



nmboos

RESPONSE TO FREEDOM OF INFORMATION ACT (FOIA) REQUEST

FOIA - 95-80

RESPONSE TYPE

XX FINAL (3rd) PARTIAL

DATE

AUG 11 1995

DOCKET NUMBER(S) (if applicable)

REQUESTER

Mr. Thomas Saporito

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

X Agency records subject to the request that are identified in Appendix(es) E are 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.

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.

Agency records subject to the request that are identified in 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 located at the NRC Public Document Room, 2120 L Street, N.W., Washington, DC.

X 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.

X Fees

X You will be billed by the NRC for fees totaling \$ 183.00

You will receive a refund from the NRC in the amount of \$ _____

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, 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.

COMMENTS

*The records identified on enclosed Appendices E and F are the last of the records you chose from the listing sent to you on March 7, 1995, as being responsive to your request. Copies of Appendix E records and the releasable portions of Appendix F records are enclosed. The fee for the processing of your request is noted below:

Duplication - 1,015 pgs. (100 pgs. @ no charge) -
915 pgs. @ \$0.20 per pg. = \$183.00

You will be billed by NRC's Division of Accounting and Finance for this amount. This completes NRC's action on your request.

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

[Handwritten Signature]

**RESPONSE TO FREEDOM OF
INFORMATION ACT (FOIA) REQUEST
(CONTINUATION)**

FOIA NUMBER(S)

FOIA — 95-80

DATE

AUG 11 1995

PART II B — APPLICABLE EXEMPTIONS

Records subject to the request that are described in the enclosed Appendix(es) F are being withheld in their entirety or in part under the Exemption No.(s) and for the reason(s) given 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 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)

X 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 recipients to take action to shield potential wrongdoing or a violation of NRC requirements from investigators. (Exemption 7 (A))

X 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, for any denials that may be appealed to the Executive Director for Operations (EDO).

DENYING OFFICIAL	TITLE/OFFICE	RECORDS DENIED	APPELLATE OFFICIAL		
			EDO	SECRETARY	IG
Guy P. Caputo	Director, OI	App. F	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 there. Any such appeal must be made in writing within 30 days of receipt of this response. Appeals must be addressed, as appropriate, to the Executive Director for Operations, to the Secretary of the Commission, or to the Inspector General, 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."

RECORDS THAT CAN BE RELEASED TO THE REQUESTER IN THEIR ENTIRETY

1. 07/29/92 Exhibit 129 to ROI 4-92-003
Supplemental Statement of Individual
(2 pp)
2. 07/28/92 Exhibit 132 to ROI 4092-003
Report of Interview with Individual
(2 pp)
3. 07/29/92 Exhibit 133 to ROI 4-92-003
Report of Interview with Individual
(2 pp)
4. 07/29/92 Exhibit 134 to ROI 4-92-003
Report of Interview with Individual
(2 pp)
5. 07/29/92 Exhibit 135 to ROI 4-92-003
Report of Interview with Individual
(2 pp)

APPENDIX F

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RECORDS THAT RELATE TO REQUEST THAT CAN BE RELEASED TO THE REQUESTER IN PART

1. 07/28/92 Exhibit 128 to ROI 4-92-003 Interview of Individual (59 pp) 7(C), portions
2. 07/28/92 Exhibit 130 to ROI 4-92-003 Investigative Interview of Individual (171 pp) 7(C), portions
3. 07/28/92 Exhibit 131 to RoI 4-92-003 Interview of Individual (57 pp) 7(C), portions

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Dunmire & Saporito

Administrative Professional Offices
113 Lloyd Avenue
Pittsburgh, Pennsylvania 15218
Telephone: (412) 243-4601
Facsimile: (412) 243-4601

Florida Administrative Offices
101-B Harvest Moon Ct.
Jupiter, Florida 33458
(407) 745-2118

Thomas J. Saporito, Jr.
ERA Complaints/Litigation
Nuclear Litigation/Intervention

February 07, 1995

FREEDOM OF INFORMATION
ACT REQUEST

FOIA-95-80
Rec'd 2-21-95

Executive Director for Operations
U.S. Nuclear Regulatory Commission
White Flint Building
Washington, D.C. 20500

Re: Freedom of Information Act Request

Dear Sir:

Pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. Part 552, et seq., Dunmire & Saporito, by and through the undersigned, hereby request a copy of the U.S. Nuclear Regulatory Commission ("NRC") record(s) and information regarding NRC licensee, Houston Lighting & Power Company ("HLP") directly related to the NRC's investigation of HLP regarding the revocation of Thomas J. Saporito Jr.'s unescorted access to the HLP South Texas Project Electric Generating Station ("STPEGS") in February, 1992 and subsequent allegations by Mr. Saporito concerning employment discrimination taken against him by HLP in his attempts to obtain work in the nuclear industry.

Specifically, we request a copy of the following:

1. A copy of the transcripts from an interview and/or deposition of Thomas J. Saporito, Jr. concerning HLP and/or STPEGS taken by the NRC Office of Investigations ("OI") regarding the revocation of Mr. Saporito's unescorted access to STPEGS in February, 1992.

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2. A copy of the transcripts from an interview and/or deposition taken by the NRC of any and all employees or agents of HLP and/or STPEGS investigated by the NRC Office of Investigations ("OI") regarding the revocation of Mr. Saporito's unescorted access to STPEGS in February, 1992.

4. A copy of the transcripts from an interview and/or deposition taken by the NRC of any and all employees or agents of Nuclear Support Services, Inc. ("NSSI") investigated by the NRC Office of Investigations ("OI") regarding discrimination of Mr. Saporito in his attempts to secure employment in the nuclear industry.

This FOIA request seeks information as described above and includes but is not limited to notes, letters, memoranda, drafts, minutes, diaries, logs, procedures, instructions, engineering analyses, drawings, files, graphs, charts, maps, photographs, agreements, handwritten notes, studies, data, notebooks, books, telephone messages, computations, interim and/or final reports, status reports, and any and all other records relevant to and/or generated in connection with the enumerated paragraphs above.

FEE WAIVER REQUEST

In accordance with 10 C.F.R. 9.41(a)(2) and (b), we hereby request that all fees be waived for the following reasons:

Purpose:

1. The information sought will contribute significantly to the public's understanding of the operations of the government and/or is primarily in the public interest. This FOIA request seeks information relevant to a Department of Labor ("DOL") discrimination complaint filed under the Energy Reorganization Act of 1974 as amended 42 U.S.C. 5851 ("ERA") concerning the undersigned and a NRC licensee. The Secretary of Labor has

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determined that cases under 29 C.F.R. Part 24 involve the litigation of "health and safety hazards to the public" not merely "private harms." See, Polizzi v. Gibbs & Hill, Inc., Case No. 87-ERA-38, slip op. of SOL at pp.2-3 (July 18, 1989).

Extent:

2. We will diligently extract and analyze the substantive content of the agency record.

Nature & Qualifications:

3. Our activity and research will support and provide a basis for litigation under the ERA as described above. The undersigned is an experienced worker in the nuclear industry with over 10-years of knowledge about the agency's regulations and the DOL process and represents nuclear workers in prosecuting Section 211 ERA claims.

Likely Impact on the Public's Understanding of the Subject:

4. The information and subsequent actions by us will be widely disseminated to the public through press releases and through grassroots environmental organizations and through FEC. Thus, the public's awareness and understanding of the agency's behavior and performance and that of the DOL and NRC's licensee as well as the adverse consequences born by whistleblowers will be greatly enhanced.

Size and Nature of the Public:

5. Nationwide distribution of materials across the continental United States of America.

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Means of Distribution:

6. Via the media; news releases; publications; public school lectures; television and radio programs; etc.

Public Access to Information:

7. Public access to information will be provided free of charge.

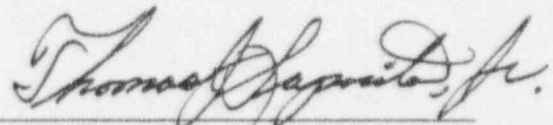
Requester's Commercial or Private Interest:

8. The requester has no commercial or private interest.

For any documents or portions of documents 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 look forward to your timely response to this FOIA request within 10-days as the law provides.

Very truly yours,
DUNMIRE & SAPORITO



Thomas J. Saporito, Jr.