



CHAIRMAN

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

June 12, 1996

The Honorable Janet Reno
Attorney General
Washington, D.C. 20530

Dear Madam Attorney General:

I am responding to your memorandum of May 16, 1996, regarding the Nuclear Regulatory Commission's experience in making discretionary disclosures of information and reducing backlogs of Freedom of Information Act (FOIA) requests. I have enclosed specific responses to each of the questions posed in your memorandum.

If you have any further questions on this matter, please contact me.

Sincerely,

Shirley Ann Jackson

cc: Richard L. Huff, Co-Director
Daniel J. Metcalf, Co-Director
Office of Information and Privacy

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PDR COMMS NRCC
CORRESPONDENCE PDR

DSM-6 Commission
XL-4-1 FOIA Request

PDR 1 per Doni Muehling

Enclosure

1. What has been your agency's experience in applying the "foreseeable harm" standard in analyzing whether to withhold information? What types of records have been the subject of "discretionary disclosures" that would have been withheld under the 1981 guidelines?

Application of the "foreseeable harm" standard has resulted in an estimated 30-40 percent increase in discretionary disclosures of records that would ordinarily have been withheld under FOIA Exemption 5. Records that were previously routinely withheld as predecisional, attorney work product, and attorney-client privileged are now scrutinized much more closely to determine their actual potential for creating a "harm" if disclosed.

2. What progress has been made in reducing FOIA backlogs (include backlog status for 12/31/93, 12/31/94, and 12/31/95) and what plans are in place to improve backlog reduction?

As of the end of December 31, 1993, 1994, and 1995, the number of pending requests were 66, 88, and 65, respectively.

A team from the NRC FOIA office conducted an internal control review from June to August 1995 to determine the adequacy of staff offices' management controls and procedures for processing FOIA requests. That review uncovered several areas that could be improved; foremost was the need for each office to identify alternates to the office FOIA Coordinator to act on FOIA requests during the absence of the primary FOIA Coordinator. Each office was asked to name an alternate FOIA Coordinator.

Each office director has designated a Senior FOIA Management Official to represent the office director in resolving FOIA issues that cannot be resolved by the office FOIA Coordinator. In July 1995, the FOIA office began notifying management at various levels, from the Senior FOIA Management Official up to NRC's Deputy Executive Director for Operations, on a weekly basis of delays in office response to the FOIA office on requests sent to them for action. This procedure has significantly improved office response to FOIA actions. In addition, each office is sent a monthly list of all its pending FOIA actions and the number of days that have elapsed since the action was assigned. At least quarterly, two charts accompany the monthly list that show the average age of completed requests and the average age of pending requests for that office and for all comparable offices, as well as the NRC average.

In May 1996, we instituted a review of the FOIA office's administrative processes to search for additional areas for improving efficiency in processing FOIA requests.

3. What other measures has your agency instituted to implement the President's commitment to the Freedom of Information Act?

On July 27, 1994, NRC launched a Public Responsiveness Initiative and required all office directors to develop "Public Responsiveness Improvement Plans." These plans were published in the Federal Register on March 31, 1995, for public comment, and the final plan was published in January 1996. In the plan, the NRC set forth the following policy on Public Access to Documents:

"It is the intent of the NRC to automatically make documents publicly available that are anticipated to be of interest to the public without anyone needing to file a Freedom of Information Act request.

"The agency will review the types of documents that are of public interest that are not now routinely placed in the NRC Public Document Room (PDR) and local public document rooms (LPDRs). To the extent that categories of documents can be identified that are likely to be of interest to the public, NRC will expand the scope of information routinely disclosed. To this end, the NRC will make information available to the PDR and LPDRs whenever it is known or anticipated that there is or will be public interest in such information, except when there is a legitimate need to safeguard the information.

"On occasion a document that has a requirement for protection and also has known or potential interest to the public can be released, in whole or in part, as a result of declassification or disclosures under the Freedom of Information Act. In these cases, the NRC will make the document or a portion thereof available to the public by placing it in the PDR and LPDRs."

In March 1995, NRC held an FOIA Users Conference that was open to the public. The conference was announced in the Federal Register and invitations were sent to NRC's most frequent FOIA requesters. The Executive Director for Operations, the Co-Director from the Office of Information and Privacy (DOJ) and an FOIA representative from each of the major NRC staff offices made presentations about the FOIA process. The staff of the NRC Public Document Room gave a special presentation and demonstration on the availability and accessibility of NRC records from the PDR. A major outcome of the conference was the weekly publication of a list and description of the subject of all FOIA requests received by NRC each week for public access on-line through FedWorld.

From May through July 1995, NRC conducted an FOIA Users Survey to assess public satisfaction with the NRC FOIA process, and from February through April 1996 conducted a resurvey. The analysis of the survey indicated a fairly high level of satisfaction with the NRC FOIA process; however,

better communication with requesters could improve the process. The FOIA office now sends a brochure to each new FOIA requester with the letter acknowledging receipt of the FOIA request to explain the many avenues for obtaining records and information from NRC in addition to an FOIA request.

4. What goals has your agency established for further improvements in its administration of the Freedom of Information Act in 1996?

In conjunction with the "Public Responsiveness Improvement Plans," the NRC set a goal of reducing by 20 percent the average time to complete FOIA requests, from an average of 51 days in FY 1994 to an average of 41 calendar days by the end of FY 1996. (As of the end of April 1996, the average time to complete requests in FY 1996 was 43 days.)



Office of the Attorney General
Washington, D. C. 20530

May 16, 1996

MEMORANDUM FOR HEADS OF DEPARTMENTS AND AGENCIES
FROM: THE ATTORNEY GENERAL

SUBJECT: THE FREEDOM OF INFORMATION ACT

As you know, in October 1993 President Clinton called upon federal agencies and departments to renew their commitment to the Freedom of Information Act by, among other measures, establishing new litigation guidance for the release of information, encouraging "discretionary disclosure" of information, and reducing backlogs of Freedom of Information requests. The President asked the Department of Justice to coordinate agency implementation of this initiative. Since October 1993, our Office of Information and Privacy has worked with many of your agencies in this cooperative effort.

In furtherance of our continuing efforts and to fulfill the President's request, I would like now to enlist your assistance in compiling data on our progress in implementing our initiatives under the Freedom of Information Act. To that end, I would appreciate the following information:

1. What has been your agency's experience in applying the "foreseeable harm" standard in analyzing whether to withhold information? What types of records have been the subject of "discretionary disclosures" that would have been withheld under the 1981 guidelines?
2. What progress has been made in reducing FOIA backlogs (include backlog status for 12/31/93, 12/31/94 and 12/31/95) and what plans are in place to improve backlog reduction?
3. What other measures has your agency instituted to implement the President's commitment to the Freedom of Information Act?
4. What goals has your agency established for further improvements in its administration of the Freedom of Information Act in 1996?

Please provide your response to the Department's Office of Information and Privacy, Suite 570, Flag Building, Washington, D.C. 20530, by June 4, 1996.

I thank you for your continuing efforts to implement the Administration's commitment to reenergize FOIA. If you have any questions, your staff should feel free to contact Richard Huff or Daniel Metcalfe, co-directors of the Department's Office of Information and Privacy.