



PDR (PI-37)

RESPONSE TO FREEDOM OF INFORMATION ACT (FOIA) REQUEST

NRC FOIA REQUEST NUMBERS

FOIA - 90-333
RESPONSE TYPE

FINAL PARTIAL

DATE
AUG 16 1990

DOCKET NUMBER(S) (if applicable)

REQUESTER

Bradley W. Jones

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 (i.e., are identified on Appendixes) _____ 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 Appendixes _____ 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 Appendixes _____ 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

Thomas A. ...

9101080364 900816
PDR FOIA
JONES90-333 PDR

PART II.B — APPLICABLE EXEMPTIONS

Records subject to the request that are described on the enclosed Appendix(es) D 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.

- 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 reasons 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 reasons 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))
 - 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
James A. Fitzgerald	Assistant General Counsel for Adjudications and Opinions	App. D	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."

Re: FOIA-90-333

APPENDIX D
DOCUMENT BEING WITHHELD IN ITS ENTIRETY

NUMBER	DATE	DESCRIPTION
1.	9/8/89	Exhibit 45 to OI Report 1-89-006: Memorandum from James A. Fitzgerald, OGC, to Chester W. White, OI, subject: Application of 10 CFR 20.203(c)(6) To Situation at Radiation Technology, Inc. (4 pages) Exemption 5

AKIN, GUMP, STRAUSS, HAUER & FELD

ATTORNEYS AT LAW

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

1335 NEW HAMPSHIRE AVENUE, N.W.

SUITE 400

WASHINGTON, D.C. 20036

(202) 887-4000

FAX (202) 887-4288

2100 ONE CONGRESS PLAZA

111 CONGRESS AVENUE

AUSTIN, TEXAS 78701

(512) 499-6200

3200 REPUBLIC BANK CENTER

700 LOUISIANA STREET

HOUSTON, TEXAS 77002

(713) 221-0101

4100 FIRST CITY CENTER
1700 PACIFIC AVENUE
DALLAS, TEXAS 75201-4618
(214) 969-2800

1500 INTERFIRST PLAZA
300 CONVENT STREET
SAN ANTONIO, TEXAS 78205
(512) 270-0800

WRITERS DIRECT DIAL NUMBER (202) 887-4558

July 17, 1990

By Hand Delivery

Mr. Donnie H. Grimsley, Director
Division of Freedom of Information and
Publications Services
Office of Administration
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

FREEDOM OF INFORMATION
ACT REQUEST

FOIA-90-333
Rec'd 7-17-90

Re: Freedom of Information Act Request

Dear Mr. Grimsley:

The following is filed under the Freedom of Information Act, 5 U.S.C. Sec. 552. Please provide complete copies of the following documents.

Any and all exhibits or other attachments to two Office of Investigations Reports concerning issues involved in the April 1989 enforcement conference held with Progress Technology and/or its parent company, RTI, Inc. This request includes transcripts, summaries of interviews, NRC, RTI, or Progress Technology documents included as exhibits to the referenced reports in whatever form the documentation may appear.

We request expedited response to this request. We are aware that all the documents requested are in the possession of either OI headquarters or the Office of Enforcement. These documents are needed in order for RTI to determine appropriate response and corrective actions for an enforcement conference that, although not yet scheduled, is expected to take place in the near future. Consistent with the NRC Enforcement Manual, Sec. 5.3.4 (h), the FOIA process has been designated as the appropriate method for obtaining exhibits to OI reports. We request response to this request sooner than the required 10 day response time provided in the FOIA. To our knowledge, none of the individuals interviewed by OI during the course of this investigation has requested confidentiality and the OI reports have already been issued in final form. For this reason, we believe none of the exhibits

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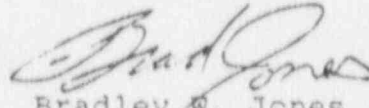
AKIN, GUMP, STRAUSS, HAUER & FELD

Donnie H. Grimsley
July 17, 1990
Page 2

should be withholdable and a prompt response to this request should be possible.

We are willing to pay all fees associated with this request, you do not need to contact me again for permission to proceed once you have established the applicable fee. I will have a courier pick up the response as soon as it is available. If any portion of this request is denied, please provide an explanation of the reasons for the denial, including the specific statutory exemption relied on, as required by 5 U.S.C. Sec. 552(a)(6)(A)(i) and NRC regulations in 10 CFR Sec. 9.27(b)(2).

Sincerely,


Bradley W. Jones

cc: SECY



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

NS/DH Brinsley

DISTRIBUTION - DFIPS Subject, Author, Branch Chief, Deputy Director for Administration/ARM, Other:

Adl, Hessler, J Hunt

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DATE ▶	<i>8/13/90</i>	<i>8/13/90</i>	<i>8/16/90</i>	<i>8/16/90</i>	<i>8/16/90</i>	<i>1</i>	<i>1</i>

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