

UNION OF CONCERNED SCIENTISTS

1346 Connecticut Avenue, N.W. • S. 1101 • Washington, DC 20036 • (202) 296-5600

*Under
FYI*

April 5, 1984

APPEAL OF INITIAL FOIA DECISION

84-A-39E(84-175)

Rec'd 4-9-84

Mr. William Dircks
Executive Director
for Operations
U. S. Nuclear Regulatory Commission
Washington, DC 20555

APPEAL FROM INITIAL FOIA DECISION

Dear Mr. Dircks:

On March 13, 1984, S. Sholly made the enclosed FOIA request (FOIA 84-175). The rules require the agency to respond within 10 days. Since no response has been forthcoming (despite repeated telephone calls), Mr. Sholly interprets this as a denial of the request. This constitutes his appeal of that denial.

As stated in Mr. Sholly's FOIA request, it was his understanding that a proprietary claim had been made with respect to some or all of the documents identified in Item "A" of his request ("A copy of the General Electric Probabilistic Risk Assessment for the GESSAR-II standard plant design (BWR/6 Mark III), and all update amendments, appendices, addenda, supplements, and all other changes thereto."). Therefore he requested to review the bases for the proprietary claim.

As you are aware, the Freedom of Information Act, which defines material that must be made publicly available, contains no general exemption for "proprietary" material. The Act does contain an exemption for "trade secrets and commercial or financial information obtained from a person and privileged or confidential." 5 U.S.C. § 552 (b) (4).

All of the following conditions must be met in order to invoke the exemption: The information must be (A) a trade secret or (B) information which is (1) commercial or financial, (2) obtained from a person, and (3) privileged or confidential. Getman v. NLRB, 450 F.2d 670, 673 (D. C. Cir. 1971); Consumers Union v. Veterans Admin., 301 F. Supp. 796, 802 (S. D. N. Y. 1969).

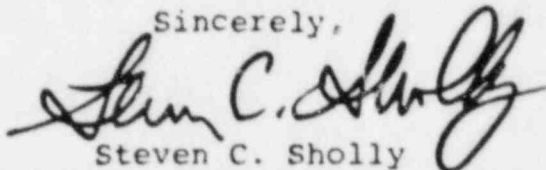
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SHOLL84-A-39E PDR

Main Office: 26 Church Street • Cambridge, Massachusetts 02238 • (617) 547-5552

I can see no basis for a proprietary claim on a probabilistic risk assessment study. Further, I am aware of no other such claim with respect to the dozens of other such studies which have been performed to date.

Your prompt attention to this request will be appreciated.

Sincerely,

A handwritten signature in cursive script, appearing to read "Steven C. Sholly". The signature is written in dark ink and is positioned above the printed name.

Steven C. Sholly
Technical Research Associate