



OFFICE OF THE
SECRETARY

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

PDR(A-37)

November 9, 1990

Linda L. Bauman
FOIA Coordinator
Robinson, Robinson, Peterson,
Berk, Rudolph, Cross & Garde
103 East College Avenue
Appleton, Wisconsin 54911

Re: FOIA Appeal 90-A-35C

Dear Ms. Bauman:

This letter responds to your August 1, 1990 appeal of this Agency's denial of the documents identified in Appendices H (Documents Partially Withheld) and I (Documents Being Withheld In Their Entirety) of our July 20, 1990 response to FOIA 89-540.

In response to your appeal, the documents listed in Appendices H and I were reviewed again. On the basis of this review, it has been determined that the documents or portions of documents that were identified as withheld in these appendices were properly withheld pursuant to Exemption 5 of the FOIA, 5 U.S.C. § 552(b)(5). In addition, we have determined that the documents listed in Appendix H are also protected by Exemption 6 of the FOIA, 5 U.S.C. § 552(b)(6).

An important purpose behind Exemption 5 is to protect the integrity of the federal agency's decision-making processes. The documents listed in Appendix I consist of or relate directly to drafts of a proposed settlement agreement. They are part of the Commission's predecisional, deliberative processes. Disclosure of these documents would be likely to stifle honest and frank communication within the agency.

Exemption 5 also protects the adversary trial process by insulating the federal attorney's preparation for litigation from scrutiny. The documents listed in Appendix H were prepared in contemplation of administrative or judicial litigation, or relate directly to such documents. The withheld portion of these documents are, therefore, protected by Exemption 5.

The withheld portions of the documents listed in Appendix H are also protected by Exemption 6 of the FOIA. Exemption 6 protects privacy interests of individuals by authorizing the agency to withhold documents the release of which would constitute a clearly unwarranted invasion of personal privacy. Under this exemption, the harm to personal privacy is weighed against the benefit to the public that would result from disclosure. In this instance, the documents contain information that would result in distress and embarrassment to individuals who are named in the documents, and you have not

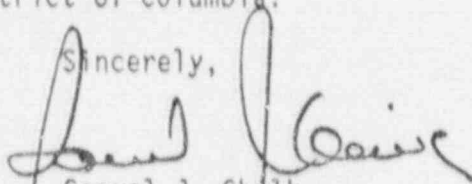
Linda L. Bauman

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established that the public interest in disclosure of such information is stronger than the threat to their privacy.

This letter represents final Agency action on your August 1, 1990 appeal. Judicial review of the denial of this information is available in Federal District Court in the district in which you reside or have your principal place of business, or in the District of Columbia.

Sincerely,



Samuel J. Chalk
Secretary of the Commission

Robinson,
Robinson, Peterson, Berk,
Rudolph, Cross & Garde

Mary Lou Robinson
Nda Jean Robinson
John C. Peterson
Avram D. Berk
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December 15, 1989

SENT BY FACSIMILE
FREEDOM OF INFORMATION ACT REQUEST

Donald Grimsley,
Director, Division of Rules and Records
Office of Administration
and Resources Management
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

FREEDOM OF INFORMATION
ACT REQUEST

FOIA-89-54
Rec'd 12-15-89

Freedom of Information Officer
Nuclear Regulatory Commission
611 Ryan Plaza Drive, Suite 1000
Arlington, TX 76011

TO WHOM IT MAY CONCERN:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. 552, as amended, I request copies of any and all transcripts, testimony, agency records and information, including but not limited to notes, letters memoranda, drafts, minutes, diaries, logs, calendars, tapes, summaries, interview reports, procedures, instructions, allegation summary sheets, interim and/or final reports, status reports, computer disks, and any and all other records relevant to and/or generated in connection with:

THE JIM KELLY ARBITRATION HEARING CONDUCTED DURING THE WEEK OF DECEMBER 11 - 15, 1989, IN REGION IV HEADQUARTERS. THIS REQUEST INCLUDES ANY AND ALL DEPOSITIONS AND TRANSCRIPTS OF TESTIMONY CONDUCTED WITH RESPECT TO THIS MATTER, AND ANY AND ALL INVESTIGATIONS, MEMORANDUMS, REPORTS, NOTES OF DISCUSSIONS, MINUTES OF MEETINGS, AND ANY AND ALL OTHER WRITTEN MATERIAL WITH RESPECT TO SAME.

The information and records subject to this request will be used to inform and educate the public and concerned citizens about the agency's activities regarding the NRC's operation and conduct of business in regards to their employees.

This request includes all agency records as defined in 10 C.F.R. 9.3 (a) (b) and the NRC Manual, Appendix 0211, Parts 1.A.2 and A.3 (approved October 8, 1980) whether they currently exist in the NRC official "working" investigative or other files, or at

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any other location, including private residences.

If any records, as defined in 10 C.F.R. 9.3 (a) (b), and the NRC Manual, supra., and covered by this request have been destroyed, and/or removed, after this request, please provide all surrounding records, including but not limited to a list of all records which have been or are destroyed and/or removed, a description of the action(s) taken relevant to, generated in connection implementing the action(s).

We are requesting this information as part of an ongoing monitoring project of the NRC's efforts to protect public health and safety at and near nuclear power plants.

We request that fees be waived, because "finding the information can be considered as primarily benefitting the general public" 5 U.S.C. 552 (a) (4) (a). I work regularly with public interest non-profit, non-partisan organizations concerned with honest and open government, and especially in assuring that the truth is made public about the nuclear plants across the country, and the conduct of the NRC management in this regard.

For any documents or portions that you deny due to a specific FOIA exemption, please provide an index itemizing and describing the documents or portions of documents withheld. The index should provide a detailed justification of your grounds for claiming each exemption, explaining why each exemption is relevant to the document or portion of the document withheld. This index is required under Vaughn v. Rosen (I), 484 F.2d 820 (D.C. Cir. 1973), cert. denied, 415 U.S. 977 (1974).

We anticipate a complete or partial response to this request within ten working days, as required by the FOIA.

Sincerely,

Billie Pirner Garde
Billie Pirner Garde

BPG/11b



RESPONSE TO FREEDOM OF INFORMATION ACT (FOIA) REQUEST

FOIA — 89-540

RESPONSE TYPE

FINAL

PARTIAL 3rd

DATE

JUL 20 1990

DOCKET NUMBER(S) (if applicable)

REQUESTER

Garde, Billie Pirner

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 on Appendix(es) E are already available for public inspection and copying in the NRC Public Document Room, 2120 L Street, N.W., Washington, DC 20555.

Agency records subject to the request that are identified on Appendix(es) F, G, H and J 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.

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.

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.

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.

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.

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

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, 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.

COMMENTS

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

Donna H. Kennedy

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PART II B - APPLICABLE EXEMPTIONS

Records, subject to the request that are described on the enclosed Appendixes G, H, I, J, K, 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 9.17(a) of NRC Regulations.

<input type="checkbox"/>	1. The withheld information is properly classified pursuant to Executive Order (EXEMPTION 1)
<input type="checkbox"/>	2. The withheld information relates solely to the internal personnel rules and procedures of NRC (EXEMPTION 2)
<input type="checkbox"/>	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)
<input type="checkbox"/>	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).
<input checked="" type="checkbox"/>	5. The withheld information consists of interagency or intraagency records that are not available through discovery during litigation (EXEMPTION 5) Applicable Privilege
<input checked="" type="checkbox"/>	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 fact- portions because the release of the facts would permit an indirect inquiry into the predecisional process of the agency.
<input checked="" type="checkbox"/>	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)
<input checked="" type="checkbox"/>	6. The withheld information is exempted from public disclosure because its disclosure would result in a clearly unwarranted invasion of personal privacy (EXEMPTION 6)
<input checked="" type="checkbox"/>	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 them to take action to shield potential wrongdoing or a violation of NRC requirements from investigators (EXEMPTION 7 (A))
<input checked="" type="checkbox"/>	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	IG	EDO
Leo J. Norton	Assistant Inspector General for Investigations, Office of Inspector General	Portions-App. G		<input checked="" type="checkbox"/>	
Joseph Scinto	Deputy General Counsel for Hearings and Enforcement, Office of the General Counsel	Appendices H and I	<input checked="" type="checkbox"/>		
Thomas T. Martin	Regional Administrator, Region IV	Appendices J and K			<input checked="" type="checkbox"/>

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.

TO THE INSPECTOR GENERAL

APPENDIX E

DOCUMENTS MAINTAINED AMONG PDR FILES

NUMBER	DATE	DESCRIPTION
1.	4/5/85	Letter from Martin to Parker, HL&P. PDR #8504090278 850405 (2 pages)
2.	5/30/85	Letter from Johnson to Goldberg, HL&P. PDR # 8506030384 850530 (3 pages)

APPENDIX F
RECORDS MAINTAINED IN THE PDR UNDER THE ABOVE REQUEST NUMBER

1. Various Chronology. (1 page)
2. 5/21/85 NRC Inspection Report, re: Dockets 50-498 and 50-499.
(6 pages)
3. 1/4/88 Memorandum for James G. Partlow from Richard L. Bangart,
re: Referral of Technical Issues Provided to OIA
During the South Texas Project Investigation, with enclosure.
(15 pages)
4. 8/10/88 Memorandum for Sharon Connelly from Robert D. Martin, re:
Memorandum from James A. F. Kelly. (1 page)
5. 11/2/88 Memorandum for Sharon R. Connelly from Robert D. Martin, re:
OIA Investigation - South Texas Physical Security Program.
(1 page)
6. 11/14/88 Report of Interview, re: Charles Laurence Kern. (1 page)
7. 11/14/88 Report of Interview, re: Larry George. (1 page)
8. 11/15/88 Report of Interview, re: David Sheesley. (2 pages)
9. 11/17/88 Memorandum from James Kelly from Mark E. Resner, re: Review of
Transcript, with attachment. (37 pages)
10. 11/18/88 EDO Principal Correspondence Control Ticket Cover from
Sharon R. Connelly, OIA, to Robert D. Martin, Region IV,
re: Investigation of Alleged Improper Actions by NRC
Inspectors (South Texas Project). (1 page)
11. 11/26/88 Memorandum for Mark E. Resner from James A. F. Kelly,
re: Review of Transcript. (2 pages)
12. 12/1/88 Report of Interview, re: David Moore. (1 page)
13. 12/6/88 Report of Interview, re: David Lamb. (1 page)
14. 12/6/88 Report of Interview, re: Mark McBurnett. (2 pages)
15. 12/21/88 Memorandum for Robert D. Martin from Sharon R. Connelly, re:
Investigation of Alleged Improper Actions by NRC Inspectors.
(1 page)

APPENDIX F
RECORDS MAINTAINED IN THE PDR UNDER THE ABOVE REQUEST NUMBER
(Continued)

16. 2/8/89 Memorandum for Robert D. Martin from Richard L. Bangart, re: Safeguards Information Classification of Supplemental Interviews Transmitted by Connelly to Martin 12/21/88 Memo, w/o attachment. (1 page)
17. 3/8/89 Memorandum for Bill Brown from Donald D. Driskill, re: STP Investigation. (2 pages)
18. 4/10/89 Letter to Walter Dressler from William L. Brown. (1 page)
19. 4/14/89 Memo from Martin to Dambly and Cradock, (1 page), transmitting 4/14/89 ltr from Dressler. (NOTE: Dressler letter addressed in 2nd Partial response.)
20. 4/17/89 Letter to Robert D. Martin from Walter E. Dressler, re: Supplemental Information Request and Caldwell and Kelly Adverse Action. (2 pages)
21. 4/21/89 Letter to Robert D. Martin from Walter E. Dressler, re: Supplemental Information Request and Caldwell and Kelly Adverse Action. (2 pages)
22. 5/11/89 Oral Reply of Mr. Kelly by Mr. Dressler. (24 pages)
23. 5/12/89 Letter to Robert D. Martin from Walter E. Dressler, re: Proposed Discipline, regarding James Kelly, Senior Inspector, with attachment. (13 pages)
24. 5/16/89 Letter to Walter Dressler from William L. Brown, with enclosure. (2 pages)
25. 7/18/89 Letter to Office of Arbitration, Federal Mediation and Conciliation Service from Walter E. Dressler, re: Request for List of Arbitrators. (1 page)
26. 8/7/89 Memo from Taylor to Malsch with attachment: Memo dated 8/1/89 from Martin to Taylor. (2 pages)
27. 8/31/89 Letter to Don B. Hays from James E. Cradock, re: In the Matter of James Kelly, NRC Adverse Action #AA 61. (1 page)

APPENDIX F
RECORDS MAINTAINED IN THE PDR UNDER THE ABOVE REQUEST NUMBER

- 28. -- Trips For Selected Employees, Destinations, Dates
(1 page)
- 29. -- Trips to Bay City - 1987 (2 pages)
- 30. -- Telecon's related to STP (June - September 1987) (1 page)

APPENDIX G
DOCUMENTS PARTIALLY WITHHELD

NUMBER	DATE	DESCRIPTION
1.	11/16/88	Memorandum re Review of Transcript. (1 page) - Release - with following attachment: a. 11/10/88 Investigative Interview of an individual - (15 pages) Portion deleted - Exemption 6
2.	11/17/88	Memorandum re Review of Transcript. (1 page) - Release - with following attachment: a. 11/9/88 Investigative Interview of an individual - (23 pages) Portion deleted - Exemption 6
3.	11/17/88	Memorandum re Review of Transcript. (1 page) - Release - with following attachment: a. 11/9/88 Investigative Interview of an individual - (92 pages) Portion deleted - Exemption 6

APPENDIX H
DOCUMENTS PARTIALLY WITHHELD

NUMBER	DATE	DESCRIPTION
1.	3/22/89	Facsimile Transmittal Sheet with notation (1 page) - Exemption 5 - withheld in entirety - Attachments: a. List of Interviewees with NRC Attorney 2/16/89 (1 page) - withheld in entirety - Exemption 5 b. Interviews with HL&P Personnel 2/16/89 (17 pages) Portions withheld - Exemption 5 (note: pages 1 through 5 and pages 7 through 17 withheld in entirety. Portions of page 6 released).

APPENDIX I
DOCUMENTS BEING WITHHELD IN THEIR ENTIRETY
EXEMPTION 5

NUMBER	DATE	DESCRIPTION
1.	Draft	Cradock to Dresslar letter, re: Adverse Action of James A. F. Kelly. (1 page)
2.	Draft	Cradock to Martin (12/18/89) transmittal (1 page) of draft Settlement Agreement (3 pages)
3.	Draft	Cradock to Martin (12/19/89) transmittal (1 page) of draft Settlement Agreement (3 pages)
4.	Draft	Cradock to Martin (12/19/89) transmittal (1 page) of Proposed Settlement Agreement (3 pages)

APPENDIX J
DOCUMENTS PARTIALLY WITHHELD

NUMBER	DATE	DESCRIPTION
1.	10/19/88	Memorandum re: Observations Concerning the CIA Memo dated September 26, 1988, Transmitting Their South Texas Report. (4 pages) Portions deleted - Exemptions 6 and 7C
2.	12/8/89	Handwritten note with a Public Affairs release and an organizational chart. (3 pages) - Portions deleted - Exemption 5
3.	Undated	Handwritten notations on the bottom half of typed note which is dated 11/23/88. Deleted - Exemption 5. Note the 11/23/88 typed upper portion of this record has already been addressed in the previous response dated 4/16/90.

APPENDIX E
DOCUMENTS BEING WITHHELD IN THEIR ENTIRETY

EXEMPTION 5

1. Handwritten note to Bob from Bill (2 pages) with 23-page attachment (Legal opinions given during deliberative process)
2. Handwritten note to Bob from Bill (2 pages) with note at top stating the note was "Privileged-Lawyer/Client Information." (Legal opinions given during deliberative process)
3. Handwritten note to Bob from Bill dated 1/24/89. (Legal opinions given during deliberative process) (2 pages)
4. Handwritten analysis (4 pages) with note at top stating "Privileged Lawyer-Client Information 1-27-89." (Legal opinion given during deliberative process)
5. Five-page typewritten note entitled: "Charge Conclusion Characterization" (Predecisional, deliberative process)
6. Handwritten note to Bob from Bill (1 page) dated 11/28/89. (Legal analysis given during deliberative process)
7. Draft typewritten note to Taylor from Martin; subject: Proposed OIA Actions, with 2 attached typewritten draft memoranda, with 4-line handwritten note. (Drafts, predecisional) (5 pages)
8. Draft Questions for Bob Martin (15 pages). (Record covered by Lawyer-Client privilege)
9. Typewritten 7-page note with handwritten notation: "This may be helpful in answering questions." (Record covered by Lawyer-Client privilege)
10. Handwritten note (6 lines). (Predecisional, deliberative process) (1 page)
11. Handwritten note, Bob M. to Sharon Connelly: OIA Report Things Needed, dated 11/9/88. (Predecisional, deliberative process) (1 page)
12. Proposed Settlement Agreement (2 pages). (Predecisional, deliberative process)

APPENDIX K
DOCUMENTS BEING WITHHELD IN THEIR ENTIRETY

EXEMPTION 5

13. Suggested provision in Settlement Agreement (1 page). (Predecisional, deliberative process)
14. Proposed Settlement Agreement (2 pages) with handwritten note to Bill at top. (Predecisional, deliberative process)
15. Draft Settlement Agreement (2 pages) with numerous handwritten changes. (Predecisional, deliberative process)
16. Draft Counter-Offer (2 pages) with handwritten changes on 1st page. (Predecisional, deliberative process)
17. Handwritten notes (1 page). (Predecisional, deliberative process)
18. Draft Settlement Agreement (2 pages, 1 of which is legal size). (Predecisional, deliberative process)