

FOIA — 97-365

RESPONSE TYPE

FINAL

PARTIAL (2nd)

DATE

DEC 23 1997

DOCKET NUMBER(S) (if applicable)



*Muders*

### RESPONSE TO FREEDOM OF INFORMATION ACT (FOIA) REQUEST

REQUESTER

J. Patrick Hickey

#### PART I.—AGENCY 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.

Requested records are available through another public distribution program. See Comments section.

Agency records subject to the request that are identified in Appendix(es) \_\_\_\_\_ are already available for public inspection and copying at the NRC Public Document Room, 2120 L Street, N.W., Washington, DC.

Agency records subject to the request that are identified in Appendix(es) \_\_\_\_\_ are being made available for public inspection and copying at the NRC Public Document Room, 2120 L Street, N.W., Washington, DC, in a folder under this FOIA number.

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, 2120 L Street, N.W., Washington, DC, in a folder under this FOIA number.

Agency records subject to the request that are identified in Appendix(es) \_\_\_\_\_ may be inspected and copied at the NRC Local Public Document Room identified in the Comments section.

Enclosed is information on how you may obtain access to and the charges for copying records located at the NRC Public Document Room, 2120 L Street, N.W., Washington, DC.

Agency records subject to the request are enclosed.

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

#### Fees

You will be billed by the NRC for fees totaling \$ \_\_\_\_\_.

You will receive a refund from the NRC in the amount of \$ \_\_\_\_\_.

In view of NRC's response to this request, no further action is being taken on appeal letter dated \_\_\_\_\_, No. \_\_\_\_\_.

#### PART II. A—INFORMATION WITHHELD FROM PUBLIC DISCLOSURE

Certain information in the requested records is being withheld from public disclosure pursuant to the exemptions described in and for the reasons stated in Part II, 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, 2120 L Street, N.W., Washington, DC in a folder under this FOIA number.

#### COMMENTS

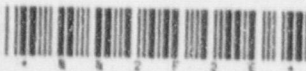
Copies of the releasable portions of the records identified on Appendix B are enclosed.

*FOIA 1/1*

SIGNATURE, DIRECTOR, DIVISION OF FREEDOM OF INFORMATION AND PUBLICATIONS SERVICES

*[Handwritten Signature]*

9712310297 971223  
PDR FOIA  
HICKEY97-365 PDR



**RESPONSE TO FREEDOM OF  
INFORMATION ACT (FOIA) REQUEST**  
(CONTINUATION)

FOIA NUMBER(S)

**FOIA - 97-365**

DATE

DEC 23 1997

**PART II B - APPLICABLE EXEMPTIONS**

Records subject to the request that are described in the enclosed Appendix(es) B are being withheld in their entirety or in part under the Exemption No.(s) and for the reason(s) given below pursuant to 5 U.S.C. 552(b) and 10 CFR 9.17(a) of NRC regulations.

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

Sections 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 pursuant to 10 CFR 2.790(d)(2).

5 The withheld information consists of inter-agency or intra-agency records that are not available through discovery during litigation. (Exemption 5). Applicable Privilege:

Deliberative Process. 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.

Attorney work product privilege. (Documents prepared by an attorney in contemplation of litigation.)

Attorney-client privilege. (Confidential communications between an attorney and his/her client.)

6 The withheld information is exempted from public disclosure because its disclosure would result in a clearly unwarranted invasion of personal privacy. (Exemption 6)

X 7 The withheld information consists of records compiled for law enforcement purposes and is being withheld for the reason(s) indicated. (Exemption 7)

Disclosure could reasonably be expected to interfere with an enforcement proceeding because it could reveal the scope, direction, and focus of enforcement efforts, and thus could possibly allow recipients to take action to shield potential wrongdoing or a violation of NRC requirements from investigators. (Exemption 7 (A))

X 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 reasonably be expected to reveal identities of confidential sources. (Exemption 7 (D))

OTHER

**PART II C - DENYING OFFICIALS**

Pursuant to 10 CFR 9.25(b) and/or 9.25(c) 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 Freedom of Information and Publications Services, 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		
			EDO	SECRETARY	IG
Guy P. Caputo	Director, Office of Investigations	Appendix B	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 therein. Any such appeal must be made in writing within 30 days of receipt of this response. Appeals must be addressed, as appropriate, to the Executive Director for Operations, to the Secretary of the Commission, or to the Inspector General, 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 B  
RECORDS BEING WITHHELD IN PART

<u>NO.</u>	<u>DATE</u>	<u>DESCRIPTION/(PAGE COUNT)/EXEMPTIONS</u>
1.	Various dates	Investigation Status Record, (4 pp) 7(C), portions
2.	Various dates	Exhibit 1 to OI:ROI 1-96-005, Investigations Status Record -Page 3, (1 p), 7(C), portions
3.	Various dates	Exhibit 2B to OI:ROI 1-96-005, Vermont Yankee Nuclear Power Corporation Exempt Employee Performance Review, (6 pp), 7(C), portions
4.	06/05/96	Exhibit 3 to OI:ROI 1-96-005, Transcript of Investigative Interview of Individual, (80 pp), 7(C), portions
5.	12/17/96	Exhibit 5 to OI:ROI 1-96-005, Interview Report of Individual, 7(C), portions, (5 pp)
6.	01/21/97	Exhibit 6 to OI:ROI 1-96-005, Interview Report of Individual, 7(C), portions, (7 pp)
7.	01/28/97	Exhibit 7 to OI:ROI 1-96-005, Interview Report of Individual, 7(C), portions, (4 pp)
8.	Various dates	Exhibit 19A to OI:ROI 1-96-005, Vermont Yankee Nuclear Power Corporation Management Performance Review, 7(C), portions, (6 pp)
9.	Various dates	Exhibit 19B to OI:ROI 1-96-005, Vermont Yankee Nuclear Power Corporation Management Performance Review, 7(C), portions, (7 pp)
10.	Various dates	Exhibit 19C to OI:ROI 1-96-005, Vermont Yankee Nuclear Power Corporation Management Performance review, 7(C), portions, (6 pp)
11.	12/17/96	Exhibit 20 to OI:ROI 1-96-005, Interview Report of Individual, 7(C), portions, (19 pp)
12.	12/17/96	Exhibit 21 to OI:ROI 1-96-005, Interview Report of Individual, 7(C), portions, (4 pp)
13.	01/22/97	Exhibit 22 to OI:ROI 1-96-005, Interview Report of Individual, 7(C), portions, (2 pp)
14.	01/23/97	Exhibit 23 to OI:ROI 1-96-005, Interview Report of Individual, 7(C), portions, (2 pp)

SHAW, PITTMAN, POTTS & TROWBRIDGE

PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

2300 N STREET, N. W.  
WASHINGTON, D. C. 20037

(202) 663-8000

FACSIMILE  
(202) 663-8007

FOIA/PA REQUEST

Case No: 97-365  
Date Rec'd: 9-22-97  
Action Off: Pow  
Related Cases: \_\_\_\_\_

J. PATRICK HICKEY, P.C.  
(202) 663-8103

September 19, 1997

Mr. Russell A. Powell, Chief  
Freedom of Information Act/ Local Public Document Room Branch  
U.S. Nuclear Regulatory Commission  
Mail Stop T-6 D8  
Washington, D.C. 20555-0008

Re: Freedom of Information Act (FOIA) Request

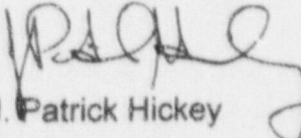
Dear Mr. Powell,

Pursuant to 5 U.S.C. § 552 (a)(3) and 10 C.F.R. § 9.23, I am requesting all documents relating to the investigation by the NRC Region I Office of Investigations of Case No. 1-96-005 (allegations related to Vermont Yankee).

I agree in advance to pay any reasonable fees associated with this request.

Thank you for your prompt attention to this request. I look forward to your response within ten (10) days, as required by NRC and FOIA regulations.

Sincerely,

  
J. Patrick Hickey

9712030094