

RESPONSE TO FREEDOM OF
INFORMATION ACT (FOIA) REQUEST

FOIA-87-655

RESPONSE TYPE

FINAL

PARTIAL

DATE

NOV 9 1987

DOCKET NUMBER(S) (if applicable)

REQUESTER

Linda Bauman

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.☒ Agency records subject to the request that are identified in Appendix C 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 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

8711120045 871109
PDR FOIA PDR
BAUMAN87-655

SIGNATURE, DIRECTOR, DIVISION OF RULES AND RECORDS

Donna H. Kinley

PART II.B - APPLICABLE FOIA EXEMPTIONS

Records subject to the request that are described in the enclosed Appendices D 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 141-145 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 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 L. Sherman	Director, Office of Enforcement	appendix D, D/1; Ex. 5		X
Thomas E. Murley	Director, Office of Nuclear Reactor Regulation	appendix D, D/2, D/6 - D/17; Ex. 5		X
Victor Stello, Jr.	Ex. Director for Operations	appendix D, D/3, D/4 & D/5, 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 C

RECORDS MAINTAINED IN THE PDR UNDER THE ABOVE REQUEST NUMBER

1. 6/30/87 Note for Scott Newberry, OEDO, referencing GAO Report and "Issue/Comment". (1 page)

APPENDIX D

RECORDS WITHHELD IN THEIR ENTIRETY

1. Undated Memo from James Lieberman to Jesse L. Funches, subject: D'Amato/GAO Report. (3 pages) Exemption 5.
2. 6/2/87 Memo from Thomas E. Murley to T. A. Rehm, subject: comments on Draft GAO Report on NRC's Safety Standard and Inspection and and Enforcement Effort. (3 pages) Exemption 5.
3. Undated Draft memo with notes from Lando Zech to Senator Alfonse M. D'Amato. (2 pages) Exemption 5.
4. Undated Handwritten notes re: Some points covered by us with media. (1 page) Exemption 5.
5. 9/29/87 Handwritten notes on Issues, S. Newberry. (1 page)
6. 9/29/87 Memo from Jesse L. Funches to Themis Speis, subject: D'Amato GAO Report. (1 page) Exemption 5.
7. 10/6/87 Draft Commission Paper, subject: Final GAO Report entitled "Nuclear Regulation: Efforts to Ensure Nuclear Power Plant Safety Can be Strengthened," with handwritten changes. (11 pages) Exemption 5.
8. 10/14/87 Note to Barbara Dalrymple from Walter Schwink, subject: Response to GAO and D'Amato letter. (2 pages) Exemption 5.
9. Undated Handwritten notes, general discussion. (2 pages) Exemption 5.
10. Undated Draft Commission Paper, subject: Final GAO Report entitled: "Nuclear Regulation: Efforts to Ensure Nuclear Power Plant Safety Can Be Strengthened." (11 pages) Exemption 5.
11. Undated Draft handwritten letter to Honorable John Glenn. (3 pages) Exemption 5.
12. Undated Handwritten draft recommendation p.43. (1 page) Exemption 5.
13. Undated Draft letter to Honorable Jack Brooks. (1 page) Exemption 5.
14. Undated Draft letter to Honorable John Glenn. (1 page) Exemption 5.

APPENDIX D
(Continued)

RECORDS WITHHELD IN THEIR ENTIRETY

15. Undated Draft/Commission paper with handwritten notes, subject: Final GAO report entitled "Nuclear Regulation: Efforts to Ensure Nuclear Power Plant Safety Can Be Strengthened." (6 pages) Exemption 5.
16. Undated Draft/Commission paper with handwritten notes, subject: Final GAO report entitled "Nuclear Regulation: Efforts to Ensure Nuclear Power Plant Safety Can Be Strengthened." (7 pages) Exemption 5.
17. Undated Draft/Commission paper with handwritten notes, subject: Final GAO report entitled "Nuclear Regulation: Efforts to Ensure Nuclear Power Plant Safety Can Be Strengthened." (13 pages) Exemption 5.

GOVERNMENT ACCOUNTABILITY PROJECT

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

(202) 232-8550

MIDWEST OFFICE

104 E. WISCONSIN AVENUE
APPLETON, WISCONSIN 54911-4897

September 23, 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-87-655
Rec'd 10-1-87

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 and including the federal report released Tuesday, September 22, 1987 by the General Accounting Office, regarding the Nuclear Regulatory Commission lacking guidelines on shutting down nuclear power plants for safety violations. (see attached article)

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).

87-10280372 3p.

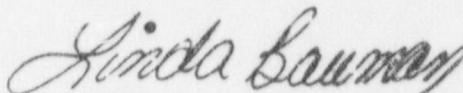
GAP requests that fees be waived, because "finding the information can be considered as primarily benefitting the general public, "5 U.S.C. 552 (a) (4) (a). GAP is a non-profit, non-partisan public interest organization concerned with honest and open government. Through public outreach, the Project promotes 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 (I), 484 F.2d 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,



Linda Bauman
FOIA Coordinator
Midwest Office

Response to this request should be mailed to the Midwest Office:

104 E. Wisconsin Avenue -B
Appleton, Wisconsin 54911-4897

NRC lacks nuclear safety guidelines

WASHINGTON (AP) — The Nuclear Regulatory Commission lacks guidelines on shutting down nuclear power plants for safety violations, and some have operated for years with significant problems, according to a federal report released today.

The report, by the General Accounting Office, recommends that the NRC "provide utilities clear signals on the types of safety and management problems that could result in a shutdown."

"Nuclear Regulation: Efforts To Ensure Nuclear Power Plant Safety Can Be Strengthened" was written in response to a request from Sen. Alfonse M. D'Amato, R-N.Y., who was to release the report at a news conference.

Victor Stello, the NRC's executive director for operations, responded to some of the report's criticisms in a telephone interview Monday, although he said he had not yet seen the document.

Stello said the NRC explains what violations would lead to a shutdown in a "technical specifications" document each plant receives upon licensing.

"To suggest that a comprehensive set of criteria beyond what we already have ought to be developed, I'm at a loss because we really have a fairly comprehensive system right now," he said.

While the NRC has ordered shutdowns at five operating plants in the past 25 years, "its decisions to close these plants or allow continued operations look inconsistent because it did not take the same action for other plants with similar problems," the report said.

Some plants with chronic safety violations that were allowed to stay open wound up shut down anyway because of equipment failures, the report noted.

D'Amato called on the NRC to stop licensing

any more nuclear plants until it adopts the GAO recommendations and improves enforcement of safety regulations.

The two plants that would be directly affected by D'Amato's demand are Shoreham in New York and Seabrook in New Hampshire. Both plants have been thwarted in their efforts to obtain full-power licenses because neither has an approved emergency evacuation plan.

"The NRC has allowed nuclear plants to keep operating despite findings of design problems, questionable equipment and even utility personnel found asleep in the control room on duty," D'Amato said. "This report shows that when serious problems are found, the NRC waits and waits and waits before taking action."

The report also pointed to instances in which the commissioners could not agree on what types or degrees of safety problems should lead the NRC to close a plant.