17- Extension of contract No. NRC-34-89-347 with Alan Rosenthal for review of OI matters (1 pg)
2. December 7, 1989 memorandum from Chilk for the Record subj: COMKC-89-16- Fortuna investigation (1 pg)
3. May 10, 1989 memorandum from Chilk to Chairman Zech subj: Rosenthal report of investigation (89-02) COMLZ-89-24 (1 pg)
4. April 3, 1989 Memorandum from Chilk to Zech subj: Delegation of authority to Alan Rosenthal COMLZ-89-12 (1 pg)
5. December 19, 1989 letter from Chairman Carr to Rep. Peter Kostmayer with attached incoming letter dated December 12, 1989 (7 pgs)
6. Letters to Reps Dingell, Udall SHarp, Bevill, Senators Breaux, Glenn, and Johnston from Chairman Zech, 2/27/89, advisement of contracting Judge Alan Rosenthal to assume responsibility for OIA investigations of OI (7 pgs)
7. Commissioner Carr's comment, 2/28/89, CR-89-38 (1 pg)
8. Memorandum for Commissioners Roberts, Rogers, and Curtiss from Chairman Carr, 9/20/89, extension of contract with Alan Rosenthal for investigative services (1 pg)
9. NRC form 400, part 2, request for procurement action, extension of the Rosenthal contract (2 pgs)
10. Memorandum for Chairman Carr from Chilk, 9/22/89, KC-89-13 -extension of contract with Alan Rosenthal for investigative services (1 pg)
11. Memorandum for Edward Halman from Chairman Zech, undated, award of contract to Alan Rosenthal (8 pgs)

APPENDIX F

Portions Deleted

Exemption 5

1. 9/21/89 Memo from Rosenthal to Chairman and Commissioners,
re: Investigation 89-02. (2 pages)

APPENDIX G
DOCUMENTS PARTIALLY WITHHELD

NUMBER	DATE	DESCRIPTION
1.	3/30/89	Memorandum re Inquiry into alleged travel abuse by NRC employee (Report No. I-87-31). with various attachments. Portions deleted - Exemptions 6 and 7C (56 pages)
2.	4/10/89	Memorandum re Office of Inspector and Auditor Investigation No. 87-13. Portions deleted - Exemptions 6 and 7C (15 pages)
3.	4/12/89	Memorandum re Office of Inspector and Auditor Investigation No. 87-06. Portions deleted - Exemptions 6 and 7C (8 pages)
4.	7/3/89	Memorandum re Investigation (89-15) with attachment. Portions deleted - Exemptions 5, 6 and 7C (57 pages)

APPENDIX H

Portions Deleted - Exemption 5

1. December 5, 1989 memorandum from Chairman Carr to Hugh Thompson subj: Second interim report of investigation (89-02) (COMKC-89-16) (1 page)
2. April 4, 1989 memorandum from Chairman Lando Zech to Alan S. Rosenthal subj: Delegation of subpoena authority (1 page)

APPENDIX I

Records Denied in Entirety

Exemption 5

1. Karen Cyr's handwritten note on her telephone conversation with Mary Malsch, undated, extension of Rosenthal contract 1 page
2. Draft letter to Judge Alan S. Rosenthal from Chairman Kenneth Carr re: Extension of contract No. NRC-34-89-347 1 page
3. Draft memorandum from Chairman Carr to David C. Williams, OIG subj; Request for investigation 1 page
4. December 14, 1989 memorandum from Commissioner James Curtiss to Chairman Carr subj; Extension of contract No. NRC-34-89-347 with Alan Rosenthal for review of OI matters (COMKC-89-17) 1 page
5. December 12, 1989 comment from Commission Remick regarding 12/12/89 Carr memo on COMKC-89-17 subj; Extension of contract No. NRC -34-89-347 with Alan Rosenthal for review of OI matters 1 page
6. December 19, 1989 comment from Commissioner Rogers on COMKC-89-17
7. December 14, 1989 comment from Commissioner Thomas Roberts on COMKC-89-17 1 page
8. December 12, 1989 memorandum from Chairman Carr to Cmrs subj; Extension of contract No. NRC-34-89-347 with Alan Rosenthal for review of OI matters 1 page
9. Draft memorandum from Chairman Carr to Hugh Thompson subj; Second interim report of investigation (89-02) 1 page
10. December 4, 1989 comment from Commissioner Roberts on COMKC-89-16 1 page

APENDIX I

11. December 1, 1989 memorandum from Chairman Carr to Cmrs subj; Fortuna investigation--COMKC-89-16 1 page
12. May 5, 1989 memorandum from Lando Zech to Cmrs subj; Rosenthal report of investigation (89-02) COMLZ-89-24 1 page
13. May 8, 1989 comment from Commisssioner Roberts on COMLZ-89-24 1 page
14. May 5, 1989 comments from Steve Burns on COMLZ-89-24 1 page
15. May 5, 1989 comment from Commissioner Rogers on COMLZ-89-24 1 page
16. May 5, 1989 comment from Commissioner Curtiss on COMLZ-89-24 1 page
17. Undated memorandum from Chairman Zech to Victor Stello subj; Report by Alan Rosenthal (89-02) 1 page
18. March 24, 1989 memorandum from Chairman Zech to Cmrs subj; Delegation of subpoena authority to Alan Rosenthal COMLZ-89-12 1 page
19. March 28, 1989 comments from Commissioner Rogers on COMLZ-89-12 1 page
20. March 27, 1989 comments from Commissioner Curtiss on COMLZ-89-12 1 page
21. March 27, 1989 comments from Commissioner Carr on COMLZ-89-12 1 page
22. March 27, 1989 comment from Commissioner Roberts on COMLZ-89-12 1 page

January 4, 1990
Washington, D.C.

Mr. Donnie Grimsley
Director, Division of Rules & Records
Office of Administration & Resources Management
U.S. Nuclear Regulatory Commission
Washington, D.C.

FREEDOM OF INFORMATION
ACT REQUEST

FAI-A-90-6
Rec'd 1-9-90

Dear Mr. Grimsley:

Pursuant to the Freedom of Information Act, I hereby request the following material.

- 1) Reports of investigations filed with the commission by Alan Rosenthal on or about March 30, April 10, April 12, and July 3, 1989. Rosenthal, a contractor hired by NRC, was to furnish fully documented reports of his investigations which were to focus on pending investigations of NRC's Office of Investigations.
- 2) Any correspondence, including but not limited to, notes and memoranda, regarding the NRC commission decision to hire Alan Rosenthal on or about February 28, 1989 and the NRC commission's decision to extend his contract (#34-89-347) on or about October 1, 1989.
- 3) Records of funds expended in connection with the Rosenthal contract #34-89-347, including but not limited to vouchers for Rosenthal's transportation or other expenses incurred in connection with the contract.
- 4) Any records pertaining to Rosenthal's qualifications as an investigator or other expertise that qualified him for the contract.

This request is made on behalf of Inside N.R.C., a McGraw-Hill newsletter with readers in government, industry, and non-profit organizations. The information I am seeking will be used in the preparation of news articles, which will benefit the public. Therefore, I ask that all search and copying fees be waived. If they are not, McGraw-Hill is prepared to pay normal NRC fees.

If you have any questions, please call 202-463-1659.

Sincerely,

Dave Airozo
Dave Airozo
Managing Editor
Inside NRC

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