

RESPONSE TO FREEDOM OF
INFORMATION ACT (FOIA) REQUEST

FOIA-87-467

RESPONSE TYPE

☒ FINAL ☐ PARTIAL
DATE SEP 30 1987

DOCKET NUMBER(S) (if applicable)

REQUESTER

David S. Rubinton

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 I 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 F, H 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 _____.

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

SIGNATURE, DIRECTOR, DIVISION OF RULES AND RECORDS

8714050208 XA

PART II.B - APPLICABLE FOIA EXEMPTIONS

Records subject to the request that are described in the enclosed Appendices G, H 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 141-146 of the Atomic Energy Act which prohibits the disclosure of Restricted Data or Formerly Restricted Data (42 U.S.C. 2161-2166).

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).

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
James P. Murray	Deputy General Counsel for Hearings and Enforcement	G1, G2, H1	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 that 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 F

RECORDS MAINTAINED IN THE PDR UNDER THE ABOVE REQUEST NUMBER

1. 1/20/87 Letter to Stello and Mattox from Garde and Condit (2 pages)
2. 1/27/87 Letter to Concern No. 11227 from Guthrie, SAFETEAM(2
pages), with attachment:
1/28/87 Safeteam concern walkdown summary (15 pages)
3. 1/28/87 Letter to Martin from Goldberg (3 pages)
4. 3/4/87 Letter to Stello from Garde (2 pages).
5. 3/27/87 Letter to Goldberg from Garde (3 pages)
6. 4/6/87 Letter to Garde from from Goldberg (2 pages)
7. 5/8/87 Letter to Martin from Garde (2 pages)
8. 5/22/87 Draft Agreement between Garde and USNRC re: attached
subpoena (2 pages)
9. 5/20/87 Subpoena to Garde from Stello (1 page)
10. 5/22/87 Agreement between Garde and USNRC re: subpoena (1 page)
11. 6/11/87 Letter to Chilk from Newman (7 pages) with attachment:
4/6/87 Letter to Garde from Goldberg (3 pages)
12. 6/25/87 Reply of Billie Garde, Esquire to the NRC's Staff's
Opposition To Motion To Quash and DeFacto Opposition To
Petition Pursuant to 10 CFR §2.206 (13 pages).
13. 7/15/87 NRC Memorandum and Order (8 pages)
14. Undated GAP representation agreement (3 pages)
15. 11/25/85 NRC Statement of Policy on Confidentiality, 50 FR 48506
(4 pages)
16. Undated Federal Rule of Civil Procedure 45 (2 pages)
17. Undated 594 Fed. Supp. 117 (1984) United States vs. Metropolitan
Edison Company (5 pages)
18. Undated 87 Federal Rules Decisions 584 United States vs. McGovern
(6 pages)

APPENDIX F
(Continued)

19. Undated 87 Federal Rules Decisions 590 United States vs. McGovern (4 pages)
20. Undated 349 Federal Reporter 2nd 900, NLRB vs. Harvey (8 pages)
21. Undated Harvard Law Review Volume 91 Page 486, conclusion of article about attorney-client relationship. (3 pages)
22. 3/19/85 NRC Statement of Policy: Handling of Late Allegations, 50 FR 11030 (1 page)
23. 3/19/87 Letter to Martin from Goldberg, subject: Negotiations with Government Accountability Project re: Letter from J.H. Goldberg to R.D. Martin dated 3/9/87 (3 pages)
24. 4/6/87 Letter to the Daily Tribune (Bay City, Texas) from J.H. Goldberg (2 pages)

APPENDIX G

RECORDS TOTALLY WITHHELD

1. Undated Draft of NRC Staff Response to Motion and Memorandum to Quash Subpoena Filed by Billie P. Garde, Esq. (15 pages) [FOIA Exemption (5)]
2. Undated List of questions used in connection with deposition of Monday July 27, 1987. (21 pages). [FOIA Exemption (5)]

APPENDIX H

RECORDS PARTIALLY WITHHELD

1. 7/10/87 Note to Murray from Sohinki, subject: Status of Billie Garde Subpoena (1 page) [FOIA Exemption (5)]

APPENDIX I

RECORDS MAINTAINED AMONG PDR FILES

1. 11/19/85 NRC Statement of Policy on Confidentiality (19 pages),
Accession No. 8512110154
2. 6/4/87 NRC Order concerning GAP's Motion to Quash. (1 page),
Accessin No. 8706090110
3. 7/15/87 NRC Memorandum and Order, CLI-87-08 (6 pages), Accession
No. 8708190087
4. 3/18/87 Letter to Garde from Stello (1 page), Accession No.
8709040082