

*Donna  
Coyne  
Lynn* *AH Control please  
see if any of our  
FOIA people  
know  
anything  
about this*

# PUBLIC CITIZEN

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APPEAL OF INITIAL FOIA DECISION

**88-A-20E (87-838)**

**Rec'd 4-14-88**

April 7, 1988

Sam Chilk  
Secretary of the Commission  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

**[REDACTED]**

**[REDACTED]**

**[REDACTED]**

**[REDACTED]**

*4/11/88*

ATTENTION: Freedom of Information Act Administrative Appeal

Dear Mr. Chilk:

This letter is a formal administrative appeal to the Nuclear Regulatory Commission's (NRC) response to Public Citizen's Freedom of Information Act (FOIA) request FOIA-87-838.

Copies of our initial request and all subsequent correspondence with the NRC are attached for your information.

The NRC's Division of Rules and Records received the request on December 16, 1987. The request (see enclosed copy) asked for records which provided information "on the scores received by reactor operators and senior reactor operators on license qualification and requalification exams at each and every commercial nuclear generating facility." The request went on to state, "This does not include information on any individual operator, but it does include plant-specific statistics on the results of the exams."

Public Citizen received a single and final response from the NRC dated January 14, 1988 (enclosed). The response stated that documents had been placed in the NRC's Public Document Room that provide the examination results of Reactor Operators and Senior Reactor Operators for all of the years that we had requested except 1983, for which there were no data available. The response went on to state that "there are no data on requalification [exams] by plant as requested." However, no general requalification exam data was presented, and the response was marked "Final."

In a telephone conversation on February 4, 1988 with Connie Pappas and Linda Robinson of the Freedom of Information and Privacy Acts Branch staff, we were told that the Operator Licensing Branch does not compile information on requalification scores.

Soon thereafter, we became aware of an article in The Pittsburgh Press (enclosed) which strongly implied that the NRC did in fact compile information on requalification exam scores. Indeed, according to the article, this information was used by the NRC to determine which plants (sixteen in number) have "unsatisfactory" retraining programs.

Assuming that the Freedom of Information and Privacy Acts (or Operator Licensing) office had simply made an unfortunate oversight, we contacted Connie Pappas, who had originally handled the request. She suggested that we send a letter and a copy of the article to Linda Robinson, the Branch Chief, who would then review the material. We sent such a letter on February 18 (enclosed) with a copy of the article.

Subsequently, on two separate occasions (February 26 and 29), we telephoned the Freedom of Information and Privacy Acts Branch to see about the status of our request. Both times the response was that they had not yet been able to locate the source of the information mentioned in the article, although they would continue to try. In fact, Linda Robinson restated during the second call, in spite of the new evidence, that the NRC has no compilation of requalification exam scores.

Over a week later, while inspecting the NRC's recent response to a separate FOIA request, Public Citizen discovered SECY-87-121, a memorandum from Victor Stello for "The Commissioners," and dated May 11, 1987. Its subject is "The 2-Year Evaluation on Implementation of the Commission Policy Statement on Training and Qualification." Among the data that it provides is a short compilation of pass/fail rates for senior reactor operators and reactor operators on written and oral requalification exams on an industry-wide basis (enclosed).

Again, this information implies, indeed proves, that requalification exam scores are compiled by the NRC. That this later information was not included in the NRC's response to the original FOIA request is entirely inexcusable.

On March 11, we informed Linda Robinson of the existence of this new piece of evidence. She said that she would try to find out who wrote SECY-87-121 and would learn more about it that way. She also told us that the matter of the newspaper article had still not been resolved -- three weeks after it had been brought to her attention.

On March 22, Connie Pappas told us that Linda Robinson and Donnie Grimsley, Director of the Division of Rules and Records, had met with their staff and that Mr. Grimsley would soon be writing us to give an update on the status of our FOIA request.

On March 23, having heard nothing from Donnie Grimsley or Linda Robinson, Public Citizen contacted Ted Szymanski, a Section Leader in the Operator Licensing Branch. Mr. Szymanski told us that there were a number of SECY papers that regularly came out of the Executive Director of Operation's office which reported qualification and requalification exam scores on a plant-specific basis. Janet Lanning, of the same office, called back to list eleven such papers, giving information dating back to the beginning of 1983, as our original FOIA request stipulated. We have since obtained a copy of one of these papers, SECY-86-13 (cover enclosed).

We have conducted a search at the Public Document Room, and only six of the eleven papers listed by Janet Lanning are there, four of them

because they were included in the NRC's response to past FOIA requests. Those that are not in the Public Document Room are SECY-88-75, SECY-87-2, SECY-83-72b, SECY-83-72a, and SECY-83-72.

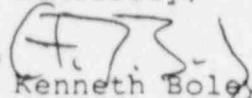
The implications of this chain of events are clear: the NRC's Division of Rules and Records is either intentionally misleading the public, is being misled by dishonest or ill-informed members of the agency, or is less capable of finding information than the public which it is intended to serve. At least, it is clear that the NRC conducted a less-than-adequate search in response to our initial request. Based upon the inaction of the staff at the Division of Rules and Records, Public Citizen feels that the real problem is the NRC's general hostility to the Freedom of Information Act and the public that makes use of it.

Public Citizen requests that a complete search for documents be undertaken in response to FOIA-87-838 and that the remaining SECY papers, listed above, and all other relevant documents, be provided immediately. We also request that the NRC investigate this matter and explain at what point the Freedom of Information Act was brushed aside, and why.

As provided for in the FOIA, we expect to receive the requested records or a final determination on FOIA-87-838 within 20 working days.

If you have any questions about this administrative appeal or our initial request, please do not hesitate to call. Thank you for your attention to this request.

Sincerely,



Kenneth Boley  
Nuclear Safety Policy Analyst  
Critical Mass Energy Project  
of Public Citizen

Enclosures as described.

cc: William Parler,  
General Counsel, NRC  
Chairman Lando Zech, NRC  
Commissioner Bernthal, NRC  
Commissioner Carr, NRC  
Commissioner Roberts, NRC  
Commissioner Rogers, NRC

Senator Joseph Biden  
Senator John Glenn  
Senator Patrick Leahy  
Senator Edward Kennedy  
Representative Dennis Eckart  
Representative Glen English  
Representative Samuel Gedjenson  
Representative Edward Markey