



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

OFFICE OF THE
SECRETARY

September 11, 1984

Mr. Earl Lane
Newsday, Washington Bureau
1301 Pennsylvania Ave., N.W.
Washington, D.C. 20004

Subject: FOIA 84-A-58

Dear Mr. Lane:

This is in response to your July 11, 1984 Freedom of Information Act ("FOIA") appeal of the denial of access to Commission transcripts of May 9, 10, 11 and 16, 1984 regarding the Shoreham Nuclear Power Station. The Commission has reviewed the initial determination to withhold these transcripts and has determined that they should continue to be withheld in their entirety. There were no factual portions that were reasonably segregable.

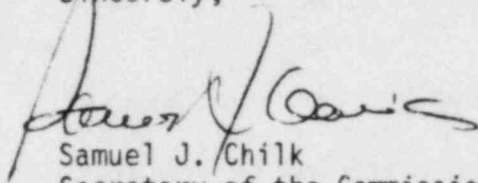
The focus of the Commission's attention during the identified series of meetings on Shoreham was the manner in which the Commission ought to adjudicate the low power license application submitted by LILCO. Specifically, the May 9 meeting and its continuation on May 10 focused on the options open to the Commission in handling LILCO's application while the May 11 and 16 meetings were discussions related to the order, CLI-84-8, issued by the Commission on May 16, 1984. These are precisely the types of issues and meetings sought to be protected by the plain language of Exemption 10 of the Government in the Sunshine Act, 5 U.S.C. § 552b(c)(10).

Philadelphia Newspapers v. NRC, 727 F.2d 1195 (D.C. Cir. 1984), the impetus in the release of the TMI transcripts to the Philadelphia Inquirer, does not support release of the Shoreham transcripts. The Court in Philadelphia Newspapers cautioned that use of Exemption 10 should be limited to discussions involving on-the-record formal proceedings. No doubt, the Shoreham proceeding is, and has all of the attributes of, such a formal proceeding.

Furthermore, release of transcripts to Congress does not waive any applicable Sunshine exemption. Murphy v. Dept. of Army, 613 F.2d 1151 (D.C. Cir. 1979). Therefore, release of the transcripts to the House Interior Committee does not alter the Commission's position of withholding.

This letter represents final agency action on your FOIA appeal concerning the identified Shoreham transcripts. Judicial review is available in a federal district court in the district in which you reside or have your principal place of business, or in the District of Columbia.

Sincerely,

A handwritten signature in black ink, appearing to read "Samuel J. Chilk". The signature is written in a cursive style with a large initial "S" and a long horizontal stroke at the end.

Samuel J. Chilk
Secretary of the Commission



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

JUN 14 1984

Docket No. 50-322

Mr. Earl Lane
Newsday, Washington Bureau
1301 Pennsylvania Avenue, NW
Washington, DC 20004

IN RESPONSE REFER
TO FOIA-84-445

Dear Mr. Lane:

This is in response to your letter dated June 1, 1984, in which you requested, pursuant to the Freedom of Information Act (FOIA), access to or copies of transcripts of all Nuclear Regulatory Commission meetings relating to the Shoreham Nuclear Power Station on May 7 through May 16, 1984.

The transcripts identified on enclosed Appendix A are available for public inspection and copying at the NRC Public Document Room (PDR), 1717 H Street, NW, Washington, DC 20555.

There is no charge for inspecting records at the PDR. The charge for copying records maintained at the PDR is five cents per page, as specified in 10 CFR 9.14(a). If you do not wish to visit the PDR to inspect or copy these transcripts, you may obtain copies by calling the PDR (634-3273). Upon your agreement to pay the copying charges, the PDR will arrange for the transcripts to be copied. You will be billed for the copying charges, plus tax and postage.

The transcripts identified on enclosed Appendix B are being withheld in their entirety. The closed Commission meeting transcripts have been reviewed, and it has been determined that they are exempt in their entirety from mandatory public disclosure under Exemption (10) of the Government in the Sunshine Act. The discussion during this meeting specifically concerned the NRC's conduct of a particular case of formal agency adjudication. Accordingly, the transcripts are being withheld in their entirety pursuant to Exemption (10) of the Government in the Sunshine Act (5 U.S.C. 552b (c)(10)) and 10 CFR 9.104(a)(10) of the Commission's regulations. The person responsible for the denial of the transcripts is Mr. John C. Hoyle, Assistant Secretary of the Commission.

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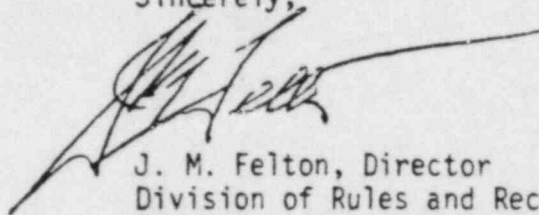
JUN 14 1984

Mr. Earl Lane

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This denial may be appealed to the Commission within 30 days from the receipt of this letter. Any such appeal must be in writing, addressed 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".

Sincerely,

A handwritten signature in black ink, appearing to read "J. M. Felton", with a long horizontal flourish extending to the right.

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

Enclosures: As stated

APPENDIX A

1. May 7, 1984 - Commission Meeting Oral Argument on Shoreham
2. May 16, 1984 - Affirmation of Shoreham Order

APPENDIX B

1. May 9, 1984 - Discussion of Shoreham Proceeding 63 pp.
2. May 10, 1984 - Continuation of 5/9 Discussion of Shoreham Proceeding, 57 pp.
3. May 11, 1984 - Review of Shoreham Order, 62 pp.
4. May 16, 1984 - Continuation of Review of Shoreham Order, 45 pp.

Washington Bureau

June 1, 1984

J. M. Felton
Freedom of Information Act Office
Nuclear Regulatory Commission
7735 Old Georgetown Rd.
Bethesda, Md.

FREEDOM OF INFORMATION
ACT REQUEST

FOIA-84-445

Rec'd 6-1-84

Dear Sir:

Pursuant to the Freedom of Information Act, 5 U.S.C. 552, I hereby request access to, or a copy of, transcripts of any and all Nuclear Regulatory Commission meetings relating to the Shoreham nuclear power station on the following days: May 7 through May 16, 1984.

The parties to the low-power license proceeding for Shoreham delivered oral arguments before the Commission on May 7. The Commission then held several meetings during the next 10 days to consider an order in the case. The order was handed down on May 16. I am interested in the meetings leading up to the issuance of that order.

If any expenses in excess of \$250 are incurred in connection with this request, please inform me in advance for my approval.

If you determine that some portions of the transcripts are exempt from release, I request that you provide me with the remainder. I reserve my right to appeal any such decisions.

If you do not grant this request within 10 working days, I will consider my request denied.

Sincerely,

Earl Lane
Earl Lane