



*77000CS*

### RESPONSE TO FREEDOM OF INFORMATION ACT (FOIA) REQUEST

FOIA -- 93-34

RESPONSE TYPE

FINAL

PARTIAL

DATE

JUN 25 1993

DOCKET NUMBER(S) (if applicable)

REQUESTER

Dave Davis

#### 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) H & J 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. [App. H and J, and releasable portions of App. I and K documents

Records subject to the request have been referred to another Federal agency(ies) for review and direct response to you. are enclosed]

Fees

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

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*

9404190226 930625  
PDR FOIA  
DAVIS93-34 PDR

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

FOIA NUMBER(S)

FOIA — 93-34

DATE

**JUN 25 1993**

**PART II. B — APPLICABLE EXEMPTIONS**

Records subject to the request that are described in the enclosed Appendix(es) I, K, L 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).

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 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
John B. Martin	Regional Administrator, Reg. III	Appendix K	X		
Joseph Scinto	Deputy General Counsel for Hearings, Enf. & Adm.	Appendices I and L		X	

**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 H  
DOCUMENTS BEING RELEASED IN THEIR ENTIRETY

NUMBER	DATE	DESCRIPTION
<u>RECORDS MAINTAINED IN PETER CRANE'S FILES</u>		
1.	Undated	Precautions Observed in the Case of Jennifer Heeg, Observations on Precautions Appropriate in Hospital Areas. (1 page)
2.	Undated	Suggestions for Future Implantation of Iodine Seeds. (1 page)
3.	Undated	Handwritten notes. (1 page)
4.	4/28/83	Comments on the NRC Document: Radiation Protection - Thyroid Blocking - Draft, by Eugene L. Saenger, M.D. (4 pages)
5.	5/31/84	Excerpts from Part 20 - Standards for Protection Against Radiation. (1 page)
6.	2/11/86	Letter from Jacquelyn D. Bush, 3M, to C. J. Heltemes, NRC subject: Preliminary Case Study Report - Rupture of an Iodine-123 Brachytherapy Source at the University of Cincinnati Medical Center. (6 pages)
7.	11/86	Preliminary Notification regarding Therapeutic Misadministration. (1 page)
8.	11/18/86	Note regarding conversation with W. L. Axelson, Region III. (1 page)
9.	11/28/86	Memo from Victor Stello to Chairman Zech, subject: Staff Requirements - "AEOD Case Study Report on the Rupture of an Iodine-125 Brachytherapy Source at the University of Cincinnati Medical Center." (5 pages)
10.	5/12/87	<u>Federal Register</u> Notice: Abnormal Occurrences for Third Quarter CY 1986; Dissemination of Information. (3 pages)

APPENDIX H  
DOCUMENTS BEING RELEASED IN THEIR ENTIRETY  
(Continued)

NUMBER	DATE	DESCRIPTION
11.	2/5/88	Memo from Peter Crane to Keith Logan, OIA. (4 pages)
12.	2/19/88	Memo from Peter Crane to Keith Logan, OIA, subject: University of Cincinnati Incident. (8 pages)
13.	4/19/88	Note to Marty. (1 page)
14.	11/7/88	Memo from Peter Crane to Dennis Rathbun, subject: U. of Cincinnati Incident. (3 pages)
15.	7/12/90	Report and Recommendation of the Differing Professional Opinion Panel to the Executive Director for Operations on the Cincinnati Hospital Contamination Incident. (57 pages)
16.	6/11/90	Certificate of Service, In the Matter of Differing Professional Opinion -- Cincinnati Hospital. (1 page)
17.	3/7/91	A Brief Account of the U. of Cincinnati Incident. (5 pages)
18.	4/8/91	Memo from Peter Crane to James Taylor, subject: SECY-91-79. (5 pages)
19.	12/10/92	Memo from Peter Crane to Martin Malsch, subject: Staff Paper on Patient Deaths Attributed to Misadministrations. (6 pages)

APPENDIX I  
DOCUMENTS BEING WITHHELD IN WHOLE OR IN PART

NUMBER	DATE	DESCRIPTION
<u>RECORDS MAINTAINED IN PETER CRANE'S FILES</u>		
1.	6/11/90	Statement of Peter Crane before Judges Margulies, Kline and Foreman, subject: University of Cincinnati Case. (10 pages) Portions withheld, Exemption 6
2.	Various	Patient's chart. (15 pages) Portions withheld, Exemption 6
3.	10/30/84	Handwritten notes. (1 page) Portions withheld, Exemption 6
4.	Undated	Draft memo from the EDO to the Chairman, subject: Staff Requirements - "AEOD Case Study Report on the Rupture of an Iodine-125 Brachytherapy Source at the University of Cincinnati Medical Center." (5 pages) Withheld in entirety, Exemption 5
5.	11/26/86	OGC memo, regarding EDO memo on Cincinnati Iodine-125 Incident. (3 pages) Withheld in entirety, Exemption 5
6.	Undated	Notes in preparation for 12/15/86 briefing. (4 pages) Portions withheld, Exemption 6
7.	12/15/86	Viewgraphs - University of Cincinnati Ruptured Iodine-125 Seed Incident, August 27 - September 1, 1984, Commissioner Assistants Briefing. (10 pages) Portions withheld, Exemption 6
8.	12/19/86	Memorandum for The Files, subject: Cincinnati Incident. (3 pages) Portions withheld, Exemption 6
9.	7/6/87	Memo from OGC to OIA, subject: Staff Handling of University of Cincinnati Incident. (6 pages) Portions withheld, Exemption 6

APPENDIX I  
DOCUMENTS BEING WITHHELD IN WHOLE OR IN PART  
(Continued)

NUMBER	DATE	DESCRIPTION
10.	7/29/87	Memo from OGC to OI, subject: University of Cincinnati Incident. (7 pages) Portions withheld, Exemption 6
11.	Undated	Notes on OI Investigation. (7 pages) Portions withheld, Exemption 6
12.	11/20/88	Memorandum for OIA, subject: OI Report on University of Cincinnati Incident. (4 pages) Portions withheld, Exemption 6
13.	4/5/89	Memo from OGC to OI, subject: Cincinnati Investigation. (8 pages) Portions withheld, Exemption 6
14.	8/4/89	Memorandum to the Deputy EDO, subject: U. of Cincinnati Investigation. (3 pages) Withheld in entirety, Exemption 5
15.	9/28/89	Memo from individual regarding thoughts on investigation. (3 pages) Portions withheld, Exemption 6
16.	3/10/90	Memo from OGC to OIG, subject: Cincinnati and Related Investigations. (5 pages) Portions withheld, Exemption 6
17.	11/18/86	Draft memo from OGC to the Commissioners, subject: Cleveland Misadministration. (1 page) Withheld in entirety, Exemption 5
18.	Undated	Handwritten notes. (1 page) Portions withheld, Exemption 6
19.	8/30/84	University of Cincinnati memorandum. (1 page) Portions withheld, Exemption 6

APPENDIX I  
DOCUMENTS BEING WITHHELD IN WHOLE OR IN PART  
(Continued)

NUMBER	DATE	DESCRIPTION
20.	Undated	Chronology of 125I Incident. (6 pages) Portions withheld, Exemption 6
21.	Undated	Handwritten notes. (1 page) Portions withheld, Exemption 6
22.	Undated	Handwritten notes. (1 page) Portions withheld, Exemption 6
23.	Undated	Handwritten notes re urine counts. (1 page) Portions withheld, Exemption 6
24.	9/17/84	University of Cincinnati memo. (1 page) Portions withheld, Exemption 6
25.	9/18/84	Letter from University of Cincinnati - Radiation Safety Office. (2 pages) Portions withheld, Exemption 6
26.	9/17/84	Letter from the University of Cincinnati Medical Center to the Chairman, Radiation Safety Committee. (2 pages) Portions withheld, Exemption 6
27.	Undated	Draft letter. (1 page) Portions withheld, Exemption 6
28.	12/8/92	Memo from OGC to the Chairman, subject: Forthcoming Medical Briefing, (3 pages), Released, with attached memo from OGC to EDO, subject: Comments on Staff Paper, "Final Amendments to 10 CFR Parts 2 and 35 on Quality Management Program and Reportable Events." (11 pages) Withheld in entirety, Exemption 5.

APPENDIX J  
DOCUMENTS BEING RELEASED IN THEIR ENTIRETY

NUMBER	DATE	DESCRIPTION
1.	9/28/76	Memo from L. I. Cobb to various addressees, subject: Medical Consultant - Eugene Saenger. (1 page)
2.	8/9/77	Memo from R. G. Gilbert to various addressees, subject: Medical Consultants. (2 pages)
3.	10/26/82	Memo from P. Smidth to Dr. Saenger. (1 page)
4.	12/7/82	Letter from E. Saenger to NRC Region III. (1 page)
5.	1/13/83	Letter from E. Saenger to P. Smidth. (3 pages)
6.	1/26/83	Letter from A. Bert Davis to Eugene Saenger. (2 pages)
7.	2/3/83	Letter from Shira Karns to A. Bert Davis. (2 pages)
8.	10/4/84	Letter from Shira Karns to NRC Region III. (1 page)



APPENDIX K  
DOCUMENTS BEING RELEASED IN PART

NUMBER	DATE	DESCRIPTION
1.	Undated	Voucher for Professional Services. Portions withheld, Exemption 6
2.	Undated	Letter from NRC to individual. (1 page) Portions withheld, Exemption 6
3.	9/20/76	Letter from NRC to individual. (1 page) Portions withheld, Exemption 6
4.	5/10/78	Memo from Director, Office of Inspection & Enforcement (IE), to Director, Division of Organization and Personnel (OP), subject: Renewal of Consultant Appointments. (6 pages) Portions withheld, Exemption 6
5.	8/17/81	Memo from IE to OP, subject: Renewal of Consultant Appointments. (5 pages) Portions withheld, Exemption 6
6.	5/3/82	Letter from NRC Region III. (3 pages) Portions withheld, Exemption 6
7.	9/13/82	Letter from University of Cincinnati Hospital to NRC Region III. (3 pages) Portions withheld, Exemption 6
8.	4/15/83	Letter from NRC Region III. (1 page) Portions withheld, Exemption 6
9.	8/9/84	Letter from NRC Region III to Henry Ford Hospital. (2 pages) Portions withheld, Exemption 6
10.	4/2/85	Request for Personnel Action. (1 page) Portions withheld, Exemption 6
11.	4/10/85	Letter from NRC Region III. (1 page) Portions withheld, Exemption 6

APPENDIX K  
DOCUMENTS BEING RELEASED IN PART  
(Continued)

NUMBER	DATE	DESCRIPTION
12.	7/1/85	Request for Appointment of a Consultant, Expert or Member. (1 page) Portions withheld, Exemption 6
13.	11/12/85	Letter from University of Cincinnati Hospital to NRC Region III. (2 pages) Portions withheld, Exemption 6
14.	5/8/86	Voucher for Professional Services. (3 pages) Portions withheld, Exemption 6
15.	5/9/86	Letter from NRC Region III. (1 page) Portions withheld, Exemption 6
16.	10/17/86	Letter from University of Cincinnati Hospital to NRC Region III. (8 pages) Portions withheld, Exemption 6
17.	1/21/87	Letter from University of Cincinnati Hospital to St. Luke's Hospital. (1 page) Portions withheld, Exemption 6

APPENDIX L  
DOCUMENTS BEING WITHHELD IN THEIR ENTIRETY

NUMBER	DATE	DESCRIPTION
1.	9/23/76	Memo from Irwin B. Rothschild, Office of the General Counsel (OGC), to Ernst Volgenau, Inspection and Enforcement (IE), subject: Confidential Statement of Employment and Financial Interests: Eugene Saenger. (2 pages) Exemptions 5 and 6
2.	7/6/77	Memo from Ruth Bell, OGC, to Ernst Volgenau, IE, subject: Confidential Statement of Employment and Financial Interests: Eugene Saenger, M.D. (1 page) Exemptions 5 and 6
3.	7/20/78	Memo from Ruth Bell, OGC, to Ernst Volgenau, IE, subject: Statement of Employment and Financial Interests: Eugene L. Saenger. (2 pages) Exemptions 5 and 6

# THE PLAIN DEALER

OHIO'S LARGEST NEWSPAPER  
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January 20, 1993

Mr. Donnie Grimsley  
Director, FOIA and Publication Services  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555  
FAX: 301-492-4994

FREEDOM OF INFORMATION  
ACT REQUEST

*FOIA-93-34  
Rec'd 1/21-93*

Dear Mr. Grimsley:

Under the provisions of the federal Freedom of Information Act, I request that your office produce all documents kept by the NRC that in any way pertain to Dr. Eugene Saenger, a longtime medical consultant and researcher at the University of Cincinnati. It is my understanding that this request has been made by congressional investigators preparing for upcoming hearings, so I would ask that I be provided all releasable records being given to them.

As a reporter for The Plain Dealer, I ask that you waive any search or copying fees as this information will be used in the public interest.

I greatly appreciate your help in obtaining these records. Please feel free to ring me at 216-344-4808 with questions.

*[Handwritten Signature]*  
TRUIN:  
Dave Davis

*93 110 20219*