

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

2017-0005

3

RESPONSE TYPE  INTERIM  FINAL

**REQUESTER:**

Lawrence Criscione

**DATE:**

FEB 08 2017

**DESCRIPTION OF REQUESTED RECORDS:**

Records corresponding to items 3 (ML16204A002) and 7 (ML16239A085) 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\*

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\*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: (1) you have the right to seek assistance from the NRC's FOIA Public Liaison; (2) you have the right to seek dispute resolution services from the NRC's FOIA Public Liaison or the Office of Government Information Services; and (3) notwithstanding the language in Parts I.B and II.B of this form, you may appeal this final determination within 90 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." [continued on next page]

SIGNATURE - ASSISTANT INSPECTOR GENERAL FOR INVESTIGATIONS, OIG

*Joseph A. McMillan*

2017-0005

3

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

RESPONSE  
TYPE

INTERIM

FINAL

REQUESTER:

Lawrence Criscione

DATE:

FEB 08 2017

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

This final response addresses the last two records requested in this request. Since the date of your request, these records have been removed from ADAMS. However, because the NRC was able to locate them by the accession numbers when your request was received, we have processed the records.

ML16204A002 is a copy of a letter addressed to Inspector General Hubert Bell. It was released to you in part in response to your request, FOIA-2016-0064. Personally identifiable information of the third party who submitted the letter was redacted pursuant to FOIA exemption 7(C). We continue to withhold these portions on that basis.

ML16239A084 consists of (1) an email exchange among the General Counsel to the Inspector General, the NRC Solicitor, and your lawyer with respect to the resolution of a prior FOIA lawsuit; (2) a letter from the General Counsel to the Inspector General to you; and (3) a copy of the stipulation of dismissal of that lawsuit, which is publicly available. They are enclosed.



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

2017-0005#3

DATE:

**FEB 08 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	IG
Joseph A. McMillan	Assistant Inspector General for Investigations, OIG	PII of a third party	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			<input type="checkbox"/>	<input type="checkbox"/>	<input 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."

(b)(7)(C)

Office of Nuclear Regulatory Research  
U.S. Nuclear Regulatory Commission

September 14, 2012

Hubert T. Bell  
Office of the Inspector General  
U.S. Nuclear Regulatory Commission, MS 05-E13  
11555 Rockville Pike  
Rockville MD 20852

Dear Mr. Bell,

Subject: Concealment of Significant Nuclear Safety Information by the U.S. Nuclear Regulatory Commission

I allege that the Nuclear Regulatory Commission (NRC) has intentionally mischaracterized relevant and noteworthy safety information as sensitive, security information in an effort to conceal the information from the public. This action occurred in anticipation of, in preparation for, and as part of the NRC's response to a Freedom of Information Act request for information concerning the *generic issue* investigation on *Flooding of U.S. Nuclear Power Plants Following Upstream Dam Failure*. Specifically requested was the completed screening analysis report for this issue, (b)(7)(C). Portions of the publically released version of this report are redacted citing security sensitivities, however, the redacted information is of a general descriptive nature or is strictly relevant to the safety of U.S. nuclear power plants, plant personnel, and members of the public. The Nuclear Regulatory Commission staff has engaged in an effort to mischaracterize the information as security sensitive in order to justify withholding it from public release using certain exemptions specified in the Freedom of Information Act. Evidence supporting this allegation includes the redacted text from the analysis report, e-mails and written correspondence within the NRC, and e-mail correspondence with other Government agencies. The Nuclear Regulatory Commission staff may be motivated to prevent the disclosure of this safety information to the public because it will embarrass the agency. The redacted information includes discussion of, and excerpts from, NRC official agency records that show the NRC has been in possession of relevant, notable, and derogatory safety information for an extended period but failed to properly act on it. Concurrently, the NRC concealed the information from the public.

Because this concern involves a violation of law and is not related to a technical opinion or distinction, I am not submitting this concern to (or through) the NRC's Differing Professional Opinion Program. It is my intention to cooperate fully with NRC Office of the Inspector General. It is also my intention to make a copy of this letter available to the public shortly after I have submitted it to your office; therefore, please consider this allegation to be public information.

Respectfully submitted,

(b)(7)(C)

Enclosure: Response to Freedom of Information Act / Privacy Act Request, 2012-0106, Final

cc: Rep. Donna Edwards,  
8730 Georgia Avenue, Suite 610  
Silver Spring, Maryland 20910

----- Forwarded Message -----

**From:** "Averbach, Andrew" <[Andrew.Averbach@nrc.gov](mailto:Andrew.Averbach@nrc.gov)>  
**To:** "[infoprivacylaw@yahoo.com](mailto:infoprivacylaw@yahoo.com)" <[infoprivacylaw@yahoo.com](mailto:infoprivacylaw@yahoo.com)>  
**Cc:** "Grodin, Maryann" <[Maryann.Grodin@nrc.gov](mailto:Maryann.Grodin@nrc.gov)>  
**Sent:** Wednesday, March 12, 2014 11:45 AM  
**Subject:** RE: notification in Criscione v. NRC, 12-042 (D.D.C)

My apologies; case number is 13-942 (D.D.C.)

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**From:** Averbach, Andrew  
**Sent:** Wednesday, March 12, 2014 11:44 AM  
**To:** [infoprivacylaw@yahoo.com](mailto:infoprivacylaw@yahoo.com)  
**Cc:** Grodin, Maryann  
**Subject:** notification in Criscione v. NRC, 12-042 (D.D.C)

Mr. Hodes:

This email confirms our conversation this morning, during which I informed you that we will be sending out a notice of closure of investigation pursuant to paragraph 2 of the settlement agreement dated October 28, 2013. We will send this notification today by certified mail through the USPS (to the address designated in the settlement agreement) and will also send you a copy of the notice by e-mail to this address ([infoprivacylaw@yahoo.com](mailto:infoprivacylaw@yahoo.com)).

Please let me know if you have any questions.

Andrew P. Averbach  
Solicitor  
U.S. Nuclear Regulatory Commission  
(301) 415-1956  
[andrew.averbach@nrc.gov](mailto:andrew.averbach@nrc.gov)



**UNITED STATES  
NUCLEAR REGULATORY COMMISSION**

WASHINGTON, D.C. 20555-0001

**OFFICE OF THE  
INSPECTOR GENERAL**

March 12, 2014

Mr. Lawrence Criscione  
1412 Dial Court  
Springfield, IL 62704

**RE: Civil Action No: 13-0942 (RMC)**

Dear Mr. Criscione:

Pursuant to paragraph two of the settlement agreement in the above captioned matter, this constitutes notice that both OIG Investigations 13-001 and 13-005 are now closed cases.

Please contact Joseph McMillan, the Assistant Inspector General for Investigations, Office of the Inspector General, at 301-415-5929 to arrange for your receipt of the digital recording referenced in the settlement agreement.

Sincerely,

A handwritten signature in cursive script, appearing to read "Maryann L. Grodin".

Maryann L. Grodin  
General Counsel to the Inspector General

cc: Joseph McMillan  
Andrew Averbach

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

LAWRENCE CRISCIONE,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No.: 13-0942 (RMC)
	)	
U.S. NUCLEAR REGULATORY	)	
COMMISSION,	)	
	)	
Defendant.	)	
	)	

**STIPULATION OF SETTLEMENT AND DISMISSAL**

Plaintiff Lawrence Criscione (“Plaintiff”) and the U.S. Nuclear Regulatory Commission (“NRC”) (“Defendant”) hereby settle and compromise the above-entitled lawsuit brought under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, as amended, on the following terms:

1. Plaintiff agrees to dismiss this suit with prejudice with each side bearing its own fees and costs, based on the terms set forth below.
2. Within five working days of the closure of NRC’s Office of Inspector General’s (“OIG”) Investigation 13-001 and 13-005 or within 12 months of the date of this agreement, whichever is sooner, the Defendant shall release to Plaintiff an un-redacted digital copy of the recording of the requested January 17, 2013 interview regarding OIG Investigations 13-001 and 13-005 (the “recording”). Defendant will notify Plaintiff once both OIG Investigations 13-001 and 13-005 are closed. Notification to the Plaintiff will entail the NRC sending a letter by certified mail to the Plaintiff at 1412 Dial Court, Springfield, IL 62704 (“Plaintiff’s mailing address”) and including in the letter instructions for whom to contact to arrange timely receipt of the digital recording. This notification letter will be postmarked within five working days of the



closure of OIG Investigations 13-001 and 13-005. If Plaintiff's mailing address changes after the signing of this agreement but before receipt of the recording, Plaintiff will notify the NRC's Office of Inspector General of any change in address. For purposes of this paragraph, "closure" means notice from the agency to OIG of management's decision concerning agency action. If on the one year anniversary of the date of this agreement the Plaintiff has not yet received an un-redacted digital copy of the recording, then by the end of the next working day the Defendant will send the un-redacted recording to the Plaintiff via certified mail to the Plaintiff's mailing address. For the purposes of this agreement, "certified mail" includes any government or private postal or parcel service which entails signing for the receipt of the document or package. Email transmission or personal pick-up at the NRC's FOIA desk in Rockville, MD (i.e. the methods traditionally used by the Plaintiff to receive documents from the NRC under the Freedom of Information Act) may, and should, be used in lieu of certified mail if the parties can agree to less formal arrangements for receipt of the un-redacted digital recording at the time it is available for release.

3. At the time Plaintiff receives an un-redacted copy of the digital recording, any and all obligations as set forth under paragraph 2 will be satisfied.

4. This Stipulation of Settlement constitutes the full and complete satisfaction of any and all claims arising from (a) the allegations set forth in the complaint filed in this lawsuit and (b) any litigation or administrative proceeding that Plaintiff has brought, could bring, or could have brought regarding Plaintiff's FOIA/Privacy Act request in this case with the exception of enforcing the settlement agreement.

5. This Stipulation of Settlement does not constitute an admission of liability or fault on the part of Defendant, the United States, its agents, servants, or employees, and is entered into

by all parties for the sole purpose of compromising disputed claims and avoiding the expenses and risks of further litigation.

6. This Stipulation of Settlement is binding upon and inures to the benefit of the parties hereto and their respective successors and assigns.

7. The Court retains jurisdiction over enforcement of any other provisions of this Stipulation of Settlement.

*(remainder of this page left intentionally blank)*

8. The execution and filing of this Stipulation of Settlement by counsel for Plaintiff and by counsel for Defendant constitutes a dismissal of this lawsuit, with prejudice, pursuant to Rule 41(a)(1)(A)(ii).

Dated: October 28, 2013

Respectfully submitted,

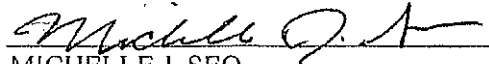


SCOTT A. HODES  
D.C. Bar # 430375  
P.O. Box 42002  
Washington, D.C. 20015  
(301) 404-0502  
infoprivacylaw@yahoo.com

*Attorney for Plaintiff*

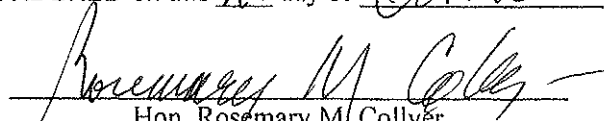
RONALD C. MACHEN JR., D.C. Bar #447889  
United States Attorney

DANIEL F. VAN HORN, D.C. Bar #924092  
Chief, Civil Division

By:   
MICHELLE J. SEO  
Special Assistant United States Attorney  
555 4th Street, N.W.  
Washington, D.C. 20530  
(202) 252-2633  
michelle.seo@usdoj.gov

*Attorneys for Defendant*

It is SO ORDERED on this 29 day of October, 2013.

  
Hon. Rosemary M. Collyer  
UNITED STATES DISTRICT JUDGE