

FOIA-88-63

RESPONSE TYPE

FINAL

PARTIAL

DATE

MAY 26 1988

DOCKET NUMBER(S) (if applicable)



RESPONSE TO FREEDOM OF INFORMATION ACT (FOIA) REQUEST

PDR
016

REQUESTER

Robert R. Belair

PART I - 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.

Agency records subject to the request that are identified in Appendix _____ are already available for public inspection and copying in the NRC Public Document Room, 1717 H Street, N.W., Washington, DC.

Agency records subject to the request that are identified in Appendix _____ are being made available for public inspection and copying in the NRC Public Document Room, 1717 H Street, N.W., Washington, DC, in a folder under this FOIA number and requester name.

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, 1717 H Street, N.W., Washington, DC, in a folder under this FOIA number and requester name.

Enclosed is information on how you may obtain access to and the charges for copying records placed in the NRC Public Document Room, 1717 H Street, N.W., Washington, DC.

Agency records subject to the request are enclosed. Any applicable charge for copies of the records provided and payment procedures are noted in the comments section.

Records subject to the request have been referred to another Federal agency(ies) for review and direct response to you.

In view of NRC's response to this request, no further action is being taken on appeal letter dated May 3, 1988, (88-A-27).

PART II.A - INFORMATION WITHHELD FROM PUBLIC DISCLOSURE

Certain information in the requested records is being withheld from public disclosure pursuant to the FOIA exemptions described in and for the reasons stated in Part II, sections 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, 1717 H Street, N.W., Washington, DC, in a folder under this FOIA number and requester name.

Comments

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PDR FOIA
BELAIR88-63 PDR

SIGNATURE, DIRECTOR, DIVISION OF RULES AND RECORDS

James H. Kinley

PART II B - APPLICABLE FOIA EXEMPTIONS

Records subject to the request that are described in the enclosed Appendices D are being withheld in their entirety or in part under FOIA Exemptions and for the reasons set forth below pursuant to 5 U.S.C. 552(b) and 10 CFR 9.5(a) of NRC Regulations.

- 1. The withheld information is properly classified pursuant to Executive Order 12356 (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)

Section 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 from a foreign source pursuant to 10 CFR 2.790(d)(2).

- X 5. The withheld information consists of interagency or intraagency records that are not available through discovery during litigation. 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. (EXEMPTION 5)

- 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 investigatory records compiled for law enforcement purposes and is being withheld for the reason(s) indicated: (EXEMPTION 7)

Disclosure would interfere with an enforcement proceeding because it could reveal the scope, direction, and focus of enforcement efforts, and thus could possibly allow them 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 would reveal identities of confidential sources. (EXEMPTION 7(D))

PART II C - DENYING OFFICIALS

Pursuant to 10 CFR 9.9 and/or 9.15 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 Rules and Records, 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	
			SECRETARY	EDO
Thomas E. Murley	Director, NRR	Appendix D		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 in this section. Any such appeal must be in writing and must be made within 30 days of receipt of this response. Appeals must be addressed as appropriate to the Executive Director for Operations or 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."

APPENDIX D

RECORDS PARTIALLY WITHHELD

<u>NUMBER</u>	<u>DATE</u>	<u>DESCRIPTION & EXEMPTION</u>
1.	4/29/87	Memo from Steven A. Varga to Thomas Murley, subject: Task Action Plan for Staff Evaluation of LILCO'S Request to Operate Shoreham at 25% Power, (1 page), released, with attachment: Task Action Plan (19 pages), withheld, Exemption 5.

KIRKPATRICK & LOCKHART

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(412) 355-6500

ROBERT R. BELAIR
(202) 778-9023

January 27, 1988

HAND DELIVERED

Director, Office of Administration
Nuclear Regulatory Commission
Room 4210
Maryland National Bank Building
7735 Old Georgetown Road
Bethesda, Maryland 20814

FREEDOM OF INFORMATION
ACT REQUEST

FOIA-88-63
Rec'd 1-27-88

Re: Freedom of Information Act Request

Gentlemen:

On behalf of our client, Suffolk County, Long Island, New York, we request, pursuant to the Freedom of Information Act, as amended, 5 U.S.C. Section 552 ("FOIA"), and the rules of the Nuclear Regulatory Commission ("NRC") issued thereunder, 10 C.F.R. Part 9, copies of any agency records in the possession or control of the NRC relating to the following:

1. All records, including preparatory materials, contemporaneous notes, post-meeting discussions or analyses, and information submitted by the Long Island Lighting Company ("LILCO"), relating in any way to a January 14, 1988, meeting involving NRC employees, officials, agents or representatives (including Messrs. Reis, Johnson, Scoto, and Olmstead) and representatives of LILCO (Messrs. Earley, Frielicher, Reveley, and Irwin) concerning matters relating to the Shoreham Nuclear Power Station.

2. All records, not served via the service list in 50-322-OL-03, 05, or 06 dockets, relating in any way to any other communications during the period March 1987 to the present between LILCO, including any person acting for or on behalf of LILCO, and NRC employees, officials, agents or representatives, which concerned ~~any matters pertaining to the Shoreham Nuclear Power Station, including without limitation, LILCO's request to operate Shoreham at 25 percent power, any Federal Emergency Management Agency review of revisions to LILCO's emergency plan,~~

- See
Clarification

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2A

KIRKPATRICK & LOCKHART

Director, Office of Administration
January 27, 1988
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any further exercise of LILCO's emergency plan, and any proposed procedures or schedules for any review or exercise of LILCO's emergency plan.

In the event that access is denied to any of the records responsive to this request, please supply the following information:

a. Identify the record or withheld portion of the record and specify the statutory basis for the denial, as well as your reason for believing that an exemption applies, as required by 10 C.F.R. Section 9.10(b).

b. Segregate the nonexempt from the allegedly exempt portion of any withheld records and release the former, as required by 10 C.F.R. Section 9.5(b).

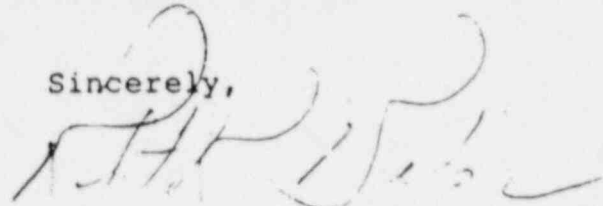
c. Supply a detailed statement of the content of the withheld document or portion thereof, along with the date on which that document or portion thereof was written; its section heading or title; and an identification of any persons or entities who have received copies of such records or portions thereof, as required by applicable case law. Vaughn v. Rosen, 484 F.2d 820, 826-827 (D.C. Cir. 1973).

d. Separately state your reasons for not invoking your discretionary power to release the allegedly exempt records or portions thereof.

The undersigned will pay charges for search time and copying fees, as provided by NRC regulations, 10 C.F.R. Section 9.14. If search and copying fees to be incurred by the undersigned will exceed \$300, please notify Lorraine Gibson at (202) 778-9118 before this sum is exceeded. Any questions or comments concerning this request may also be directed to Ms. Gibson.

We expect to receive your response to this FOIA request within ten (10) working days of your receipt of this request, as required by the FOIA, and as set forth at 10 C.F.R. Section 9.9(a).

Sincerely,



Robert R. Belair