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June 25, 1982

FREEDOM OF INFORMATION
ACT REQUEST

FOIA-82-292
Rec'd 7-6-82

Director,
Office of Administrator
Nuclear Regulatory Commission
Washington, D.C.
U.S.A. 20555

Dear Sir:

This is a request under the Freedom of Information Act as amended (5 U.S.C. 552).

It is my understanding that the Atomic Energy Commission cooperated with the U.S. Army in developing plans for the use of radioactive wastes as "area denial" weapons.

In 1956, a study on the quantity of radioactive waste "that will be available for conversion into radiological warfare agents during the period 1960 to 1980" was prepared by the U.S. Army Research and Development Command. That 1956 study is referred to in the Summary of Events and Problems, U.S. Army Chemical Corps, FY 1956. I believe that the Atomic Energy Commission was involved in that study, and other studies on developing radiological weapons.

Therefore, I am writing your agency to request the following:

1. Records outlining the A.E.C.'s involvement with the development of radiological weapons that would use radioactive materials to contaminate buildings, roads, harbors, factories, and other facilities and/or large areas of land.
2. Records outlining proposals, studies, and/or plans on the use of radioactive wastes from commercial nuclear facilities in radiological weapons.
3. Records on whether radioactive material from commercial nuclear reactors or any other reactors under the jurisdiction of the Nuclear Regulatory Commission has ever been used in any experimental or standardized military radiological weapons.
4. Records on the current status of radiological warfare, ie. has the concept fallen from favor or is it still accepted as a viable military option.

The concept of using radioactive wastes to contaminate territory and facilities has been around for some time. Therefore, I request that you search your records from as far back as 1950 right up to the present.

VAUGHN SHOWING

The FOIA provides that if only portions of a file are exempted from release, the remainder must be released to me. I therefore request that I be provided with all reasonably segregable portions of the records indicated above. Of course, I reserve my right to appeal your refusal to release any records or portions of records that are responsive to my request.

Should you decide to withhold any records from me, I request that you provide me with a detailed explanation of what records have been withheld. This should be the name, number and/or other identifying characteristics of the record if it is a complete document, file, etc. In the event that the withheld information is only a portion of a particular record, the page number, paragraph number or any other way of readily the missing portions should be noted by you.

As well, I request that you provide me with a detailed explanation of why each record or portion thereof was denied me. This would be in line with the procedures established under Vaughn v. Rosen (I), 484 F.2d 820 (D.C. Cir. 1973) cert. denied, 415 U.S. 977 (1974). The Vaughn procedures have been adopted by the courts in many other cases involving Freedom of Information Requests.

An explanation of the specificity with which a Vaughn showing must ordinarily be prepared - should you need such an explanation - can be found in Jaffe v. CIA, Civil No. 76-1394 (D.D.C., April 7, 1977).

FEE WAIVER

I request that all fees associated with the search for and copying of the records I seek be waived. The information contained in those records is of great public interest.

As you are no doubt aware, the issue of nuclear weapons is a topic of great public concern. Furthermore, the use of radioactive material from commercial nuclear reactors is a topic of public interest. Any information that will shed light on the use of radioactive materials in or as weapons would be of great public interest and could contribute to public debate on this important subject.

My request for waiver of fees is based on the grounds that furnishing "the information can be considered as primarily benefitting the general public." 5 U.S.C. 552(a)(4)(A). The language of the FOIA makes it clear that Congress intended that the assessment of fees not be a bar to private individuals or public interest groups seeking access to government documents. At the the same time, it permitted the charging of fees so that corporations of individuals seeking access to government documents for private gain would be charged the cost of the services provided.

The legislative history of the FOIA provisions calls for a liberal interpretation of the phrase "primarily benefitting the

public." All fees should be waived if two criteria are met: (1) the information will contribute to the public debate of important policy issues; and (2) the information is requested so that it can be used for that purpose.

Those two principles have been repeatedly upheld by the U.S. Supreme Court (see, eg. New York Times v. Sullivan). I am a newspaper reporter and freelance writer. Information I receive is intended for use in Canadian and American publications and the broadcast medium in both countries. Furthermore, I have extensive contacts with many individuals and public interest groups and will share the information I receive with them.

There can be no doubt that the interests of the public will be served if I were to be provided the records I seek. The role of journalists has been dealt with a number of times in the legislative history of the FOIA.

"Public benefit can be demonstrated by, inter alia, newsmen ... seeking information to be used in a publication or a public interest group ... seeking information to further a project benefitting the general public" (1974 Sourcebook, at 171). See, e.g., Nixon v. Sampson, Civ. Action No. 74-1518 (D.D.C. June 12, 1980).

While the case referred to deals primarily with the awarding of attorneys' fees for court actions involving the FOIA, that does not diminish the validity of the argument that the public interest is served by newsmen. The legislative history of the FOIA also clearly spells out that news interests and those seeking records for publication are not to be considered commercial interests.

NATIONAL SECURITY INFORMATION

As you know, the FOIA provides that what is withheld in the interests of national security information must be properly classied. Should your agency claim that records are exempt from release for reasons of national security, I expect that the precise reasons be given. Furthermore, I expect that the determination to withhold information also be judged on the basis of whether the public's interest in disclosure outweighs the damage to national security that might reasonably be expected from disclosure.

I believe the public's interest in the records I seek outweighs any damage that might come from their release. Firstly, I am not seeking detailed technical and scientific information on how to actually construct and use a radiological weapon. Secondly, the U.S. Army has already declassified records that discuss the use of radioactive wastes in weapons and how those weapons might be used.

Therefore, very little, if any, damage would be done to national security if your agency were to release the records I seek.

CONCLUSION

The Freedom of Information Act gives your agency 10 working days

to respond to this request for records. I shall expect an answer from you within that time.

If you have any questions or need to contact me by telephone, please call me at (403)420-1919.

Sincerely,

A handwritten signature in cursive script that reads "Peter von Stackelberg".

Peter von Stackelberg,
News reporter