

Dear FOIA Requester:

The FOIA Improvement Act of 2016, which was enacted on June 30, 2016, made several changes to the Freedom of Information Act (FOIA). Federal agencies must revise their FOIA regulations to reflect those changes by December 27, 2016. In addition to revising our regulations, we intend to update the Form 464, which we use to respond to FOIA requests.

In the interim, please see the comment box in Part I.C of the attached Form 464. The comment box includes information related to the recent changes to FOIA that is applicable to your FOIA request, including an updated time period for filing an administrative appeal with the NRC.

Sincerely yours,

*Stephanie Blaney /S/*

Stephanie Blaney  
FOIA Officer



# RESPONSE TO FREEDOM OF INFORMATION ACT (FOIA) REQUEST

2016-0725

1

RESPONSE TYPE  INTERIM  FINAL

**REQUESTER:**

Lawrence Criscione

**DATE:**

02/23/2017

**DESCRIPTION OF REQUESTED RECORDS:**

Records corresponding to items 6 (ML12335A059), 8 (ML13084A022), 9 (ML13149A079), 10 (ML13218A150), 11 (ML14090A406), and 12 (ML14325A850) of your request, as further explained in the Comments Section, below.

### PART I. -- INFORMATION RELEASED

- Agency records subject to the request are already available in public ADAMS or on microfiche in the NRC Public Document Room.
- Agency records subject to the request are enclosed.
- Records subject to the request that contain information originated by or of interest to another Federal agency have been referred to that agency (see comments section) for a disclosure determination and direct response to you.
- We are continuing to process your request.
- See Comments.

### PART I.A - FEES

AMOUNT\*

\$

\*See Comments for details

- You will be billed by NRC for the amount listed.
- None. Minimum fee threshold not met.
- You will receive a refund for the amount listed.
- Fees waived.

### PART I.B - INFORMATION NOT LOCATED OR WITHHELD FROM DISCLOSURE

- We did not locate any agency records responsive to your request. *Note:* Agencies may treat three discrete categories of law enforcement and national security records as not subject to the FOIA ("exclusions"). 5 U.S.C. 552(c). This is a standard notification given to all requesters; it should not be taken to mean that any excluded records do, or do not, exist.
- We have withheld certain information pursuant to the FOIA exemptions described, and for the reasons stated, in Part II.
- Because this is an interim response to your request, you may not appeal at this time. We will notify you of your right to appeal any of the responses we have issued in response to your request when we issue our final determination.
- You may appeal this final determination within 30 calendar days of the date of this response by sending a letter or email to the FOIA Officer, at U.S. Nuclear Regulatory Commission, Washington, D.C. 20555-0001, or [FOIA.Resource@nrc.gov](mailto:FOIA.Resource@nrc.gov). Please be sure to include on your letter or email that it is a "FOIA Appeal."

### PART I.C COMMENTS ( Use attached Comments continuation page if required)

In conformance with the FOIA Improvement Act of 2016, the NRC is informing you that you have the right to seek assistance from the NRC's FOIA Public Liaison.

This interim response addresses 6 of the 13 records that are the subject of your request.

ML12335A059 is an email exchange among NRR staff, which is already publicly available. [continued on next page]

SIGNATURE - FREEDOM OF INFORMATION ACT OFFICER

Stephanie A. Blaney

2016-0725

1

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

RESPONSE TYPE



INTERIM



FINAL

REQUESTER:

Lawrence Criscione

DATE:

02/23/2017

**PART I.C COMMENTS (Continued)**

ML13084A022 is a set of PowerPoint slides submitted by Duke Energy in advance of a public meeting, which were attached to an email exchange that was the subject of a prior FOIA request that you submitted, FOIA-2013-0264. The redacted version is already publicly available as ML13226A265. We continue to assert exemption 7(F) for the redaction of the cross-section diagram of the Jocassee Dam, as it appears on slide 18 of this PowerPoint presentation.

ML131949A079 is the Commission's 2nd Quarter Operating Plan for FY-2013, which was also the subject of a prior FOIA request you submitted, FOIA-2013-0261, and its appeal, FOIA-2013-0021A. We continue to withhold the Plan in full pursuant to FOIA exemption 5, as it incorporates the deliberative process privilege.

ML13218A150 is a Template for Staff Assessment of Response to 10 CFR 50.54(f) Information Request - Flooding Mechanisms, which is already publicly available.

ML14090A406 is a record entitled "Evaluation of Missouri River Mainstem Dams and Potential Flood Hydrographs at Fort Calhoun and Cooper Nuclear Plants," which was prepared by the U.S. Army Corps of Engineers (ACE) and shared with the NRC;. It was the subject of two prior FOIA requests, FOIA-2015-0074 (ML15034A093) and FOIA-2016-0062 (ML15303A263), one of which was your own. After consulting with ACE again, the record continues to be withheld in full on the basis of FOIA exemptions 7(E) and (F). Any appeal with respect to this record should be directed to Secretary of the Army (ATTN: General Counsel). The appeal must be received within 90 calendar days of the date of this response. The envelope containing the appeal should bear the notation: "Freedom of Information Act Appeal" and should be sent to: U.S. Army Engineer District, Omaha, ATTN: CENWO-OC, 1616 Capitol Avenue, Omaha, Nebraska 68102-4901.

ML14325A850 is a letter that has also been the subject of a prior FOIA request you submitted, FOIA-2016-0201. A redacted version of the letter was released to you, and also made publicly available, as ML16021A057. We continue to assert exemption 6 to protect the name of the letter's originator. In addition, we continue to assert exemption 5, as it incorporates the attorney-client privilege, for the portions of the letter that reflect advice provided by OGC lawyers to NRC staff, of which the letter's originator became aware as part of his official duties.



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

2016-0725#1

DATE:

02/23/2017

### PART II.A -- APPLICABLE EXEMPTIONS

Records subject to the request are being withheld in their entirety or in part under the FOIA exemption(s) as indicated below (5 U.S.C. 552(b)).

- Exemption 1: The withheld information is properly classified pursuant to an Executive Order protecting national security information.
- Exemption 2: The withheld information relates solely to the internal personnel rules and practices of NRC.
- Exemption 3: The withheld information is specifically exempted from public disclosure by the statute indicated.
  - 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).
  - 41 U.S.C. 4702(b), which prohibits the disclosure of contractor proposals, except when incorporated into the contract between the agency and the submitter of the proposal.
- Exemption 4: The withheld information is a trade secret or confidential commercial or financial information that is being withheld for the reason(s) indicated.
  - The information is considered to be proprietary because it concerns a licensee's or applicant's physical protection or material control and accounting program for special nuclear material pursuant to 10 CFR 2.390(d)(1).
  - The information is considered to be another type of confidential business (proprietary) information.
  - The information was submitted by a foreign source and received in confidence pursuant to 10 CFR 2.390(d)(2).
- Exemption 5: The withheld information consists of interagency or intraagency records that are normally privileged in civil litigation.
  - Deliberative process privilege.
  - Attorney work product privilege.
  - Attorney-client privilege.
- Exemption 6: The withheld information from a personnel, medical, or similar file, is exempted from public disclosure because its disclosure would result in a clearly unwarranted invasion of personal privacy.
- Exemption 7: The withheld information consists of records compiled for law enforcement purposes and is being withheld for the reason(s) indicated.
  - (A) Disclosure could reasonably be expected to interfere with an open enforcement proceeding.
  - (C) Disclosure could reasonably be expected to constitute an unwarranted invasion of personal privacy.
  - (D) The information consists of names and other information the disclosure of which could reasonably be expected to reveal identities of confidential sources.
  - (E) Disclosure would reveal techniques and procedures for law enforcement investigations or prosecutions, or guidelines that could reasonably be expected to risk circumvention of the law.
  - (F) Disclosure could reasonably be expected to endanger the life or physical safety of an individual.
  - Other

### PART II.B -- DENYING OFFICIALS

**In accordance with 10 CFR 9.25(g) and 9.25(h) of the U.S. Nuclear Regulatory Commission regulations, the official(s) listed below have made the determination to withhold certain information responsive to your request.**

DENYING OFFICIAL	TITLE/OFFICE	RECORDS DENIED	APPELLATE OFFICIAL	
			EDO	SECY
Stephanie A. Blaney	FOIA Officer	ML13084A022	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Rochelle Bavol	Exec Asst to the Secy to the Commission	ML131949A079	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Bernice Ammon	Assistant General Counsel	ML14325A850	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**Appeals must be made in writing within 30 calendar days of the date of this response by sending a letter or email to the FOIA Officer, at U.S. Nuclear Regulatory Commission, Washington, D.C. 20555-0001, or [FOIA.Resource@nrc.gov](mailto:FOIA.Resource@nrc.gov). Please be sure to include on your letter or email that it is a "FOIA Appeal."**