

PDR016



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

OCT 3 1985

Thomas Devine, Esquire
Government Accountability Project
1555 Connecticut Avenue, NW, Suite 202
Washington, DC 20036

IN RESPONSE REFER
TO FOIA-85-589

Dear Mr. Devine:

This is in response to your letter dated August 20, 1985, in which you requested, pursuant to the Freedom of Information Act (FOIA), all records regarding the Office of Inspector and Auditor (OIA) inquiry into charges that NRC staff responded improperly to allegations by whistle-blowers at the Diablo Canyon Nuclear Power Plant.

The OIA staff has approximately thirty (30) feet of documents subject to this request. The OIA staff informed me that they believe a majority of these documents has either been previously provided by you to the NRC or have been provided by the NRC to you.

The OIA review of matters relating to Diablo Canyon is ongoing. All the documents are predecisional in nature and are being withheld from public disclosure pursuant to Exemption 5 of the FOIA (5 U.S.C. 552(b)(5)) and 10 CFR 9.5(a)(5) of the Commission's regulations. There are no reasonably segregable factual portions in these documents because releasing the factual portions of these documents would reveal a predecisional evaluation of which facts are important. (See Russell v. Department of the Air Force, 2 GDS §81,123 (D.D.C. 1981), aff'd, 682 F.2d 1045 (D.C. Cir. 1982). Such "selective" facts are therefore entitled to the same protection as that afforded to purely deliberative materials as their release would "permit indirect inquiry into the mental processes," Williams v. Department of Justice, 556 F. Supp. 63,65 (D.D.C. 1982), and so "expose" predecisional agency deliberations. Montrose Chemical Corp. v. Train, 491 F.2d 63 (D.C. Cir. 1974). Additionally, some of the documents are being withheld pursuant to Exemption 7(A) of the FOIA (5 U.S.C. 552(b)(7)(A)) and 10 CFR 9.5(a)(7)(i) of the Commission's regulations.

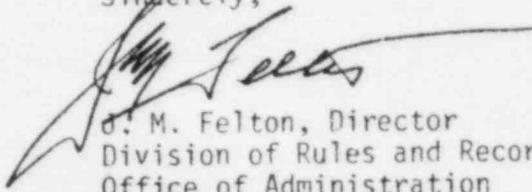
Pursuant to 10 CFR 9.15 of the Commission's regulations, it has been determined that the information withheld is exempt from production or disclosure and that its production or disclosure is contrary to the public interest. The person responsible for this denial is Ms. Sharon R. Connelly, Director, Office of Inspector and Auditor.

Thomas Devine, Esquire

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This denial may be appealed to the Secretary of 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,



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