



May 20, 1985

POLICY ISSUE
(Notation Vote)

SECY-85-174

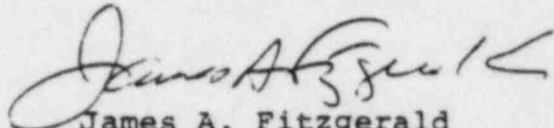
For: The Commissioners

From: James A. Fitzgerald
Assistant General Counsel

Subject: FOIA Appeal 85-A-18C -- Documents
Related to Aamodt Motion for Investi-
gation of Radioactive Releases During
the TMI-2 Accident and the Center for
Disease Control (CDC) Review of that
Motion (Initial Request FOIA-85-8)

8603140326 860115
PDR FOIA
RYAN85-409 PDR

B/16



James A. Fitzgerald
Assistant General Counsel

Attachments:

1. Draft Response Letter
2. Documents for Release (2)
3. Withheld Documents (13)
4. FOIA Appeal (85-A-18C) undated
5. March 27, 1985 NRC Denial Letter

Commissioners' comments or consent should be provided directly to the Office of the Secretary by c.o.b. Tuesday, June 4, 1985.

Commission Staff Office comments, if any, should be submitted to the Commissioners NLT Tuesday, May 28, 1985, with an information copy to the Office of the Secretary. If the paper is of such a nature that it requires additional time for analytical review and comment, the Commissioners and the Secretariat should be apprised of when comments may be expected.

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ATTACHMENT 1

ATTACHMENT 2



ADJUDICATORY ISSUE

August 13, 1984

(Affirmation)

SECY-84-322

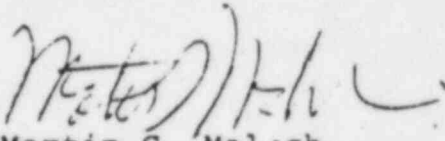
COMMISSION LEVEL
DISTRIBUTION ONLY

For: The Commissioners

From: Martin G. Malsch, Deputy General Counsel

Subject: AAMODT MOTION FOR INVESTIGATION OF RADIOACTIVE
RELEASES DURING THE TMI-2 ACCIDENT

Discussion: On June 21, 1984 the Aamodts filed a motion with the Commission asking it to investigate immediately the circumstances surrounding alleged falsification of radioactive emission information in the early days of the TMI-2 accident and during the subsequent investigation of the accident. The Aamodts requested that the Commission postpone any decision on TMI-1 restart until their concerns have been fully resolved. Attached is a self-explanatory order which would deny the Motion. OGC prepared this order after consulting with OPE.


Martin G. Malsch
Deputy General Counsel

Enclosures:

1. Draft order
2. Aamodt Motion
3. NRC staff response
4. Licensee response

Contact:
Trip Rothschild, OGC, 41465

Commissioners' comments or consent should be provided directly to the Office of the Secretary by c.o.b. Monday, August 27, 1984.

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

August 17, 1984

MEMORANDUM FOR:

Samuel J. Chilk
Secretary of the Commission

FROM:

Martin G. Malsch
Acting General Counsel *MM*

SUBJECT:

SECY-84-322 -- AAMODT MOTION FOR
INVESTIGATION OF RADIOACTIVE RELEASES
DURING THE TMI-2 ACCIDENT

OGC requests that the Commission not act on SECY-84-322 at this time. During the oral presentations of August 15 on TMI-1 restart, the NRC staff and the Aamodts stated that they would provide the Commission with additional pertinent information in the near future. After we receive that material, OGC and OPE may wish to withdraw this paper and submit a revised response to the Aamodt motion. We will keep you apprised of our position.

cc: Chairman Palladino
Commissioner Roberts
Commissioner Asselstine
Commissioner Bernthal
Commissioner Zech
OPE

Contact:
Trip Rothschild, OGC, 41465

ATTACHMENT 3

ATTACHMENT 4

Tom Corbo

200 North Church Street, Oak 203
Parkesburg, Pennsylvania 19365

APPEAL OF INITIAL FOIA DECISION

Secretary of the Commission
U. S. Nuclear Regulatory Commission
Washington, D.C. 20555

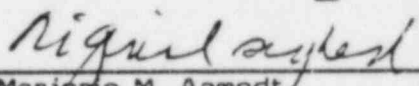
FOIA-85-A-18C (85-8)
rec'd 4/30/85

Dear Secretary:

By letter of March 27, 1985 from J.M. Felton, Director, Division of Rules and Records, Office of Administration, Nuclear Regulatory Commission (letter attached), our Freedom of Information Act request of December 20, 1984 has been denied in part. The Felton letter lists fourteen documents in two appendices (D and E) which fall into one of the categories of documents requested but to which the Nuclear Regulatory Commission has denied us access.

We appeal the agency's decision to withhold the documents, supra. The February 10, 1984 ruling of the United States Court of Appeals for the District of Columbia Circuit in Philadelphia Newspapers, Inc. v. NRC (No. 83-1698) is effective in our case, not those cites relied upon by the agency in the Felton letter. The court has upheld the public's interest in and access to the deliberations of the Commissioners concerning Three Mile Island Unit 1 interim decisions in meetings that were closed to the public. The agency's denial is flying in the face of this clear and relevant ruling.

Very truly yours,


Marjorie M. Aamodt

cc: James A. Fitzgerald, Assistant General Counsel
John C. Hoyle, Assistant Secretary to the Commission
J.M. Felton, Director, Division of Rules and Records, Office of Administration

R. D. 5, Box 428
Coatesville, PA 19320

December 20, 1984

J. Felton, Director - Rules & Regulations
Nuclear Regulatory Commission
Washington, D. C. 20555

FREEDOM OF INFORMATION
ACT REQUEST
FOIA-85-8
Rec'd 1-7-85

Dear Sir:

On the basis of our interest in the TMI Restart Proceeding
(Docket 50-289) and the Freedom of Information Act, I am requesting
the following information:

- (1) All communications, written and verbal, between the NRC Staff and the Commission or any of the Commissioners concerning the Aamodt Motion of June 21, 1984 and the Center for Disease Control review of that motion.
- (2) All communications, written or verbal, between the Commonwealth of Pennsylvania or any of its agents, including Dr. George Tokohata, concerning the Aamodt Motion of June 21, 1984 and the Center for Disease Control review of that motion.
- (3) The transcripts of the Commission meetings of August 15, 1984, September 7, 1984 and December 13, 1984.

Respectfully submitted,

Marjorie M. Aamodt
Marjorie M. Aamodt



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

MAR 27 1985

Mrs. Marjorie M. Aamodt
R. D. 5, Box 428
Coatesville, PA 19320

IN RESPONSE REFER
TO FOIA-85-8

Dear Mrs. Aamodt:

This is in further response to your letter dated December 20, 1984, in which you requested, pursuant to the Freedom of Information Act (FOIA), three categories of documents related to the Aamodt June 21, 1984, Motion and the Center for Disease Control review of that motion.

The documents identified on enclosed Appendix C are being placed in the NRC Public Document Room (PDR) located at 1717 H Street, NW, Washington, DC 20555, in file folder FOIA-85-8 in your name.

The documents identified on enclosed Appendix D contain the predecisional legal analyses, opinions and recommendations of the Office of the General Counsel (OGC) for the Commissioners' consideration of the Aamodt motion for investigation of radioactive releases during the Three Mile Island Unit 2 accident. Documents one and three were prepared for the Commission to decide an issue in an adjudicatory proceeding and represent confidential communications prepared as part of the attorney-client relationship and are, therefore, protected by the attorney-client privilege. Furthermore, the documents on Appendix D reflect the predecisional process between OGC and the Commissioners, and are exempt from mandatory disclosure pursuant to Exemption 5 of the FOIA, 5 U.S.C. §552(b)(5), and the Commission's regulations, 10 CFR §9.5(a)(5). Release of the documents would tend to inhibit the open and frank exchange of ideas essential to the deliberative process. There are no reasonably segregable factual portions of these documents that are not already in the public record. Further, 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). The documents are being withheld in their entirety.

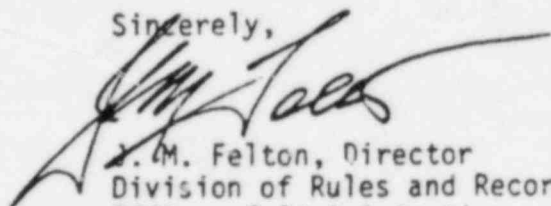
The documents identified on enclosed Appendix E contain the predecisional analyses, opinions and recommendations of the Commissioners, and between the Commissioners and their staffs on the Aamodt motion for investigation of radioactive releases during the Three Mile Island Unit 2 accident. Because the documents reflect the predecisional process among the Commissioners, and between the Commissioners and their staffs, the documents are exempt from mandatory disclosure pursuant to Exemption 5 of the FOIA, 5 U.S.C. §552(b)(5), and the Commission's regulations, 10 CFR §9.5(a)(5). Release of the documents would tend to inhibit the open and frank exchange of ideas essential to the deliberative process. The documents do not contain any reasonably segregable factual portions. The documents are being withheld in their entirety.

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 the denials in Appendix D is James A. Fitzgerald, Assistant General Counsel. The person responsible for the denials in Appendix E is John C. Hoyle, Assistant Secretary to the Commission.

These denials 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."

This completes NRC action on your request.

Sincerely,



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

Enclosures: As stated

APPENDIX C

Documents Being Placed in the PDR

1. Undated Additional Views of Commissioner Asselstine (1 page)
2. 07/05/84 Letter from George Tokuhata to Phillip Grant subject: Epidemiologic Surveillance in Pennsylvania: A Case of Nuclear Power Plants. (10 pages)
3. 08/27/84 Memo from S.J. Chilk to W.J. Dircks, subject, Staff Requirements Oral Presentations By Parties on TMI-1 Restart (2 pages)
4. 08/29/84 Letter from George Tokuhata to Charles Hinson, subject: The Aamodt Cancer Report. (5 pages)
5. 09/07/84 Memo from W.J. Dircks to the Commission, Subject: Staff Actions From the August 15, 1984 Commission Meeting on MI-1. (16 pages)
6. 09/10/84 Letter from John Cobb to Nunzio Palladino, subject: Submittal of Curriculum Vitae (9 pages) [Note: This document is Enclosure 2 to SECY-84-322A]
7. 10/23/84 Commissioner Asselstine's Response Sheet for SECY-84-322A, "Aamodt Motion for Investigation of Radioactive Releases During the TMI-2 Accident." (1 page)
8. 11/12/84 Letter from Winston Richards, The Pennsylvania State University, to Nunzio Palladino (5 pages)
9. 12/18/84 Memo from S.J. Chilk to H. Plaine, subject: Staff Requirements-Affirmation/Discussion and vote. (1 page)

APPENDIX D

Documents Being Withheld in their Entirety

1. 08/13/84 Memo (SECY-84-322) from M. Malsch, Deputy General Counsel to the Commissioners, subject: Aamodt Motion for Investigation of Radioactive Releases During the TMI-2 Accident (1 page); enclosure 1, draft order. (4 pages)
2. 08/17/84 Memo from M. Malsch to S. Chilk, subject: SECY-84-322-Aamodt Motion for Investigation of Radioactive Releases During the TMI-2 Accident. (1 page)
3. 10/05/84 Memo (SECY-84-322A) from M. Malsch, Deputy General Counsel, and J. Zerbe, Director, Office of Policy Evaluation, to the Commissioners, subject: Aamodt Motion for Investigation of Radioactive Releases During TMI-2 Accident. (4 pages)
4. Undated Draft memorandum from S. Chilk, Secretary, to W. Dircks, EDO, re: Health effects resulting from TMI-2 accident. (2 pages)
[Note: This document is Enclosure 3 to SECY-84-322A]

APPENDIX E

Documents Being Withheld in Their Entirety

1. Undated Draft Commission Order with handwritten notes of Cmr. Asselstine. (5 pages)
2. 08/20/84 Vote Sheet of Cmr. Zech on SECY-84-322 - Aamodt Motion for Investigation of Radioactive Releases During the TMI-2 Accident. (1 page)
3. 08/28/84 Vote sheet of Cmr. Roberts on SECY-84-322 - Aamodt Motion for Investigation of Radioactive Releases During the TMI-2 Accident. (1 page)
4. 10/21/84 Vote Sheet of Chm. Palladino on SECY-84-332A - Aamodt Motion for Investigation of Radioactive Releases During the TMI-2 Accident. (1 page)
5. 10/23/84 Vote sheet of Cmr. Roberts on SECY-84-332A - Aamodt Motion for Investigation of Radioactive Releases During the TMI-2 Accident. (1 page)
6. 10/24/84 Vote sheet of Cmr. Zech on SECY-84-322A - Aamodt Motion for Investigation of Radioactive Releases During the TMI-2 Accident. (1 page)
7. 10/30/84 Vote sheet of Cmr. Bernthal on SECY-84-322A - Aamodt Motion for Investigation of Radioactive Releases During the TMI-2 Accident. (2 pages)
8. 11/14/84 Memo from Cmr. Bernthal to Cmr., "Aamodt Motion and Commission Order (SECY-84-322). (1 page)
9. 11/26/84 Memo from Chm. Palladino to Cmr. Bernthal, "SECY-84-322 - Aamodt Motion for Investigation of Radioactive Releases During the TMI-2 Accident. (1 page)
10. 12/13/84 Affirmation Memo with attached draft Order from S.J. Chilk, "SECY-84-322/322A - Aamodt Motion for Investigation of Radioactive Releases During the TMI-2 Accident." (8 pages)

ATTACHMENT 5

M. Aamodt
MAR 27 1985

Mrs. Marjorie M. Aamodt
R. D. 5, Box 428
Coatesville, PA 19320

IN RESPONSE REFER
TO FOIA-85-8

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FC	:ADM:DRR	:ADM:DRR	:ADM:DRR	:OGC	:SECY
AME	:NBrown/me	:LLRobinson	:JMFelton	:MSweeneyMS	:TCombs
ATE	:3/26/85	:3/26/85	:3/26/85	:3/18/85	:3/26/85

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