



PDR (P-37)

RESPONSE TO FREEDOM OF INFORMATION ACT (FOIA) REQUEST

NRC FOIA REQUEST NUMBER: 90-270

RESPONSE TYPE	
FINAL	<input checked="" type="checkbox"/> PARTIAL
DATE	SEP 20 1990
DOCKET NUMBER(S) (if applicable)	

REQUESTER  
John C. Person

PART I - AGENCY RECORDS RELEASED OR NOT LOCATED (See checked boxes)

<input type="checkbox"/>	No agency records subject to the request have been located.
<input type="checkbox"/>	No additional agency records subject to the request have been located.
<input type="checkbox"/>	Requested records are available through another public distribution program. See Comments Section.
<input type="checkbox"/>	Agency records subject to the request that are identified on Appendix(es) _____ are already available for public inspection and copying in the NRC Public Document Room, 2120 L Street, N.W., Washington, DC 20555.
<input checked="" type="checkbox"/>	Agency records subject to the request that are identified on Appendix(es) <u>F</u> 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 and requester name.
<input type="checkbox"/>	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 and requester name.
<input type="checkbox"/>	Agency records subject to the request that are identified on Appendix(es) _____ may be inspected and copied at the NRC Local Public Document Room identified in the Comments Section.
<input type="checkbox"/>	Enclosed is information on how you may obtain access to and the charges for copying records placed in the NRC Public Document Room, 2120 L Street, N.W., Washington, DC.
<input type="checkbox"/>	Agency records subject to the request are enclosed.
<input type="checkbox"/>	Records subject to the request have been referred to another Federal agency(ies) for review and direct response to you.
<input type="checkbox"/>	You will be billed by the NRC for fees totaling \$_____.
<input type="checkbox"/>	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

<input checked="" type="checkbox"/>	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, sections 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 and requester name.
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COMMENTS

SIGNATURE, DIRECTOR, DIVISION OF FREEDOM OF INFORMATION AND PUBLICATIONS SERVICES  
*Kathryn O. Greene for Lonnie H. Swinley*

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PDR FOIA  
PERSON90-270 PDR

PART II B - APPLICABLE EXEMPTIONS

Records subject to the request that are described on the enclosed Appendixes) G & H are being withheld in their entirety or in part under the Exemptions and for the reasons set forth below pursuant to 5 U.S.C. 552(b) and 10 CFR 2.290(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 141-146 of the Atomic Energy Act which prohibits the disclosure of Restricted Data or Formerly Restricted Data (42 U.S.C. 2161-2166)
  - 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 2.290(d)(1).
  - The information was submitted and received in confidence pursuant to 10 CFR 2.290(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 an enforcement effort, and thus could possibly allow them 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 and Resources Management, for any denials that may be appealed to the Executive Director for Operations (EDO).

DENYING OFFICIAL	TITLE/OFFICE	RECORDS DENIED	APPELLATE OFFICIAL	
			SECRETARY	EDO
Ben B. Hayes	Director, Office of Investigations	G/1		X
Thomas T. Martin	Regional Administrator, Region I	G/2, H/1, & H/2		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 in that section. Any such appeal must be in writing and must be made within 30 days of receipt of this response. Appeals must be addressed as appropriate to the Executive Director for Operations or to the Secretary of the Commission, 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 F  
DOCUMENTS BEING PLACED IN THE PDR

NUMBER	DATE	DESCRIPTION
1.	10/7/83	Memo from R. A. Matakas to Case File 1-82-078, subject: Falsification of Stone and Webster QC Records at Nine Mile Point, Unit 2. (1 page)
2.	Various	<p>Attachments to Report of Investigation 1-82-078: (25 pages)</p> <p>Attachment 1: Stone and Webster Nine Mile Point, Unit 2, Quality Control (Electrical) Discipline Chain of Command Flow Structure.</p> <p>Attachment 2: Statement of S. D. Brown</p> <p>Attachment 3: Statement of D. F. Foley</p> <p>Attachment 4: Statement of K. P. Herbert</p> <p>Attachment 5: Statement of S. D. West</p> <p>Attachment 6: Statement of M. E. LaPoint</p> <p>Attachment 7: Statement of P. Towle</p> <p>Attachment 8: Statement of G. M. Smith</p> <p>Attachment 9: Statement of G. C. Wilkins</p> <p>Attachment 10: Statement of K. F. Irwin</p> <p>Attachment 11: Statement of G. F. Gigon</p> <p>Attachment 12: Statement of R. M. Hardison</p> <p>Attachment 13: Statement of D. W. Lanham</p>
3.	Various	Copies of 12 executed handwritten and typewritten sworn statements identified above at (F/2). (33 pages)

APPENDIX G  
DOCUMENTS BEING RELEASED IN PART

NUMBER	DATE	DESCRIPTION
1.	Various	Handwritten notes of individuals. (52 pages) Portions withheld pursuant to Exemptions 6 and 7(C).
2.	2/23/83	Memo from Region I to IE, subject: Niagara Mohawk Power Corporation (Nine Mile Point 2) - Proposed Civil Penalty, with attachments: 1) Proposed Letter and Notice of Violation and Proposed Imposition of Civil Penalty, and 2) Enforcement Conference Report. (NOTE: This document is already located in the PDR- -Accession No. 8211120435) Enclosure 1 and portions of the cover memo are being withheld pursuant to Exemption 5.

APPENDIX H  
DOCUMENTS BEING WITHHELD IN THEIR ENTIRETY

NUMBER	DATE	DESCRIPTION
1.	8/4/83	Memo from Daniel Holody to Jane Axelrad, subject: Niagara Mohawk Power Corporation (Nine Mile Point 2) - Proposed Order Imposing a Civil Penalty, with attachments: draft letter and Order Imposing a Civil Monetary Penalty, and Appendix --Evaluation and Conclusions. (10 pages) Exemption 5
2.	12/14/83	Memo from Daniel Holody to Jane Axelrad, subject: Niagara Mohawk Power corporation (Nine Mile Point 1) Proposed "Notice of Violation and Proposed Imposition of Civil Penalty", with attachments: 1) draft Proposed Notice of Violation and Proposed Imposition of Civil Penalty, and 2) Inspection Reports 83-24 and 83-29. (NOTE: The Inspection Rpts. are already in the PDR: Accession Nos. 8311280407 and 8312120001.) Cover memo and attachment 1 are being withheld pursuant to Exemption 5.