

GOVERNMENT ACCOUNTABILITY PROJECT

Institute for Policy Studies

1901 Que Street, N.W., Washington, D.C. 20009

(202) 234-9382

March 18, 1982

Director
Office of Administration
Nuclear Regulatory Commission
Washington, D.C. 20555

FREEDOM OF INFORMATION
ACT REQUEST

FOIA-82-157

Rec'd 3-23-82

To Whom It May Concern:

Pursuant to the Freedom of Information Act, 5 U.S.C. sec. 552, we request all Office of Inspector and Auditor ("OIA") investigative reports on any issues investigated during 1981 at the Zimmer Nuclear Power Plant, other than Mr. Applegate's original charges against Gerald Phillips. In addition, we also request all spin-off reports of issues that arose out of Mr. Applegate's whistle-blowing disclosure but were organized into different classifications or files, as well as all attachments, exhibits, notes, drafts, telephone logs, diaries, or any other information connected with the above requests. We have reason to believe spin-off investigations exist which deal with possible criminal violations at Zimmer. This is substantiated by an Aug. 17, 1981 letter from Arthur Schnebelen, of OIA, to Ms. Ann Marie Tracy, Assistant U.S. Attorney in Cincinnati, Ohio. Mr. Schnebelen stated that OIA "...has initiated an investigation into the recent discoveries, by Region III, relating to both alleged altering or falsifying documentation and failures to conduct quality control inspections pursuant to Appendix B, Part 50, Title 10, Code of Federal Regulations. These allegations as they pertain to regulatory violations have been the subject of a recently completed IE investigation." (This letter is enclosed as Exhibit I.) The NRC's initial denial of our FOIA-81-488 request indicated no investigation of any criminal investigation conducted by OIA or IE at Zimmer. We must conclude that the results of this investigation are contained in another report. This contention is strengthened by the Commission's own March 3, 1982 testimony before the House Subcommittee on Energy, Conservation, and Power. At that time, Mr. Richard DeYoung, Director, Office of Inspection and Enforcement, revealed that OIA had pursued a criminal investigation and that investigation was separated from its investigation of Mr. Phillips. He also indicated that a referral was made to the Department of Justice. (Relevant excerpts from an unofficial transcript of the testimony are enclosed as Exhibit 2.) Press accounts from Cincinnati also indicate that the NRC has admitted that the Justice Department was at least unofficially contacted. However, these reports are not confirmed.

We are requesting this information as part of a monitoring project on the adequacy of the Commission's efforts to protect public safety at nuclear power plants. As a result, we request that fees be waived because "furnishing the information can be considered as primarily benefitting the general public." 5 U.S.C. § 552 (a) (4) (A).

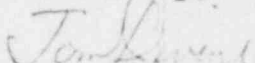
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For any documents or portions of documents that you deny due to a specific exemption, please provide any index itemizing and describing documents or portions of documents withheld. The index should provide a detailed justification of your grounds for claiming such exemption, explaining why each exemption is relevant to the document or portion withheld. This index is required under Vaughn v. Rosen (I), 484 F.2d 820 (D.C.Cir. 1973), cert. denied, 415 U.S. 977 (1974).

We look forward to your reply within ten working days.

Sincerely,


Tom Devine
Legal Director

Jay Rosenthal
Staff Associate

2353 safeguards activities going on in the region.

2654 Ms. HULL. There is just one more question on this.

2655 I understand that inspections uncover certain health and
2656 safety possible violations, but that in the course of that
2657 investigation there is also, perhaps, evidence that there is
2658 criminality or a willful violation, in the case of Zimmer,
2659 the criminal inspection was postponed until the completion
2660 of the health and safety violation, probable violation.

2661 I understand that health and safety is your primary
2662 responsibility, and should not take second seat to anything,
2663 including criminal violations. But have any standards been
2664 established to determine when the health and safety threat
2665 is imminent or when the criminal investigation should not be
2666 postponed?

2667 Mr. DEYOUNG. I might respond that they were not put
2668 aside. They were separated. OIA pursued the criminality,
2669 and we pursued the I&E part of it, the health and safety. So
2670 they were not dropped, they were just completely separated.

2671 It was referred. We talked to the Department of Justice.
2672 OIA did pursue that, they questioned people, and they
2673 questioned them about the staff performance in Region III as
2674 well, but they referred it to the Department of Justice.
2675 The Department of Justice will tell us what they want us to
2676 do. If they say, stop, do not proceed, we do not proceed.

2677 Commissioner GILINSKY. I think criminality, if that is

August 17, 1981

Ms. Ann Marie Tracey
Assistant U.S. Attorney
United States Attorney
Southern District of Ohio
Cincinnati, Ohio 45202

Dear Ms. Tracey:

Enclosed is a copy of the Office of Inspector and Auditor's (OIA) report of investigation pertaining to an NRC investigation conducted in April 1980 by the Office of Inspection and Enforcement (IE) at the William H. Zimmer Nuclear Construction Project. We are providing this report in order that your office remains fully informed of the results of investigations conducted by the NRC at Zimmer.

As discussed during our April 22, 1981 meeting, OIA was tasked to investigate the adequacy of previous efforts at the Zimmer site to resolve allegations of alleged faulty construction which may have violated quality assurance criteria set forth in NRC regulations and adversely effected NRC's ability to ensure matters effecting public health and safety.

Our report specifically focuses on the merits of IE investigation 50-358/80-09 and "extends neither to the evaluation of other Region III actions relating to Zimmer nor to the question of allegedly faulty construction at Zimmer." However, OIA has initiated an investigation into the recent discoveries, by Region III, relating to both alleged altering or falsifying documentation and failures to conduct quality control inspections pursuant to Appendix B, Part 50, Title 10, Code of Federal Regulations. These allegations as they pertain to regulatory violations have been the subject of a recently completed IE investigation. This draft IE report of investigation will be forwarded to your office under separate cover.

If there are any questions regarding this matter or assistance needed, feel free to contact Arthur Schnebelen, Acting Assistant Director for Investigation or John Sinclair of the investigative staff (301-492-7170).

Sincerely,

/s/ Arthur Schnebelen
James J. Cummings, Director
Office of Inspector and Auditor

Distribution

OIA File 81-18

OIA File 1.2.b.

JSinclair

Enclosure:
OIA rpt of Investigation

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OFFICE	cc: David Everett, DOJ, w/encl.	OIA	OIA	OIA	
NAME	Allen Pausman, DOJ, w/encl.	JSinclair/bab	Snebelen	Cummings	81-18
DATE		8/17/81	8/17/81	8/ /81	V