



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D. C. 20555

PDR (PI-37)

AUG - 8 1990

Barry A. Zimmerman, Esquire  
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7750 College Town Drive  
Suite 300  
Sacramento, CA 95826

IN RESPONSE REFER  
TO FOIA-90-A-27  
(FOIA-90-76)

Dear Mr. Zimmerman:

This is in response to your letter dated May 16, 1990, in which you appealed Mr. Donnie H. Grimsley's responses dated April 25 and April 26, 1990. Mr. Grimsley's response dated April 26, 1990, denied four documents in their entirety responsive to your Freedom of Information Act (FOIA) request for documents concerning NRC's investigation of liquid radioactive discharges from the Rancho Seco nuclear power plant. The four documents are identified on the enclosed appendix. Mr. Grimsley's response dated April 25, 1990, denied your request for a waiver or reduction of fees.

Acting on your appeal, I have carefully reviewed the record in this case and have determined that some of the previously withheld information may now be made available to you. Your appeal is, therefore, partially granted and partially denied.

Portions of documents listed at numbers one, two, and three on the enclosed appendix can now be made publicly available and are enclosed. The remainder of the previously withheld information will continue to be withheld from public disclosure pursuant to Exemption (5) of the FOIA (5 U.S.C. 552(b)(5)) and 10 CFR 9.17(a)(5) of the Commission's regulations.

The withheld portions of the cover memorandum of document two contains the advice, opinions, and recommendations of a member of the staff. Exemption 5 shields from mandatory disclosure information generated in the deliberative process that precedes decisions of government agencies.

The remaining withheld information consists of drafts which were prepared prior to and in the course of reaching a final agency decision. Exemption (5) was intended to permit the agency's withholding of such documents to preserve the free and candid internal dialogue necessary for the careful formulation of agency decisions.

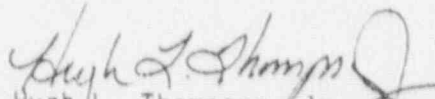
You also appeal the decision to deny your request for a waiver or reduction of fees. I am sustaining that denial because you provided no information in your appeal letter to counter the finding that information disclosed would not likely contribute to significant public understanding of the operations or activities of the government. The substantive information you sought regarding the investigation by NRC's Office of Investigations of releases of radioactive liquid effluent and discharge of radioactive liquid effluent following assessment of penalties was already in the public domain. This includes the

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NRC's Investigative Report, which was previously made available at NRC's Public Document Room in Washington, DC, the Local Public Document Room located near the Rancho Seco plant, and disclosed to you in response to referral of records to NRC by the Executive Office of U.S. Attorneys as being responsive to an FOIA request you submitted to the Executive Office of U. S. Attorneys. For example, the summary of interviews disclosed to you in this request is duplicative of interview exhibits disclosed to you in regard to your law firm's request to the Executive Office of the U.S. Attorneys. Records maintained by NRC's Region V, Walnut Creek, California, were made available for your inspection free of charge at Region V. Almost all of the additional information disclosed in response to this request consisted of internal administrative memoranda and correspondence with interviewees with regard to providing them copies of their interview transcripts. Also, the information available to the NRC indicates that the principal use of the records requested is for litigation for the benefit of private litigants you represent.

This is a final agency action. As set forth in the FOIA (5 U.S.C. 552(a)(4)(B)), judicial review of this decision is available in a district court of the United States in the district in which you reside or have your principal place of business or in the District of Columbia.

Sincerely,



Hugh L. Thompson, Jr., Deputy Executive Director  
for Nuclear Materials Safety, Safeguards  
and Operations Support

Enclosures:

1. Appendix
2. Portions of Documents one, two, and three

## APPENDIX

NUMBER	DATE	DESCRIPTION
1.	6/23/86	Unsigned draft enforcement package consisting of: 1) Routing form and Call Up sheet (2 pages) RELEASED; 2) Draft memo from A. D. Johnson to J. Axelrad re: Rancho Seco Notice of Violation and Proposed Imposition of Civil Penalties Relating to Release of Radioactive Liquid Effluents and Emergency Preparedness (1 page), 3) Draft letter from J. B. Martin to D. K. K. Lowe re: Notice of Violation and Proposed Imposition of Civil Penalties (2 pages), and 4) Draft Notice of Violation and Proposed Imposition of Civil Penalty (7 pages), EX. 5
2.	12/14/87	Memo from J. Lieberman to various addressees re: Rancho Seco (EA 86-110) (1 page) PARTIALLY RELEASED, with attached Draft letter to G. C. Andognini re: Request for Information (3 pages), EX. 5
3.	10/11/88	Memo from J. Lieberman to J. B. Martin re: EA 86-110 Rancho Seco Radioactive Effluent Discharge (1 page) RELEASED, with attached 1) Draft Commission Paper (3 pages), 2) Draft letter to G. C. Andognini re: Notice of Violation and Proposed Imposition of Civil Penalty (3 pages), and 3) Draft Notice of Violation and Proposed Imposition of Civil Penalty (5 pages) EX. 5
4.	Undated	Draft letter form J. B. Martin to D. K. K. Lowe re: Notice of Violation and Proposed Imposition of Civil Penalty (3 pages) and Draft Notice of Violation and Proposed Imposition of Civil Penalty (4 pages) EX. 5