

REED SMITH SHAW & McCLAY

1301 K STREET, N.W.
SUITE 1100 - EAST TOWER
WASHINGTON, D.C. 20005-3117
202-414-9200

Pittsburgh, PA
Philadelphia, PA
Harrisburg, PA
Princeton, NJ

Suite 1100
8251 GREENSBORO DRIVE
McLEAN, VA 22102-3844
703-734-4600

FACSIMILE
202-414-9299

FACSIMILE
703-734-4699

WRITER'S DIRECT DIAL NUMBER

(703) 734-4612

April 10, 1996

VIA CERTIFIED MAIL

Mr. James M. Taylor
Executive Director for Operations
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

APPEAL OF INITIAL FOIA DECISION
96-A-07 E [96-110]
Rec'd 4-17-96

Re: Appeal from an Initial FOIA Decision (Req. 96-110)

Dear Mr. James:

This letter will serve as Alexandria Hospital's appeal from the denial of access to portions of a certain document under the Freedom of Information Act by Stewart D. Ebnetter, Regional Administrator, Region II. Attached is the letter excluding such portions from our FOIA request.

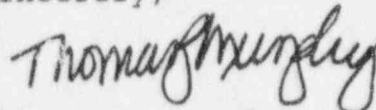
Portions of this document have been withheld pursuant to 5 U.S.C. § 522(b)(5). Alexandria Hospital appeals this determination to the extent that the document contains segregable portions not within the exemption.

Section 522(b) provides that "[a]ny reasonable segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt from this subsection." 5 U.S.C. § 522(b). Generally, the agency bears the burden of showing that no such segregable information exists. Ethyl Corp. v. United States EPA, 25 F.3d 1241, 1250 (4th Cir. 1994).

Alexandria Hospital requests that you produce copies of those portions of the withheld document (described on Appendix C) that contain segregable information. Alexandria Hospital will pay the reasonable cost of copying those documents.

Thank you for your consideration.

Sincerely,



Thomas P. Murphy

ktp
Enclosure

9606070214 960524
PDR FOIA
MURPHY96-A-7 PDR

96-A-7
(FOIA-96-110)

APPENDIX A
(RECORD RELEASED)

1. 6/23/94 Facsimile Transmittal to Pat Santiago, OE, from
L. Watson (1 page) attaching Escalated Enforcement
Panel Questionnaire (10 pages)



RESPONSE TO FREEDOM OF
INFORMATION ACT (FOIA) REQUEST

FOIA — 96-110

RESPONSE TYPE

☒ FINAL (2nd) ☐ PARTIAL

DATE APR 09 1996

DOCKET NUMBER(S) (if applicable)

REQUESTER

Thomas P. Murphy

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.

☐ Agency records subject to the request that are identified in Appendix(es) _____ 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.

☐ 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.

☒ Fees

☒ You will be billed by the NRC for fees totaling \$ 82.77

☐ 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

A copy of the releasable portions of the record identified on Appendix C is enclosed.

The fees for processing your request are:

20 minutes professional search @ \$32.47 = \$10.80
1/2 hour clerical search @ \$15.39 = \$7.50
1.5 hours professional review @ \$32.47 = \$48.67
Duplication of 79 pages @ \$0.20 per page = \$15.80

TOTAL = \$82.77

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

[Signature]

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

FOIA NUMBER(S)

FOIA — 96-110

DATE

APR 09 1996

PART II. B — APPLICABLE EXEMPTIONS

Records subject to the request that are described in the enclosed Appendix(es) C 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 intragency 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)

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))

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
Stewart D. Ebner	Regional Administrator RII	Appendix C	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."

APPENDIX C
(RECORD WITHHELD IN PART)

1. 6/23/94 Facsimile Transmittal to Pat Santiago from L. Watson
(1 page) (RELEASE) attaching Escalated Enforcemenet
Panel Questionnaire (10 pages) (EXEMPTION 5)

REED SMITH SHAW & McCLAY

1301 K STREET, N.W.
SUITE 1100 - EAST TOWER
WASHINGTON, D.C. 20005-3117
202-414-9200

Pittsburgh, PA
Philadelphia, PA
Harrisburg, PA
Princeton, NJ

Suite 1100
8251 GREENSBORO DRIVE
McLEAN, VA 22102-3844
703-734-4600

FACSIMILE
202-414-9299

FACSIMILE
703-734-4699

WRITER'S DIRECT DIAL NUMBER

(703) 734-4608

FREEDOM OF INFORMATION

ACT REQUEST

FOIA-96-110
Rec'd 3-6-96

March 5, 1996

VIA FACSIMILE 301-415-5130 AND CERTIFIED RETURN RECEIPT MAIL

Russell Powell
Branch Chief, FOIA/LPDR
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555
T6D8

Re: NRC Inspection Report No. 45-09358-02/94-01

Dear Mr. Powell:

We represent Alexandria Hospital, the subject of the NRC inspection report (referenced above) that was generated by your Atlanta, Georgia office. Pursuant to the Freedom of Information Act, 5 U.S.C. § 552 et seq., please provide us with a complete copy of the NRC's files (investigative reports, witness statements, transcripts of hearings, and all other documents) as to this matter. We will pay all copying costs.

Following this facsimile, please expect a return Federal Express envelope under identical cover. Please use this envelope to transmit the requested information, as we desire to obtain the information as soon as possible. Thank you in advance for your immediate attention to this matter.

Sincerely,

Thomas P. Murphy
Thomas P. Murphy

TPM:ktp
Enclosure

~~9604080033~~ 1P