

RESPONSE TO FREEDOM OF INFORMATION ACT (FOIA) REQUEST

RESPONSE TYPE

FINAL PARTIAL

DATE

JUN - 8 1993

DOCKET NUMBER(S) (if applicable)

REQUESTER

Susan Budnick

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 in Appendix(es) _____ are already available for public inspection and copying at the NRC Public Document Room, 2120 L Street, N.W., Washington, DC.

Agency records subject to the request that are identified in Appendix(es) D are 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.

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.

Agency records subject to the request that are identified in 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 located at 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.

Fees

You will be billed by the NRC for fees totaling \$123.60

You will receive a refund from the NRC in the amount of \$ _____

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, 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.

COMMENTS

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

Carol Ann Harris

9403240055 930608
 PDR FOIA
 BUDNICK92-612 PDR

**RESPONSE TO FREEDOM OF
INFORMATION ACT (FOIA) REQUEST
(CONTINUATION)**

FOIA NUMBER(S)

FOIA — 92-612

DATE

JUN - 8 1992

PART II. B — APPLICABLE EXEMPTIONS

Records subject to the request that are described in the enclosed Appendix(es) E, F are being withheld in their entirety or in part under the Exemption No.(s) and for the reason(s) given 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).
 - XX** 5. The withheld information consists of interagency or intraagency records that are not available through discovery during litigation. (Exemption 5). Applicable Privilege:
 - XX** 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.)
 - XX** 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 recipients 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, for any denials that may be appealed to the Executive Director for Operations (EDO).

| DENYING OFFICIAL | TITLE/OFFICE | RECORDS DENIED | APPELLATE OFFICIAL | | |
|------------------|----------------|----------------|--------------------|-----------|----|
| | | | EDO | SECRETARY | IG |
| Edward L. Jordan | Director, AEOD | App. E & F | X | | |
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PART II. D — APPEAL RIGHTS

The denial by each denying official identified in Part II. C may be appealed to the Appellate Official identified there. Any such appeal must be made in writing within 30 days of receipt of this response. Appeals must be addressed, as appropriate, to the Executive Director for Operations, to the Secretary of the Commission, or to the Inspector General, 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 D
DOCUMENTS BEING PLACED IN THE PDR

| NUMBER | DATE | DESCRIPTION |
|--------|----------|---|
| 1. | Various | Handwritten notes and various news articles. (32 pages) |
| 2. | Various | Altoona Hospital Physical Medicine & Rehabilitation Evaluation. (14 pages) |
| 3. | Various | OSC Patient Treatment Records. (57 pages) |
| 4. | 10/19/92 | Licensee Event Report 24451. (1 page) |
| 5. | 11/16/92 | OSC Treatment Verification and Personnel Information. (17 pages) |
| 6. | 11/27/92 | BFI Route Assignment Certification - James Goodwell. (1 page) |
| 7. | 11/16/92 | OSC Treatment Plan. (16 pages) |
| 8. | 12/3/92 | Memo from Peter Crane, subject: Apparent Misadministration Fatality (1 page) |
| 9. | 12/4/92 | Transcript of interview of Dr. Richard Calfee. (66 pages) |
| 10. | 12/7/92 | Transcript of interview of David Shepler. (27 pages) |
| 11. | 12/7/92 | Licensee Event Report 24707. (2 pages) |
| 12. | 12/8/92 | NRC Press Release: NRC Incident Investigation Team Goes to Pittsburgh to Probe Second Failure of Cancer Treatment Device; Patient Not Injured. (1 page) |
| 13. | 12/17/92 | Memo from Robert Ayres, subject: In Related to Indiana, PA Incident. (1 page) |
| 14. | 12/17/92 | Transcript of interview of Kent Schaible. (28 pages) |

Re: FOIA-92-612

APPENDIX D
DOCUMENTS BEING PLACED IN THE PDR
(Continued)

| NUMBER | DATE | DESCRIPTION |
|--------|----------|---|
| 15. | 12/17/92 | Transcript of interview of Anthony Bradshaw. (48 pages) [NOTE: PORTIONS DELETED CONTAIN PROPRIETARY INFORMATION, WHICH IS OUTSIDE THE SCOPE OF THE REQUEST.] |
| 16. | 12/17/92 | Transcript of interview of Richard Calfee. (20 pages) |
| 17. | 12/18/92 | Transcript of interview of Sam Liprie. (80 pages) |

Re: FOIA-92-612

APPENDIX E
DOCUMENTS BEING RELEASED IN PART

| NUMBER | DATE | DESCRIPTION |
|--------|----------|--|
| 1. | Undated | Curriculum Vitae of individual. (16 pages) Portions withheld, Exemption 6 |
| 2. | Undated | Resume of individual. (3 pages) Portions withheld, Exemption 6 |
| 3. | Various | Nurse's Notes. (39 pages) Portions withheld, Exemption 6 |
| 4. | Various | OSC Pre-op/Post-op Contact - Discharge instructions - Nursing Discharge Summary. (12 pages) Portions withheld, Exemption 6 |
| 5. | Various | OSC Technologists Patient Log. (24 pages) Portions withheld, Exemption 6 |
| 6. | Various | Greater Pittsburgh Cancer Center (GPCC) Physicist Log. (5 pages) Portions withheld, Exemption 6 |
| 7. | Various | GPCC HDR Patient Record. (5 pages) Portions withheld, Exemption 6 |
| 8. | Various | Individual's Credentials. (5 pages) Portions withheld, Exemption 6 |
| 9. | Jan/1992 | Curriculum Vitae. (13 pages) Portions withheld, Exemption 6 |
| 10. | 4/28/92 | Scenery Hill Manor (SHM) Admission & Discharge Records. (26 pages) Portions withheld, Exemption 6 |
| 11. | 9/27/92 | Acknowledgement of Receipt. (3 pages) Portions withheld, Exemption 6 |
| 12. | 10/2/92 | Acknowledgement of Receipt. (3 pages) Portions withheld, Exemption 6 |
| 13. | 11/16/92 | Ambulance Dispatch form from SHM Nursing Home. (4 pages) Portions withheld, Exemption 6 |

APPENDIX E
DOCUMENTS BEING RELEASED IN PART
(Continued)

| NUMBER | DATE | DESCRIPTION |
|--------|----------|---|
| 14. | 11/18/92 | Letter from Omnitron to Jefferson Radiation Oncology Center. (4 pages) Portions withheld, Exemption 6 |
| 15. | 12/4/92 | OSC Radiation Dosimetry Report. (3 pages) Portions withheld, Exemption 6 |
| 16. | 12/5/92 | Transcript of interview of individual at SHM. (40 pages) Portions withheld, Exemption 6 |
| 17. | 12/5/92 | Transcript of interview of individual at SHM. (34 pages) Portions withheld, Exemption 6 |
| 18. | 12/7/92 | HDR Treatment Data Sheet - Greater Pittsburgh Cancer Center. (8 pages) Portions withheld, Exemption 6 |
| 19. | 12/7/92 | Transcript of interview at BFI. (25 pages) Portions withheld, Exemption 6 |
| 20. | 12/7/92 | Transcript of interview at BFI. (24 pages) Portions withheld, Exemption 6 |
| 21. | 12/7/92 | Transcript of interview at BFI. (42 pages) Portions withheld, Exemption 6 |
| 22. | 12/8/92 | Transcript of interview of individual at SHM. (27 pages) Portions withheld, Exemption 6 |
| 23. | 12/8/92 | Transcript of interview of individual at SHM. (25 pages) Portions withheld, Exemption 6 |
| 24. | 12/9/92 | Transcript of interview. (46 pages) Portions withheld, Exemption 6 |
| 25. | 12/9/92 | Transcript of interview of individual at SHM. (16 pages) Portions withheld, Exemption 6 |

Re: FOIA-92-612

APPENDIX E
DOCUMENTS BEING RELEASED IN PART
(Continued)

| NUMBER | DATE | DESCRIPTION |
|--------|----------|---|
| 26. | 12/12/92 | Letter from Greater Pittsburgh Cancer Center to IIT. (4 pages) Portions withheld, Exemption 6 |
| 27. | 12/15/92 | BFI Blood Test Results. (6 pages) Portions withheld, Exemption 6 |
| 28. | 12/14/92 | Letter from ORISE (Oak Ridge Institute for Science and Education) providing blood test results. (8 pages) |

APPENDIX F
DOCUMENTS BEING WITHHELD IN THEIR ENTIRETY

| NUMBER | DATE | DESCRIPTION |
|--------|----------|---|
| 1. | Various | Handwritten notes of IIT team member taken from the Scenery Hill Manor (SHM) Nursing Home records. (2 pages) Exemption 5 |
| 2. | Undated | List of blood samples taken of SHM employees. (1 page) Exemption 6 |
| 3. | Undated | List of detailed blood samples taken of SHM employees. (2 pages) Exemption 6 |
| 4. | Undated | SHM Patient Contact - Most Frequent. (1 page) Exemption 6 |
| 5. | Undated | SHM Patient Contact - Infrequent. (1 page) Exemption 6 |
| 6. | Undated | Draft working paper, subject: Information Required for Licensing High and Medium Dose Rate Remote Afterloading Brachytherapy Devices-Revision 1. (10 pages) Exemption 5 |
| 7. | Various | Indiana Regional Cancer Center - Daily Work Sequence Schedule. (17 pages) Exemption 6 |
| 8. | 12/14/92 | Initial Human Factors Comments on the Omnitron HDR Remote Afterloader system. (1 page) Exemption 5 |

LAW OFFICES

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December 17, 1992

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Mr. Don Grimsley
Freedom of Information
Act Officer
United States Nuclear
Regulatory Commission
Washington, D.C. 20555

FREEDOM OF INFORMATION
ACT REQUEST

*FOIA-92-612
Rec'd 12-21-92*

Re: Indiana Regional Cancer Treatment Center

Dear Mr. Grimsley:

On December 10, 1992, the Courier-Post newspaper, which is located in Camden, New Jersey, published an article regarding an incident that occurred at the Indiana Regional Cancer Treatment Center in Indiana, PA, involving the Omnitron Model 2000 High Dose Rate Afterloader, which was used to treat an elderly woman named Sara Colgan who subsequently died. I am aware that the Nuclear Regulatory Commission has issued a press release in connection with this incident, and I believe your PNC numbers on this incident are I-92-72 and I-92-72A.

This firm represents two individual physicians who were sued by entities related to Oncology Services Corporation. Although the lawsuit brought against our clients does not involve injury or death as a result of radiation, we believe that information in the possession of the Nuclear Regulatory Commission will be beneficial to us in defending our clients in the above-mentioned action. Accordingly, I am writing to request, pursuant to The Freedom of Information Act, a copy of any document that The Nuclear Regulatory Commission has concerning the incident involving Sara Colgan at the Indiana Regional Cancer Treatment Center. I would also appreciate receiving from the Nuclear Regulatory Commission any records of prior complaints concerning Oncology Services Corporation or Oncology Associates, P.C. and radiation, as well as any records or complaints concerning the functioning of the Omnitron Model 2000 High Dose Rate Afterloader.

9402100187

We would be happy to reimburse the Nuclear Regulatory Commission for any costs incurred in copying and sending any pertinent documents to us. Thank you very much for your prompt attention to this matter. If you have any questions regarding my request, please feel free to contact me at (215) 864-7114 or Edward C. Mengel, Jr., Esquire, at (215) 864-7154.

Sincerely yours,

WHITE AND WILLIAMS

By: Susan Budnick
Susan Budnick

SB/sel

cc: Edward C. Mengel, Jr., Esquire