



The Native Village of Point Hope

PO Box 109

Point Hope, Alaska 99766

February 26, 1993

Carol Ann Reed, Acting Chief
FOIA/LPDR Branch
Division of Freedom of Information
and Publications Services
Office of Administration
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

FREEDOM OF INFORMATION
ACT REQUEST

FOIA-93-121
Rec'd 3-2-93

FREEDOM OF INFORMATION ACT REQUEST

Dear Ms. Reed:

Pursuant to the Freedom of Information Act, 5 U.S.C. Section 552, as amended, the Native Village of Point Hope hereby requests the following records (as the term "records" is defined in Appendix A):

1. A complete copy of:
 - a) all records relating to the development and the creation of Project Chariot.
 - b) all records relating to how Project Chariot was a part of the Plowshare Project.
 - c) all records relating to the why and how of the incursion into the Northern Arctic Slope and the Native Villages affected by Project Chariot.
2. A complete copy of the decommissioning and/or decontamination plan filed concerning Project Chariot.
3. All records generated by the Nuclear Regulatory Commission (hereinafter referred to as NRC), its predecessor the Atomic Energy Commission (hereinafter referred to as AEC), the Division of Biology and Medicine of the Atomic Energy Commission.

This request is continuing, and is intended to cover all records generated on or after the date of this request until the date it has been completely fulfilled by NRC. This request includes all agency records responsive to this request which have

Telephone (907) 368-2330

Fax (907) 368-2668

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ever been within the agency's custody or control, whether such records currently exist in agency, contractor, or subcontractor "working," investigative, special, retired, or other files or at any location, including "Do Not File" files, and documents located in the offices, desks, and/or homes of NRC staff and/or NRC contractors and/or other agents of NRC. We request that all relevant records be produced with the administrative or filing pages and information intact, and to be supplied copies of any and all "see reference" cards, abstracts, search slips, including search slips used to process this request, and file covers.

If any records covered by this request have been destroyed and/or removed, or are destroyed and/or removed after receipt of this request, please provide all surrounding records, including but not limited to a list of all records which have been destroyed and/or removed, a description of the actions taken, relevant dates, and individual, office and/or agency-wide policies and/or justifications for the action(s).

Should you or your advisors deem any part of this request to cover exempt materials, we also request that you review all sections of the document for any segregable parts, as required under Founding Church of Scientology v. Bell, 603 F. 2d 945, 950-951 (D.C. Cir. 1979). Please "black out" excised portions rather than "white out" or "cut out" such portions.

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

The Native Village of Point Hope requests that any fees be waived, because "finding the information can be considered as primarily benefitting the general public." 5 U.S.C. Section 552 (a)(4)(A). Additionally, disclosure of the above-requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations and activities of the government. Finally, disclosure of the above-requested information is in no way connected with any commercial interest of the requesters. The Native Village of Point Hope is a non-profit federally recognized tribe, non-partisan sovereign organization concerned with honest and open government. The Native Village of Point Hope has no commercial interests in the requested information. The Native Village of Point Hope is requesting the above information as part of an investigation of the creation and the cleanup of the Project Chariot in the Northern Arctic Slope of Alaska.

The Native Village of Point Hope is designated as a tax-exempt federally recognized tribe under the IRS code, and is a Tribe of Natives dedicated to protecting the rights of it's citizens. Since the information obtained will be disseminated to the public by the Native Village of Point Hope through the press, Congress, and other outlets, we request that all copying and search fees be waived.

To aid you in your analysis of our requested fee waiver, we provide the following additional information consistent with 10 C.F.R. Section 9.41 (a)(2) and (b):

(1) the purpose for which the requester intends to use the requested information:

The Native Village of Point Hope proposes to use the documents to inform and aid the citizens of Point Hope and other Native Villages which are discovered to be affected by Project Chariot, in understanding the proposed cleanup plans, health risks, environmental contamination and available cleanup options for the Project Chariot facility and surrounding communities. The Native Village of Point Hope may also use the documents to inform Congress, the press and other interested parties about the underlying facts contained in the documents.

(2) the extent to which the requester will extract and analyze the substantive content of the agency record:

The Native Village of Point Hope will analyze the substantive content of the record from both legal and scientific perspectives.

(3) the nature of the specific activity or research in which the agency records will be used and the specific qualifications the requester possesses to utilize information for the intended use in such a way that it contributes to public understanding:

The Native Village of Point Hope is a federally recognized Indian tribe that has at its disposal personnel that has extensive experience in not only analyzing government as well as scientific documents that relate to environmental issues but also experience in distilling and disseminating such information for the enhanced understanding of the public, is well qualified to utilize the requested documents in such a manner. As such, the specific activity or research in which the agency records will be used is for just such an intent--to contribute to public understanding and awareness of the issues surrounding the creation and cleanup of the Project Chariot Facility.

(4) the likely impact on the public's understanding of the subject as compared to the level of understanding of the subject existing prior to disclosure:

As the information requested pertains to creation, operation, and the decontamination of the Project Chariot site, the public's understanding can only increase as they become informed about the environmental future that directly affects them and their surrounding area.

(5) the size and nature of the public to whose understanding a contribution will be made:

Not only will the residents of Native Village of Point Hope and the surrounding area gain from a greater understanding of the requested information, but all those who are interested or concerned with the cleanup of the facility will benefit as well.

(6) the intended means of dissemination to the general public:

The information will be disseminated to the public in the form of information provided to Congressional committees, Native Village of Point Hope and surrounding Native Villages, as well as through print and broadcast news media, and possibly through distribution of a special report.

(7) if public access to information will be provided free of charge or provided for an access fee or publication fee:

The only cost that would be associated with public access to the information would be minimal, in order to cover the costs of reproduction, staffing and mailing. The Native Village of Point Hope will make the records obtained through this request available to a local library in the Northern Arctic Slope region, or another public facility so that all concerned members of the public in the Native Village of Point Hope and other Native Villages could review them

(8) any commercial or private interest the requester or any other party has in the agency records sought:

The Native Village of Point Hope will not derive profit income or other commercial benefit from such use. Such profit or benefit is not permitted under our charter.

The Native Village of Point Hope is clearly entitled to a fee waiver under the amended FOIA fee waiver standard. The fee waiver standard calls for a waiver "if the disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. Section 552 (a)(4)(iii). The legislative history committee reports created during the legislative process. However, in the absence of Congressional hearings or reports, floor statements by key legislators provide a basis for legislative interpretations. Senators Leahy and Hatch

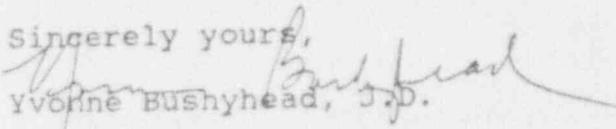
negotiated a floor amendment to the FOIA that included a provision revising the fee waiver standard. Representatives English and Kindness made several changes to the Senate-passed FOIA amendments on behalf of the House, which the Senate accepted with minor revisions. Reps. English and Kindness indicated the fee waiver standard would be met if "the information disclosed is new; supports public oversight of agency operations, including the quality of agency activities and the effect of agency policy or regulations on public health or safety; or otherwise confirms or clarifies data on past or present operations of the government." 132 Cong. Rec. H9464 (October 8, 1986) (Statements of Reps. English and Kindness). This interpretation was accepted by Senator Leahy and has been adopted by at least one court. See, McClellan Ecological Seepage Situation (Mess) v. Carlucci, 835 F.2d 1282, 1284-86 (9th Cir. 1987).

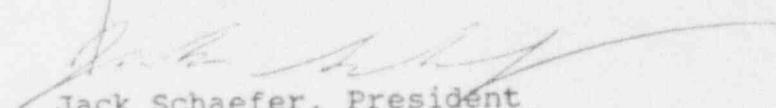
The information the Native Village of Point Hope has requested meets all of the criteria outlined in the legislators' statements noted above. The information requested pertains directly to the information available regarding the creation, the operation and the decontamination plans of Project Chariot. Therefore, our fee waiver request squarely falls with the amended FOIA fee waiver provision, 5 U.S.C. Section 552(a)(4)(iii), and within the legislative history that supports the provision.

We look forward to a response within ten working days of the receipt of this letter. Please call us at (907) 368-2330 if we may be helpful to you during your processing of our request. All correspondence should be sent to:

The Native Village of Point Hope
PO Box 109
Point Hope, AK. 99766.

Sincerely yours,


Yvonne Bushyhead, J.D.


Jack Schaefer, President
Native Village of Point Hope

APPENDIX A

The term "record" as used in this Freedom of Information Act request means the original or a copy of the original and any nonidentical copy, including copies with marks, comments or marginal notations, regardless of original location, or any kind, variety, character or type, including by way of example but not limited to, the following: agendas; reports; recommendations; transcripts; minutes; charters; books; records; contracts; subcontracts; requests for proposals; proposals; bids; Commerce Business Daily and Federal Register notices; contract modifications, deliverables; drafts; final products; questions; comments, suggestions; agreements; invoices; orders; bills; certificates; deeds; bills of sale; certificates of title; financing statements; instruments; expense accounts; receipts; disbursements journals; tax returns; financial statements; check stubs; promissory notes; resumes; address books; appointment books; telephone logs; worksheets; pictures; income statements; profit and loss statements; deposit slips; credit card receipts; records or notations of telephone or personal conversations; conferences; intraoffice communications; postcards; letters; telex; partnership agreements; catalog price lists; sound, tape and video records; memoranda (including written memoranda of telephone conversations, other conversations discussions, agreements, acts and activities); manuals; diaries; calendars or desk pads; scrapbooks; notebooks; correspondence; bulletins; circulars; policies; forms; pamphlets; notices; statements; journals; postcards; letters; telegrams; reports; interoffice communications; photostats; microfilm; microfiche; maps; deposition transcripts; drawings; blueprints; photographs; negatives; and any other data, information or statistics contained within any data storage modules, discs, or any other memory devices (including IBM or similar cards for information, data and programs) or any other information retrievable on storage systems, including computer-generated reports and printouts.