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March 28, 1990

Executive Director for Operations
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

APPEAL OF INITIAL FOIA DECISION
90-A-18E(90-54)
Rec'd 4-3-90

RE: Appeal of FOIA 90-54

TO Executive Director for Operations:

This is an appeal pursuant to subsection a(6) of the Freedom of Information Act as amended (5 U.S.C. 552), of the actual denial of the Commission to release documents requested on February 5, 1990, by the ROBINSON, ROBINSON, PETERSON, BERK, RUDOLPH, CROSS AND GARDE LAW OFFICE and on behalf of its client FRANK BAUSEMER.

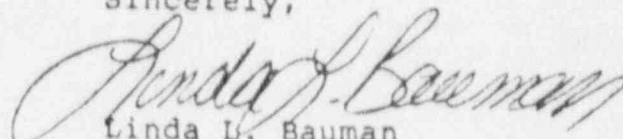
By letter dated March 21, 1990, Donnie H. Grimsley, Director, Division of Freedom of Information and Publications Services, informed us that Appendix C, is being withheld from disclosure in their entirety or in part, pursuant to FOIA Exemption 5, because the information consists of interagency or intraagency records that are not available through discovery litigation. 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; and Exemption 7, because the withheld information consists of records compiled for law enforcement purposes and is being withheld for the reason(s) indicated. 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 possible allow them to take caution to shield potential wrongdoing or a violation of NRC requirements from investigators. (7A).

We believe we are entitled to the release of the documents being withheld.

We expect your response to this appeal within 20 working days of your receipt so that we can determine whether to pursue this matter further in the courts.

Thank you for your consideration of this appeal.

Sincerely,

A handwritten signature in cursive script, appearing to read "Linda L. Bauman".

Linda L. Bauman
FOIA Coordinator

nrcappeal



RESPONSE TO FREEDOM OF INFORMATION ACT (FOIA) REQUEST

FOIA - 90-54

RESPONSE TYPE

FINAL PARTIAL
DATE

MAR 21 1990

DOCKET NUMBER(S) (if applicable)

REQUESTER
Ms. Billie P. Gault

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 Appendixes *A* are already available for public inspection and copying. NRC Public Document Room, 2120 L Street, N.W., Washington, DC 20555.
- Agency records subject to the request that are identified on Appendixes *B* are being made available for public inspection and copying. 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 *Appendix B*.
- 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 - 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

Donnie H. Brindley

9003280152 (5pp)

PART B - APPLICABLE EXEMPTIONS

Records subject to the request that are described on the enclosed Appendixes C 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 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 facta 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 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 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
<i>T. E. Mully</i>	<i>Director, DRR</i>	<i>41</i>		<input checked="" type="checkbox"/>
<i>J. Ziebarth</i>	<i>Director, OE</i>	<i>42</i>		<input checked="" type="checkbox"/>

PART D - APPEAL RIGHTS

The denial by each denying official identified in Part 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 A

RECORDS MAINTAINED AMONG PDR FILES

<u>NUMBER</u>	<u>DATE</u>	<u>DESCRIPTION</u>
1.	3/31/90	Letter to W. J. Cahill from C. I. Grimes re: Inspection conducted 1/3-30/90 with enclosure (16 pages) ANO 9002120321 & 9002110324

Re: FOIA-90-54

APPENDIX B

RECORDS BEING PLACED INTO THE PDR UNDER THE ABOVE REQUEST NUMBER

<u>NUMBER</u>	<u>DATE</u>	<u>DESCRIPTION</u>
1.	2/5/90	Letter to C. I. Grimes from B. P. Garde with enclosures (13 pages)

APPENDIX C

RECORDS TOTALLY WITHHELD

<u>NUMBER</u>	<u>DATE</u>	<u>DESCRIPTION & EXEMPTION</u>
1.	Various	Records in the Office of Nuclear Reactor Regulation EX. 5 & 7A
2.	Undated	TU Electric slides (18 pages) EX. 5 & 7A

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February 5, 1990

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-90-54
Rec'd 2-9-90

TO WHOM IT MAY CONCERN:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. 552, as amended, this firm on behalf of it's client FRANK BAUSEMER, request copies of any and all transcripts, testimony, agency records and information, including but not limited to notes, letters memoranda, drafts, minutes, diaries, logs, calenders, 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:

NRC Inspection Report 50-445/90-05; 50/446/90-05 issued January 31, 1990, and the NRC's inspection into the Therm-o-Lag issues that were subject of this inspection report.

The information and records subject to this request will be used to prepare for Mr. Bausemer's Department of Labor hearing before the Administrative Law Judge; as well as to examine the documents responsive to determine whether or not Mr. Bausemer's concerns or complaints have been properly evaluated by the NRC staff, and whether the proper corrective action was taken with respect to those concerns. The documents may also 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 the regulation of the Comanche Peak plant.

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 any other location, including private residences.

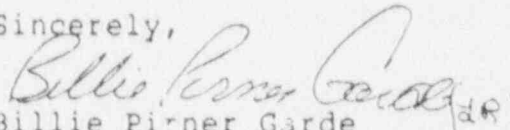
~~9003280111~~ (3pg)

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).

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 F2d 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.

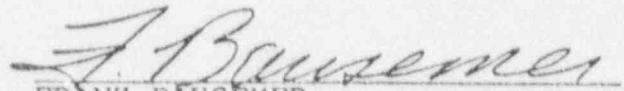
Sincerely,


Billie Pirner Garde (dR)

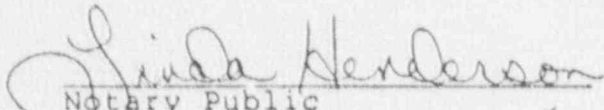
BPG/11b

AUTHORIZATION

I, FRANK BAUSEMER hereby authorize the Nuclear Regulatory Commission and/or the U.S. Department of Labor to release any and all information it has in its possession to my attorney, Billie Pirner Garde or her representative; pursuant to a Freedom of Information Act Request.


FRANK BAUSEMER

Signed and sworn to me this
9th day of JANUARY,
1990.


Notary Public
My commission expires 5-04-91.



February 5, 1990

PRELIMINARY NOTIFICATION OF EVENT OR UNUSUAL OCCURRENCE PNO-ADSP-90-2

This preliminary notification constitutes EARLY notice of events of POSSIBLE safety or public interest significance. The information is as initially received without verification or evaluation, and is basically all that is known by the ADSP staff on this date.

FACILITY: TU Electric
Comanche Peak Unit 1
Docket No. 50-445
Glen Rose, Texas

Licensee Emergency Classification:
..... Notification of Unusual Event
..... Alert
..... Site Area Emergency
..... General Emergency
..... Not Applicable

SUBJECT: POTENTIAL INTIMIDATION OF FORMER QC INSPECTOR

On January 30, 1990, a special exit was conducted with TU Electric by the NRC Resident staff which identified a potential violation of 10 CFR 50, Appendix B, Criterion I and 10 CFR 50.7 involving the potential intimidation of QC receipt inspection personnel. Subsequently, on the evening of February 2, 1990, a telephone death threat against her husband was received by the wife of a QC inspector who was involved in the identification of the events and circumstances pertaining to the subject potential intimidation violation.

A police report was filed with the local law enforcement agency and the applicant was notified by the NRC resident office on February 3, 1990. The applicant's Corporate Security organization is evaluating the event.

The NRC does not plan to issue a news release.

The Comanche Peak Project Division received initial notification of this occurrence by a telephone call from one of the QC inspectors on February 3, 1990. The information presented herein is current as of 8:00 a.m. (CST) on February 5, 1990.

CONTACT: R. F. Warnick (817) 897-1500
R. L. Latta (817) 897-1500

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