U.S. NUCLEAR REGULATORY COMMISSION

PDR-016

RESPONSE TO FREEDOM OF INFORMATION ACT (FOIA) REQUEST

NRC FOIA REQUEST NUMBER(S): FOIA-85-196

RESPONSE TYPE: [ ] FINAL [XX] PARTIAL

DATE: JUN - 3 1988

DOCKET NUMBER(S) (If applicable):

REQUESTER: Mr. Steven Aftergood

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.

[X] 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 coying 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 anpeal letter dated _____

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 releasable 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

SIGNATURE/DIRECTOR, DIVISION OF RULES AND RECORDS: Linda Roberson for Donnie Grimsley

Re: FOIA-85-196

APPENDIX D

RECORDS ALREADY IN THE PDR

1. 12/1/78 Ltr to Robert Reid from Harold Brown. (1 page) PDR # 7812080099

2. 8/30/79 Ltr to Robert Reid from Harold Brown. (1 page) PDR # 7909070413

3. 8/20/82 Ltr to University of California from Norderhaug. (4 pages) PDR # 8209080072

4. 7/26/84 Ltr to University of California from Schuster. (4 pages) PDR # 8408210161

Re: FOIA-85-195

APPENDIX E

RECORDS TO BE PLACED AT THE PDR

1.	Undated	Ltr to Carlson from Ashbaugh. (12 pages)
2.	Undated	Details. (8 pages)
3.	1/25/71	Report of the Inspection of Safeguards Control of Nuclear Materials of University of California. (79 pages)
4.	6/20/75	Ltr to Giambusso from Hicks. (9 pages)
5.	7/15/75	Ltr to Giambusso from Hicks. (7 pages)
6.	9/5/75	Memo to Lear from Houston, re: University of California. (2 pages)
7.	9/25/75	Ltr to Regents of University of California from Goller. (2 pages)
8.	10/21/75	Ltr to Goller from Kastenberg. (3 pages)
9.	4/1/76	Ltr to Rusche from Kastenberg. (8 pages)
10.	5/11/76	Memo to Lear from Houston, re: Response to Technical Assistance Request, University of California at Los Angeles. (3 pages)
11.	5/26/76	Ltr to Rusche from Kastenberg. (28 pages)
12.	6/9/76	Ltr to Rusche from Kastenberg. (2 pages)
13.	7/12/76	UCLA Security Plan. (1 page)
14.	8/3/76	Ltr to Rusche from Catton. (2 pages)
15.	8/13/76	Ltr to Regents of University of California from Rizzolo. (11 pages)
16.	9/30/76	Ltr to Rusche from Catton w/attachments. (23 pages)
17.	12/13/76	Ltr to Rusche from Catton w/attachments. (4 pages)
18.	1/20/77	Ltr to Rusche from Catton, w/attachments. (23 pages)
19.	5/31/77	Memo for Lear from Clark, subject: Response to Review Assignment - Review of University of California at Los Angeles Security Plan. (2 pages)

APPENDIX E
(CONTINUED)

20.	3/31/77	Memo for Clark from McPeek, subject: Evaluation of Proposed Changes to University of California at Los Angeles Branch. (2 pages)
21.	5/13/77	Ltr to Case from Catton, w/attachments. (5 pages)
22.	8/31/77	Ltr to Case from Brown w/attachments. (9 pages)
23.	3/13/78	Ltr to Case from Brown w/attachments. (10 pages)
24.	7/6/78	Ltr to Case from Brown w/attachments. (3 pages)
25.	8/3/78	Memo to Clark from Sinisgall, subject: Security Plan Evaluation for the University of California, Los Angeles Argonaut Reactor. (4 pages)
26.	8/17/78	Ltr to Case from Brown. (3 pages)
27.	9/6/78	Ltr to Akers from Catton. (2 pages)
28.	9/22/78	Ltr to University of California from Reid. (2 pages)
29.	11/30/78	Ltr to Denton from Catton w/attachments. (10 pages)
30.	1/19/79	Ltr to Norderhaug from Evraets. (3 pages)
31.	8/29/79	Ltr to Reid from Catton, subject: Safeguards Upgrad Rule. (2 pages)
32.	8/15/79	Ltr to Miller from Brown. (2 pages)
33.	8/17/79	Ltr to Brown from Miller. (3 pages)

COMMITTEE TO BRIDGE THE GAP

1637 BUTLER AVENUE #203
LOS ANGELES, CALIFORNIA 90025
(213) 478-0829

March 21, 1985

Director
Office of Administration
Division of Rules and Records
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

BY EXPRESS*

FREEDOM OF INFORMATION ACT REQUEST

FOIA-85-196
rec'd 03/25/85

FOIA Request

Dear Sir:

Pursuant to the Freedom of Information Act, as amended, I hereby request the following records and documents regarding the UCLA reactor facility, Docket 50-142, and the Special Nuclear Material formerly possessed pursuant to Facility License R-71:

(1) The security plan as submitted to NRC in 1980.

(2) All subsequent amendments thereto.

(3) All prior security plans for the UCLA reactor facility, and all amendments thereto, from 1959 on.

(4) All security inspection reports for the UCLA reactor facility, including notices of violation, and responses thereto, from 1959 on.

(5) All correspondence between UCLA and the AEC/NRC, and between the AEC/NRC and UCLA, 1959 to the present, dealing with the security plans or amendments, occurrences at the facility of a security interest, or any other matter associated with the security of the UCLA reactor and/or its Special Nuclear Material.

(6) All transcripts, correspondence, pleadings, Board Memoranda and Orders, written testimony, affidavits, and other documents generated in or associated with the UCLA reactor relicensing proceeding which were not released to the Public Document Room because they allegedly contained information related to the security of the UCLA reactor and its SNM.

(7) Any other documents or records not included in items (1) through (6) related to Docket 50-142 from 1959 to the present that were not released to the Public Document Room because they allegedly contained safeguards or security information.

(8) Memoranda, correspondence, or other documents or records generated by Hal Bernard or Colleen P. Woodhead since June 1984 discussing response to any request by UCLA for return or restriction of release of documents associated with the UCLA reactor or its Special Nuclear Material formerly classified as containing Safeguards Information. This shall include, but not be limited to, any request by Hal Bernard or Colleen P. Woodhead to other NRC Staff personnel or offices for return of UCLA former safeguards documents such as security plan and amendments.

Bill Cumiel

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(9) Memoranda, correspondence, or other documents or records generated by other NRC personnel than Hal Bernard or Colleen P. Woodhead on the subject identified in (8) above. This shall include responses by NRC personnel to any such memoranda, correspondence, or other documents or records.

(10) Memoranda, correspondence, or other documents or records not included in (8) or (9) above discussing the post-June 1984 status of the UCLA security plan, amendments thereto, and other UCLA documents in possession of NRC that were formerly categorized as not releasable to the public because they contained Safeguards Information. These documents or records to include, but not be limited to, items that address the issue of releasability of former safeguards information once the Special Nuclear Material that was being safeguarded has been removed from the site in question and the NRC-approved security plan and associated safeguards information protection requirements no longer apply.

(11) Documents or records not included in response to items (8), (9) or (10) but discussing matters surrounding these issues.

This request includes all agency records as defined in 10 CFR 9.3a(b) and the NRC Manual, Appendix 0211, Parts 1.A.2 and A.3 (approved October 8, 1980) whether they exist currently in the NRC official, "working," investigative or other files, or at any other location.

The last four categories of records requested above should represent, among other items, all documents and records in the agency's possession as of receipt of this request that discuss response to UCLA's request of January 16, 1985, for return or restriction of its former (most recent) security plan and amendments thereto, as well as all other documents and records discussing the status of releasability of UCLA documents formerly categorized as containing Safeguards Information now that the Special Nuclear Material has been removed and the facility is considered by UCLA and the NRC Staff to no longer be required to have an NRC-approved security plan nor comply with Part 73 requirements.

The first seven categories of documents should represent all documents and records possessed by the NRC as of the date of receipt of this FOIA request related to Docket 50-142 and License R-71 which have not previously been included in the public docket because they were alleged at the time to contain information properly categorized as safeguards information or otherwise discussing security matters. Because of UCLA's decision to permanently close down and dismantle its reactor facility, and because all reactor fuel has been reported by UCLA to have been removed from the site, these documents are no longer properly categorized as containing safeguards information and should be released, as required by 10 CFR 73.21(i).

10 CFR 73.21(i) (Removal from Safeguards Information Category) requires that:

> Documents originally containing Safeguards Information shall be removed from the Safeguards Information category whenever the information no longer meets the criteria contained in this section.

Section 73.21 of Title 10 of the Code of Federal Regulations provides the criteria by which the NRC may properly restrict distribution of unclassified safeguards information. Those criteria are that the information related to physical protection of licensees can and should be restricted from public release if the licensee (1) possesses a formula quantity of strategic special nuclear material, (2) is authorized to operate a nuclear power reactor, or (3) transports, or delivers to a carrier for transport, a formula quantity of strategic special nuclear material or more than 100 grams of irradiated reactor fuel.

The documents in question are no longer properly protectable from release because none of the three criteria specified in the regulation are met. (1) UCLA no longer possesses any fuel. (2) UCLA was a research, not power reactor, and in any event, is no longer authorized to operate the research reactor, its license having been amended to a possession only status. (3) All irradiated fuel has already been transported off-site.

10 CFR 73.21 provides the criteria by which security information can be properly prohibited from public release. Section (i) of that regulation requires that documents originally containing Safeguards Information must be removed from the category of information requiring protection "whenever" the information no longer meets the criteria contained in 10 CFR 73.21. The information in question, dealing with past (in some cases, 25 years past) security for Special Nuclear Material no longer on site and former plans which UCLA itself says NRC regulations no longer require, no longer meets any of the 73.21 criteria and therefore must be removed from the protected category and made releasable.

Whereas the documents in question may once have been protectable from disclosure under 73.21 (and, before the promulgation of that regulation, 10 CFR 2.790) because they assertedly contained Safeguards Information, that is no longer the case. (Please note that even 2.790(d), under which some of the material was previously categorized, no longer applies, because it only deals with documents containing information, not otherwise categorized as Safeguards Information, related to the physical protection of Special Nuclear Material, which UCLA no longer possesses.) With the decision to close the facility and the off-shipment of the SNM--i.e., the nuclear material the NRC is mandated to protect--the original basis, and the only relevant legal NRC authority for restraining release of the material (now almost entirely historical) has vanished.

CBG requests that fees be waived, because the "information can be considered as primarily benefitting the general public," 5 U.S.C. 552 (a)(4)(a). CBG is a non-profit, nonpartisan public interest organization concerned with safeguards matters related to nonpower reactors and with appropriate conduct of NRC and licensee employees in proceedings before the NRC, as well as being party to the on-going UCLA reactor proceeding (no termination order has yet issued) and petitioner for leave to intervene in the UCLA dismantlement proceeding.

Pursuant to the requirements of the Freedom of Information Act and the practice and procedure of the NRC in carrying out its obligations under FOIA , CBG requests that no documents related to this request in possession of the NRC as of the date of receipt of this request be destroyed or transferred from the custody of the NRC until final resolution of this

request, including any appeal that may result therefrom, and that the FOIA office promptly so inform NRC staff personnel who may be currently in possession of documents related to this request. By copy of this letter, we are informing Colleen P. Woodhead, Hal Bernard, Joseph Gray, Harold Denton, Cecil Thomas, and the Director of OIA that the above documents are subject of an active FOIA request and that destruction or transfer of any of them from NRC custody is therefore prohibited until the FOIA request is finally resolved. Please make your own notification to all relevant offices and individuals as soon as possible.

Some of the documents identified in this request are, we believe, subject of a previous FOIA request submitted by CBG last year for all documents associated with an investigation by the Office of Inspector Auditor into allegations of misconduct made by the Atomic Safety and Licensing Board with respect to certain NRC employees. In particular, the security plan and some of the inspection reports for UCLA were specifically identified by the ASLB in its February 24, 1984 Memorandum and Order making the charges of misconduct and are, we believe, likely to be part of the OIA investigatory file subject to our earlier request. Any destruction or transfer of custody of these documents pending final resolution of that earlier FOIA request would likewise violate agency obligations under FOIA (see, e.g., the Applegate case). We renew our inquiry as to the long-delayed response to that previous FOIA submission.

Should any of the documents identified in this FOIA request, or associated with it but identified previously in the earlier FOIA request related to the OIA investigation, have been destroyed or transferred from NRC custody, we request full description of the circumstances surrounding the removal, transfer, or destruction of the requested records, including the identity of all individuals involved, and the relevant dates.

The above documents are currently subject of settlement negotiations among the parties to the UCLA proceeding, the results of which may affect matters related to this request.

Please promptly take the necessary steps to assure that the documents in question are neither destroyed nor removed from NRC custody while response to these FOIA requests are being processed (or,in the unlikely event that any portions of these documents are not provided despite their no longer containing protectable Safeguards Information, until all appeals have been exhausted.)

Sincerely,

Steven Aftergood

Steven Aftergood
Executive Director

cc: H. Denton*
C. Thomas*
H. Bernard*
C. Woodhead*
J. Gray*
Director, OIA*
W. Cormier (UCLA)