

RESPONSE TO FREEDOM OF
INFORMATION ACT (FOIA) REQUESTPDR-
016

NRC FOIA REQUEST NUMBER(S)

FOIA-87-228

RESPONSE TYPE

FINAL

☒ PARTIAL

DATE

JUL 15 1987

DOCKET NUMBER(S) (if applicable)

REQUESTER

Mr. 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 H 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 I & J 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

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PDR FOIA
RUBINT087-228 PDR

SIGNATURE, DIRECTOR, DIVISION OF RULES AND RECORDS

Donna H. Kinsley

PART II B - APPLICABLE FOIA EXEMPTIONS

Records subject to the request that are described in the enclosed Appendices **J & K** 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 12958 (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).

5. The withheld information consists of interagency or intra-agency 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	
Ben B. Hayes	Director, Office of Investigations	appendix J, Ex. 6, 7c + 7d	SECRETARY	EDO
		appendix K, Ex. 5 + K/3, K/4 + K/5	X	
James Lieberman	Director, Office of Enforcement	appendix K, K6 Ex. 5		X
William T. Russell	Regional Administrator	appendix K, K/1 + K/2 Ex. 5		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 H

RECORDS MAINTAINED AMONG PDR FILES

1. 12/16/86 Ltr from J.W. Gallagher, Philadelphia Electric Co., to
Thomas T. Martin, Region I, NRC Accession No. 8612230385.

APPENDIX I

RECORDS MAINTAINED IN THE PDR UNDER THE ABOVE REQUEST NUMBER

1. Undated Draft Synopsis of Case No. 1-85-019 (5 pages).
2. Undated Investigator's handwritten notes (13 pages).
3. Undated Comparison of Manpower and Delays (1 page).
4. 8/26/85 Various Organizational Charts (8 pages).
5. 11/21/85 Handwritten ltr to Carol Gibbs from Mr. Matakas (1 page).
6. 5/8/86 Memo from Ben B. Hayes to Thomas E. Murley, re: Peach Bottom Atomic Power Station (PBAPS); Alleged Threats to Employees to Prevent Disclosure of Possible Overexposure to NRC (1-85-019) (1 page).
7. 6/25/86 Memo from Chester W. White to Thomas E. Murley, re: Release of Office of Investigations Report No. 1-85-019: Peach Bottom Atomic Station/Alleged Threats to Employees to Prevent Disclosure to NRC (1 page).
8. 7/9/86 Memo from Ben B. Hayes to Thomas E. Murley, re: Office of Investigation Report No. 1-85-019, Alleged Threats to Employees to Prevent Disclosure of Possible Overexposure to NRC, Peach Bottom Atomic Power Station (1 page).
9. 3/28/86 Memo from Chester W. White to Thomas E. Murley, re: Report of Investigation No. 1-85-019 (1 page).
10. Undated Bartlett Nuclear, Inc. Personnel Policy (6 pages).

APPENDIX J

RECORDS PARTIALLY WITHHELD

1. Various Investigation Status Record (4 pages) Ex. 7d, 6 & 7c.
2. 9/20/85 Chronological Record (1 page) Ex. 7c.

APPENDIX K

RECORDS TOTALLY WITHHELD

1. Undated Draft letter from Thomas Murley to Philadelphia Electric, re: Notice of Violation and proposed Civil Penalty w/enclosure (6 pages) (Exemption 5).
2. Undated Memo from Thomas Murley to James Taylor, re: Proposed Civil Penalty (2 pages) (Exemption 5).
3. 10/17/86 Investigative Work Plan (4 pages) (Exemption 5).
4. Various Investigator's notes on various interviewees (167 pages). (Exemption 7D)
5. Various Report of Interview/Statement/Interview notes of confidential source (58 pages) (Exemption 7D).
6. 1/28/87 Memo from Gary M. Holahan for Jane Axelrad, re: Enforcement Action 87-05, Peach Bottom Unit 3 (1 page). (Exemption 5)

GOVERNMENT ACCOUNTABILITY PROJECT

1555 Connecticut Avenue, N.W., Suite 202
Washington, D.C. 20036

(202) 232-3511

MIDWEST OFFICE
104 E. WISCONSIN AVENUE
APPLETON, WISCONSIN 54915-8605

April 15, 1987

FREEDOM OF INFORMATION ACT REQUEST

Director
Office of Administration
U.S. Nuclear Regulatory Commission
Washington, D.C. 20210

FREEDOM OF INFORMATION
ACT REQUEST

FOIA-87-228
Rec'd 4-20-87

TO WHOM IT MAY CONCERN

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. 552, the Government Accountability Project (GAP) requests copies of any and all agency records and information, including but not limited to notes, letters, memoranda, drafts, minutes, diaries, logs, calendars, tapes, transcripts, summaries, interview reports, procedures, instructions, engineering analyses, drawings, files, graphs, charts, maps, photographs, agreements, handwritten notes, studies, data sheets, notebooks, books, telephone messages, computations, voice recordings, computer runoffs, and any other data compilations, interim and/or final reports, status reports, and any and all other records relevant to and/or generated in connection with the dismissal of a health physicist for "whistleblowing" at the Beach Bottom nuclear plant as reported by the Associated Press on December 30, 1986 (see enclosed). This request covers records generated both before and after the release of the report, as well as any records generated in connection with this request.

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

If any records as defined in 10 C.F.R. 9.3a(b) and the NRC Manual, SUPRA, and covered by this request have been destroyed and/or removed after this request, please provide all surrounding records, including but not limited to a list of all records which have been or are destroyed and/or removed, a description of the action(s) taken relevant to, generated in connection with and/or issued in order to implement the action(s).

87-06-2440082

3pp

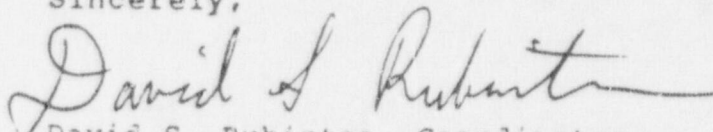
GAP requests that fees be waived, because "finding the information can be considered as primarily benefiting the general public," 5 U.S.C. 552 (a) (4) (a). GAP is a non profit, non-partisan public interest organization concerned with honest and open government. Through public outreach, the Project promotes whistleblowers as agents of government accountability. Through its Environmental Whistleblower Clinic, GAP offers assistance to local public interest and citizens groups and intervenors in the concern for safety at nuclear power plants.

We are requesting this information as part of an ongoing monitoring project of the NRC's efforts to protect public health and safety at and near nuclear processing plants and radioactive waste facilities.

For any documents or portions that you deny due to a specific FOIA exemption, please provide an index itemizing and describing the documents or portions of documents withheld. The index should provide a detailed justification of your grounds for claiming each exemption, explaining why each exemption is relevant to the document or portion of the document withheld. This index is required under Vaughn v. Rosen (1), 484 F2d 820 (D.C. Cir. 1973), cert. denied, 415 U.S. 977 (1974).

We look forward to your response to this request within ten (10) working days.

Sincerely,



David S. Rubinton, Coordinator
FOIA Litigation Clinic, GAP

Responses to this request should be mailed to :

104 E. Wisconsin Avenue
Appleton, Wisconsin 54915-8605

The Associated Press

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December 30, 1986, Tuesday, PM cycle

SECTION: Domestic News

LENGTH: 287 words

HEADLINE: NRC: Peach Bottom Fired Whistle-Blower

DATeline: PHILADELPHIA

KEYWORD: Nuke Whistle-Blower

BODY:

A nuclear power plant employee exposed to radiation at the Peach Bottom nuclear plant was laid off because he notified the Nuclear Regulatory Commission of the incident, an NRC spokesman says.

The Associated Press, December 30, 1986

However, Philadelphia Electric Company, which owns 42.5 percent of the Peach Bottom plant, said the employee, a health physicist, was dismissed in a dispute at the plant that reduced the work force from 130 employees to 90.

The federal regulatory agency will review the case and release its findings by the end of next month at the earliest, according to Bob Gallo, NRC section chief responsible for the Peach Bottom plant, which is located near the Maryland border.

"This has a chilling effect on employees at all nuclear power plants," Gallo said Monday.

"If they feel they will lose their jobs if they speak to the NRC, eventually, there could be potential problems at the plant that we wouldn't find out about," he said.

A 1974 federal law prohibits employees at nuclear power plants from being fired for "whistle-blowing," Gallo said.

An NRC report released in September concluded that the health physicist, an employee of Bartlett Nuclear Inc., a subcontractor at the plant, would not have been laid off if he hadn't spoken to the NRC about the March 1985 incident.

The Associated Press, December 30, 1986

Gallo said.

A Peach Bottom official told a Bartlett supervisor, "I want the health physicist to go in the first round of layoffs," according to testimony given for the report.

The health physicist and three other employees were exposed to radioactive gas, caused by an equipment malfunction, while examining planned modifications in the reactor. The NRC concluded that the levels of radiation to which the workers were exposed were acceptable.