



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

PDR-616

MAR 29 1984

Docket No. 50-358

Mr. Tom Devine
Mr. Jay Rosenthal
Government Accountability Project
Institute for Policy Studies
1901 Que Street, N.W.
Washington, DC 20009

IN RESPONSE REFER
TO FOIA-82-206
(FOIA-82-A-11)

Dear Messrs. Devine and Rosenthal:

This is in further response to your letter dated April 20, 1982, in which you requested, pursuant to the Freedom of Information Act (FOIA), documents concerning IE Report 50-358/81-13.

Due to the length of time it has taken to process this FOIA request, an updated search for documents was conducted as of February 1984. This final response addresses documents which were located in the file designated as 81-39 in the Office of Inspector and Auditor.

The documents listed on Appendix A are already located in the NRC Public Document Room (PDR), 1717 H Street, N.W., Washington, DC. The accession number identifying the documents is indicated on the appendix.

The documents listed on Appendix B are being placed in the PDR.

Portions of the documents 1 through 4 and the entire document 5 listed on Appendix C are investigatory records compiled for law enforcement purposes and are being withheld from public disclosure pursuant to exemption (7)(A) of the Freedom of Information Act (5 U.S.C. 552(b)(7)(A)) and 10 CFR 9.5(a) . (7)(i) of the Commission's regulations. Disclosure of this information would interfere with an ongoing enforcement proceeding by allowing those being investigated to learn the scope, direction, and focus of the NRC investigatory efforts, and thus could possibly allow them to take action to shield potential wrongdoing or a violation of agency requirements from NRC investigators.

The computer printouts (documents 3 and 4 of Appendix C) identify the allegations by item number, the name of the alleged, a description of allegation and, in some cases, the name of the inspector assigned to review the allegation. Please note, however, that the names of inspectors assigned to review the allegations represent an initial staff assignment, and in most cases, does not reflect the person who actually investigated the allegation.

The names of the alleged and their personal item number identifiers are being withheld from public disclosure in their entirety. The reasons for this are twofold. First, certain deleted names of alleged and their identifiers represent individuals who are confidential informants and who provided information to the NRC during the agency's investigative effort. Second, certain of the deleted names are of alleged who furnished unsolicited information to the NRC. The NRC, in reviewing the totality of the circumstances

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under which the information was provided, believes that disclosure of the names of alleged and their personal identifiers would constitute a clearly unwarranted invasion of their personal privacy because it could jeopardize their current and future employment, as well as their standing in the community. Consequently, because disclosure of the names of alleged and their personal item number identifiers would constitute an unwarranted invasion of personal privacy and reveal confidential sources, they are being withheld from public disclosure pursuant to Exemptions (6), (7)(C), and (7)(D) of the Freedom of Information Act (5 U.S.C. 552(b)(6), (7)(C), and (7)(D)) and 10 CFR 9.5(a)(6), (7)(iii), and (7)(iv) of the Commission's regulations. To the extent that some of this information may already have been disclosed in Report No. 50-358/81-13, it is unnecessary to repeat the information again. Also it could, if repeated at this time, cause an unwarranted invasion of the personal privacy of the individuals involved.

In addition to the above information, certain names of individuals and other identifying information have been deleted from the descriptions of the allegations. These individuals are supervisors, co-workers, and others about whom allegations were made or who were mentioned in the description of the allegations. To disclose the identity of these individuals in a preliminary agency record which does not reflect the agency's findings regarding the validity of the allegations or incidents described would constitute a clearly unwarranted invasion of the personal privacy of these individuals. Therefore, the names and other identifiers which have been deleted from the allegations are being withheld from public disclosure pursuant to Exemptions (6) and (7)(C) of the Freedom of Information Act (5 U.S.C. 552(b)(6) and (7)(C)) and 10 CFR 9.5(a)(6) and (7)(iii) of the Commission's regulations.

The nonexempt portions of documents 1 through 4 are being placed in the PDR.

Documents 6 through 8 listed on Appendix C are being withheld from public disclosure pursuant to exemption (5) of the Freedom of Information Act (5 U.S.C. 552(b)(5)) and 10 CFR 9.5(a)(5) of the Commission's regulations. Document 6 contains the advice, opinions, recommendations and analysis of the General Counsel on the proposal for a joint NRC/FBI investigation at Zimmer. Documents 7 and 8 contain predecisional views and opinions of the Chairman and were written to be circulated to the other Commissioners in the course of the NRC's deliberations on the proposal of a joint NRC/FBI investigation at Zimmer. Disclosure of these documents would inhibit the candid and frank exchange of communications in future deliberations before the Commission. There are no reasonably segregable factual portions because any facts are inextricably intertwined with exempt portions.

The documents listed on Appendix D, although located in the 81-39 file, pertain to the current activity by the Office of Investigations (OI). Since you subsequently submitted an FOIA request for OI's documents, which has been designated as FOIA-83-559, the documents listed on Appendix D will be addressed in FOIA-83-559.

In addition, a January 27, 1983 memorandum from W. F. Christianson to D. R. Hunter and a February 23, 1983 memorandum from D. R. Hunter to E. C. Gilbert are subject to this request and have previously been addressed in my letter

to Ms. Lynne Bernabei dated May 16, 1983 concerning the FOIA request designated as FOIA-83-77.

Two transcripts dated June 10, 1982 and September 14, 1982, entitled "Oversight Hearings on Quality Assurance at the Zimmer Nuclear Station" are also subject to this request. These documents are available from the Government Printing Office and are identified as Hearing Prints of the Committee on Interior and Insular Affairs, U.S. House of Representatives, Serial 97-32, Part 1 (June 10, 1982) and Part 2 (September 14, 1982).

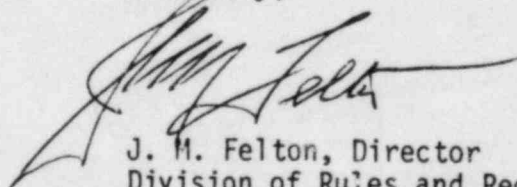
Pursuant to 10 CFR 9.9 and 9.15 of the Commission's regulations, it has been determined that the information withheld is exempt from production or disclosure, and that its production or disclosure is contrary to the public interest. The person responsible for the denial of documents 1, 2 and 5 and certain 7(A) denials of documents 3 and 4 on Appendix C is Ben B. Hayes, Director, Office of Investigations. The persons responsible for the remaining exemption (6), 7(A), (7)(C) and (7)(D) denials of documents 3 and 4 on Appendix C are the undersigned and Mr. James G. Keppler, Regional Administrator, Region III. The person responsible for the denial of document 6 on Appendix C is James A. Fitzgerald, Assistant General Counsel. The person responsible for the denial of documents 7 and 8 on Appendix C is John C. Hoyle, Assistant Secretary of the Commission.

These denials by myself and Mr. Keppler may be appealed to the Executive Director for Operations within 30 days from the receipt of this letter. Any such appeal must be in writing addressed to the Executive Director for Operations, 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." The remaining denials may be appealed within 30 days to the Commission and should be addressed to the Secretary of the Commission.

This completes action on your initial FOIA request.

On June 30, 1982, you appealed the fact that NRC had not completed its search for and review of documents subject to this request. Since the search and review are now completed, we are considering the appeal closed. Judicial review of this decision is available in a federal district court in the district in which you reside, have your principal place of business, or in the District of Columbia.

Sincerely,



J. M. Felton, Director
Division of Rules and Records
Office of Administration

Enclosures: As stated

APPENDIX A

1. Letter to Barnes from Warnick re: Date of Completion of Zimmer Investigation (8301050105) - dated 3/24/82
2. Letter to Chairman Palladino from Congressman Ottinger (8206010173) - dated 4/29/82
3. Letter to Chairman Palladino from Congressman Udall (8206130005) - dated 6/14/82
4. Memo to W. J. Dircks from S. Chilk re: Briefing on Zimmer Investigation (8206220134) - dated 6/15/82
5. Memo to the Record from S. Chilk re: Meeting with CG&E/GAP (8206290564) - dated 6/21/82
6. Letter to Chairman Palladino from Congressman Udall (8208090053) - dated 7/12/82
7. Letter to Congressman Udall from Chairman Palladino with attachments (8206130070) - dated 7/15/82
8. Congressional response with attachments re: Proposed letter to Congressman Udall (8206130066) - dated 6/28/82
9. Memo to Region III Files from Lewis re: 11/17 meeting with CG&E, et. al. (8301060264) - dated 11/24/82
10. Letter to E. A. Borgmann from R. F. Heishman with inspection report 50-358/78-25 (7901050091) - dated 12/1/78
11. Letter to Congressman Udall from Chairman Palladino with enclosure (8303110136) - dated 2/25/83

APPENDIX B

1. 8/2/82 Memo for James Fitzgerald from James J. Cummings re: Zimmer Investigation (1 page)
2. 6/23/82 Letter to Troy B. Conner, Jr., from James J. Cummings re: Release of Letter to the Public (1 page)
3. 6/7/82 Letter to Samuel J. Chilk from Troy B. Conner, Jr., re: Briefing on Zimmer w/attachment (2 pages)
4. 7/2/82 Letter to James A. Cummings from Gerald Charnoff re: Notice of Violation Issued to Cincinnati Gas & Electric Company in November 1981 (2 pages)
5. 1/5/83 Memo for L. Bickwit from James J. Cummings re: Response to Congressman Udall's 12/7/82 Letter w/attachments - NOTE: ATTACHMENT C WAS ADDRESSED IN OUR 1/10/83 LETTER TO GAP (9 pages)
6. 10/20/82 Letter to The Honorable Morris K. Udall from David H. Gamble re: Documents in OIA Files w/enclosures (11 pages)
7. 9/15/82 Letter to The Honorable Nunzio Palladino from Morris K. Udall re: Quality Assurance at the Zimmer Project (1 page)
8. 9/21/82 Memo for Chairman Palladino et. al. from Carlton Kammerer re: Udall Committee Hearing on Construction at the Zimmer Nuclear Power Station w/attachment (3 pages)
9. 8/30/82 Memo for Chairman Palladino et. al. from Carlton Kammerer re: Zimmer Documents w/o enclosures (1 page)
10. 6/29/82 Memo for Chairman Palladino et. al. from Carlton Kammerer re: Concerns of Dr. Myers Regarding Zimmer (1 page)
11. 10/30/81 Letter to The Honorable Nunzio Palladino from Morris K. Udall re: "Design Review of Brown and Root Engineering Work for the South Texas Project" (1 page)
12. 10/13/81 Letter to The Honorable Nunzio Palladino from Morris K. Udall re: Hearing on Quality Assurance (1 page)
13. 7/9/82 Memo for Chairman Palladino et. al. from Carlton Kammerer re: Zimmer Investigation w/attachment (32 pages)
14. 4/28/82 Memo for James Fitzgerald from Carlton Kammerer re: Zimmer Documentation (1 page)
15. 3/27/82 Letter to The Honorable Morris K. Udall from Carlton Kammerer re: Zimmer Investigation w/list of 23 enclosures (2 pages)

APPENDIX B

(Continued)

16. 12/20/82 Letter to The Honorable Nunzio Palladino from Morris K. Udall re: Safe Operations at Zimmer (1 page)
17. 1/14/83 Note to Jim Fitzgerald et. al. from Jim Snieszke re: Followup To Zimmer Order (1 page)
18. 7/15/82 Memo for William J. Dircks from James J. Cummings re: Zimmer - Allegation of Harassment by NRC Inspectors (1 page)
19. 6/15/82 Memo for James J. Cummings from James G. Keppler re: Zimmer - Allegation of Harassment by NRC Inspectors w/attached letter dated 6/2/82 (3 pages)
20. 5/6/82 Memo for Thomas Rehm from James G. Keppler re: Request by Henry Myers for Zimmer Documentation w/enclosures (81 pages)
21. 4/22/82 Memo for Thomas Rehm from James G. Keppler re: Request by Henry Myers for Zimmer Documentation w/enclosures (2 pages)
22. 2/7/83 Memo for Thomas Rehm from James G. Keppler re: Information Requested by Chairman Udall in the 12/20/82 Memo to Chairman Palladino (1 page)
23. 2/2/83 Memo for Thomas A. Rehm from James G. Keppler re: Information Requested by H. R. Myers in 12/15/82 Memo from Kammerer to Rehm (Corrections) w/enclosure (4 pages)
24. 1/4/83 Memo for D. R. Hunter from T. P. Gwynn re: Memo from C. Kammerer to T. Rehm dated 12/15/82, Request for Information w/enclosures (15 pages)
25. 6/1/82 Memo for Zimmer file from A. Bert Davis re: Meeting with U.S. Attorney, Cincinnati, Ohio on 5/20/82 (2 pages)
26. 6/1/82 Memo for Region III Files from D. R. Hunter re: Zimmer Briefing for Chairman Palladino - 5/10/82 (1 page)
27. 4/26/82 Memo for Thomas Rehm from James G. Keppler re: Revised Request by Henry Myers for Zimmer Documentation w/enclosed list (3 pages)
28. 11/10/82 Memo for Commissioners from James J. Cummings re: Zimmer (1 page)
29. 7/12/82 Note for Mr. Cummings concerning Zimmer from Lil, OCM (1 page)
30. 2/9/83 Correspondence response sheet for Commission Action from S. J. Chilk re: Proposed letter to Udall for Zimmer Additional Information request (1 page)
31. 7/7/82 Memo for Edward Abbott from T. A. Rehm re: Photographs of Zimmer (3 pages)

APPENDIX B

(Continued)

32. 12/17/82 Memo for Commissioners from Dircks re: Plan of Action for
Reviewing Implementation of Zimmer Order (7 pages w/Enclosure)
33. 10/20/82 Letter to Udall from Palladino re: Additional Information
regarding Zimmer (6 pages w/ Enclosure)

APPENDIX C

1. 7/1/82 Routing and Transmittal Slip to Rick Parrish from
Ron Smith re: Conversation with Mr. Cummings (1 page)
2. 9/23/82 Letter to Ann Tracey from James Cummings re: Investigative
plan meeting for Zimmer construction. (2 pages)
3. 4/26/82 Computer printout from Region III Tracking System
re: Complete listing of Zimmer Allegations (110 pages)
4. 5/18/82 Computer printout from Region III Tracking System
re: Zimmer Allegation Listing provided to James Cummings (109 pages)
5. 9/12/83 Letter to A. M. Tracey from J. J. Cummings re: conversation
with R. Smith (1 page)
6. 5/4/83 Memo to Chairman Palladino from H. H. E. Plaine re: Joint
FBI/NRC Investigation at Zimmer (6 pages)
7. 4/11/83 Memo to Commissioner Gilinsky, et al from N J. Palladino
re: Proposal for a joint NRC-FBI investigation at Zimmer (1 page)
8. 5/9/83 Memo to Commissioner Gilinsky, et al from N. J. Palladino
re: Joint FBI/NRC investigation at Zimmer (1 page)

APPENDIX D

1. 3/18/83 Draft Memo for File from Ben B. Hayes re:
Zimmer/Meeting in Cincinnati, Ohio with
U.S. Attorney Christopher Barnes and Assistant
U.S. Attorney Ann Tracy (3 pages)
2. 4/4/83 Memo to File from William J. Ward re:
Meeting with U.S. Attorney/FBI Regarding Zimmer
Investigation (4 pages)
3. 6/10/83 Letter to Christopher K. Barnes, from Ben B. Hayes
re: response of 4/1/83 letter about a joint NRC/FBI
investigation of certain allegations involving the
Zimmer nuclear power plant (2 pages)
4. 7/7/83 Memo for File from Ben B. Hayes re:
Zimmer/Meeting in Cincinnati, Ohio with
U.S. Attorney Christopher Barnes and Assistant
U.S. Attorney Ann Tracy (2 pages)
5. Undated Draft Letter to Julian Greenspun from James J.
Cummings re: Response to Mr. Greenspun's 3/25/83
letter to Ben Hayes (1 page)
6. Undated Draft Letter to Julian S. Greenspan from Ben B.
Hayes re: Response to J. S. Greenspun's letter of
3/25/83 regarding NRC and DOJ investigative
relationship (6 pages)

GOV 'MENT ACCOUNTABILITY PROJECT

Institute for Policy Studies

1901 Que Street, N.W., Washington, D.C. 20009

(202) 234-9382

April 20, 1982

Director
Office of Administration
Nuclear Regulatory Commission
Washington, D.C. 20555

FREEDOM OF INFORMATION
ACT REQUEST

FOIA-82-206

Rec'd 4-22-82

To Whom It May Concern:

Pursuant to the Freedom of Information Act ("FOIA"), 5 USC §552, we request the investigative file, including all drafts, memoranda, statements, affidavits, computer printouts, notes, telephone logs, diaries, or any other information connected with NRC IE Report No. 50-358/81-13. The documents may be at Region III Nuclear Regulatory Commission ("NRC") Headquarters, the NRC Office of Inspector and Auditor ("OIA") headquarters, or retained in the personal or office files of IE and OIA investigators who worked on the Zimmer case.

Although the Zimmer investigation is ongoing, Report No. 80-358/81-13 is for all intents and purposes a finished agency product which should be open for public inspection, notwithstanding exemption #5 of the FOIA. A document that is pre-decisional at the time of preparation may lose exempt status if "adopted formally or informally, as the agency position on an issue or is used by the agency in its dealings with the public." Coastal States v. Dept. of Energy 617 F. 2d. 854,866 (D.C. Cir. 1980). Report No. 80-358/81-13 was used by the NRC as a basis for imposition of a \$200,000 civil penalty against Cincinnati Gas & Electric ("CG&E"), as well as for the Agency's decision to delegate to CG&E the responsibility of conducting an in-house reinspection entitled "The Quality Confirmation Program." If the NRC can use the report to make this final agency policy commitment in its dealings with the public and the utility, then clearly the report must be post-decisional in nature.

On March 18, 1982, Mr. Bert Davis, Region III Deputy Director, told me that priorities have yet to be established for Part II of the investigation. As a result, it is unfair to characterize the ongoing investigation as a mere continuation of work on the previous issues.

In order to comply with the provisions of the Privacy Act, we would consent to deleting the names of any parties whose names are mentioned in the appeals and whose right to privacy would be threatened through public disclosure.

We are requesting this information as part of a monitoring project on the adequacy of the Commission's efforts to protect public safety at nuclear power plants. As a result, we request that fees be waived because "furnishing the information can be considered as primarily benefitting the general public." 5USC § 552 (a)(4)(A).

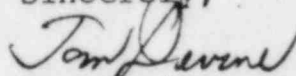
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Director, Office of Administration
Nuclear REgulatory Commission
April 20, 1982
Page Two

For any documents or portions of documents that you deny due to a specific exemption, please provide any index itemizing and describing documents or portions of documents withheld. The index should provide a detailed justification of your grounds for claiming such exemption, explaining why each exemption is relevant to the document or portion 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).

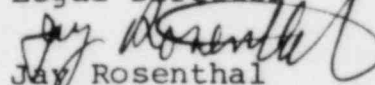
We look forward to your reply within ten working days.

Sincerely,



Tom Devine

Legal Director



Jay Rosenthal

Staff Associate

TD/jr