



GOVERNMENT ACCOUNTABILITY PROJECT

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April 25, 2018

U.S. Nuclear Regulatory Commission
FOIA/PA Privacy Act Officer
Washington, DC 20555-0001
(via Email: FOIA.Resource@NRC.gov)

RE: Freedom of Information Act Request

Dear FOIA Officer:

Pursuant to the Freedom of Information Act, 5 U.S.C. 552, as amended, and 10 CFR 9.23 of the Commission's regulations, The Government Accountability Project (GAP) requests that the US Nuclear Regulatory Commission (NRC) provide any and all records described in the numbered paragraphs below.

In the absence of guidance from the Trump Administration, the current presidential guidance comes from President Obama's 2009-Jan-21 memo, in which he declared the following policy for Executive Branch agencies such as the US NRC:

The Freedom of Information Act should be administered with a clear presumption: In the face of doubt, openness prevails. ... All agencies should adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA, and to usher in a new era of open Government. The presumption of disclosure should be applied to all decisions involving FOIA.

The President's policy of openness was reiterated in guidelines issued on March 19, 2009 by Attorney General Eric Holder. Contained in those guidelines was the following direction:

First, an agency should not withhold information simply because it may do so legally. I strongly encourage agencies to make discretionary disclosures of information. An agency should not withhold records merely because it can demonstrate, as a technical matter, that the records fall within the scope of a FOIA exemption.

In recognition of the FOIA policy declared by the President and the guidelines promulgated by the Attorney General, GAP expects that all records requested below will be released in their entirety except where release is prohibited by law. That is, GAP expects the NRC to act in a manner such that the "presumption of disclosure" is applied "to all decisions involving FOIA" and such that the agency will "not withhold records merely because it can demonstrate, as a technical matter, that the records fall within the scope of a FOIA exemption". However, GAP

does not desire the release of the name of any individual who, prior to providing information to the agency, specifically requested confidentiality or anonymity; as such you can consider the names of such individuals—but not the information they provided—as outside the scope of this FOIA request.

For the requests in the numbered paragraphs below we are requesting any and all records, including, but not limited to, reports, studies, test results, digital or tape recordings of interviews or interrogations, correspondence, memoranda, meeting notes, meeting minutes, working papers, graphs, charts, diagrams, notes from drop-in visits, summaries of conversations and interviews, computer records, transcripts, emails, and any other electronic or hardcopy documents or recorded audio or video.

For the requests that reference earlier FOIA requests, GAP requests unredacted copies of records that were assembled in response to those request and not the redacted versions released under the request. GAP expects all information not prohibited from release by law and that redactions will not be made *“merely because [the NRC] can demonstrate, as a technical matter, that the records fall within the scope of a FOIA exemption.”* GAP also desires all portions of the records assembled and not just those portions that the NRC decided fell in the scope. That is, nothing should be marked as “Out of Scope” except, as mentioned above, for cases of the appearance of the name of an individual specifically granted confidentiality. When referencing earlier FOIA requests, the scope of this request is all records assembled and not the subset of records released.

1. Any and all records pertaining to any and all Memoranda of Understanding between the US NRC and the US Army Corps of Engineers including all internal and external communication regarding the MOUs and the research, review, evaluations, etc. conducted under those MOUs. Items 2 and 3 below should fall within the scope of this item.
2. All records pertaining to the evaluations done by Dr. Ballinger and other ACRS members regarding item D.3 on page 2 of the 2016-Feb-19 and the 2015-July-14 Memoranda of Understanding contained in ADAMS record ML16125A522
3. All email communications and any other records in the possession of Brad Harvey relating to the Memorandum of Understanding between the NRC’s Advisory Committee on Reactor Safeguards and the Omaha District of the US Army Corps of Engineer
4. All records in the case file of OIG Case #C16-003 and in the case file of its associated allegation
5. All records pertaining to the removal of the following records from the NRC’s Agencywide Document Accession and Management System (ADAMS) including records pertaining to the decision to remove said records:
ML16201A086, ML16201A093, ML16201A095, ML16201A100, ML16202A536,
ML16202A537, ML16202A538, ML16204A001, ML16204A002, ML16216A702,
ML16216A703, ML16216A704, ML16216A705, ML16216A706, ML16216A707,
ML16216A708, ML16216A709, ML16216A710, ML16216A711, ML16216A712,
ML16216A713, ML16232A001, ML16236A019, ML16236A021, ML16236A230,
ML16237A004, ML16237A005, ML16237A006, ML16237A007, ML16238A005,
ML16238A006, ML16238A007, ML16238A008, ML16238A009, ML16238A010,
ML16238A011, ML16238A013, ML16238A014, ML16239A085, ML16242A333,
ML16242A343, ML16242A344, ML16244A000, ML16244A001, ML16244A002,
ML16244A003, ML16244A004, ML16244A005, ML16244A006, ML16244A007,
ML16244A008, ML16244A009, ML16245A000, ML16245A001, ML16245A002,
ML17170A169, ML17089A005, ML17170A168, ML17249A980, ML17227A821.

6. All records pertaining to Freedom of Information Act requests for any of ADAMS records listed in item 5.

Regarding item 1 above, you may exclude any items that the NRC intends to provide under FOIA 2018-00493, under FOIA 2018-00003 (e.g., items 105 – 107), or under any of the earlier GAP FOIA requests from fiscal year 2018.

Regarding items 5 & 6, GAP is seeking to understand the NRC's decision process with regards to the decision to remove the listed records from its Agencywide Document Accession and Management System. We are particularly interested in determining whether or not any of the records were removed after the agency received a FOIA request for them.

GAP expects the NRC to provide all the requested records within 20 working days as set forth in the Freedom of Information Act and 10 CFR 9.25. If it is not possible for the NRC to process every record within the time limits set forth in the FOIA and in its own regulations, then GAP expects the NRC to make every effort to provide every record possible within the prescribed time limits and to regularly provide partial requests as records become available for release. For any and all requested records that cannot be reasonably processed with the statutory 20 working day time limit, GAP expects a detailed time table from the NRC stating when we can expect the undelivered records.

For any portion of the request that you deem appropriate to deny, GAP requests that you provide an index itemizing and describing the withheld information. Pursuant to the holding of *Vaughn v. Rosen*, such an index should provide a detailed justification for claiming a particular exemption that explains why each such exemption applies to the withheld information.

In the latest Presidential guidance to Executive Branch agencies on the FOIA, the President stated that “*All agencies should use modern technology to inform citizens about what is known and done by their Government.*” In line with that directions, GAP desires that the NRC release the requested records through its Agency-wide Documents Access and Management System (ADAMS), and/or provide the documents in a digital format to GAP. As such GAP does not expect there to be any duplication fees. **Do not provide records as paper copies.** Please send all correspondence concerning this request to Jack Kolar (primary point of contact) at JackK@whistleblower.org with a copy to Tom Devine at TomD@whistleblower.org.

GAP requests that all fees incurred in connection with the attached request be waived, because “disclosure of the information is in the public interest and is not primarily in the commercial interest of the requester.” 5 U.S.C. §552 (a)(4)(A)(iii).

Please begin processing this request at the same time you are processing the request for a fee waiver. If you disallow our fee-waiver request, I pledge to pay the price of the FOIA request up to \$25. Alert me if it exceeds this price.

(1) Purpose of request:

The purpose of the request is to gather and make public information on NRC oversight, agency enforcement actions, agency internal Safety Culture, and agency transparency as pertaining to

how the agency shares national and international operating experience, both within the NRC, with its licensees and with the public.

(2) Extent to which GAP will extract and analyze the substantive content of the records:

GAP's staff will read every word of every document requested and, as necessary, seek outside expertise to analyze the documents.

(3) Nature of the specific activity or research in which the records will be used and GAP's qualifications to utilize the information for the intended use in such a way that it will contribute to public understanding:

GAP is qualified to make use of the requested information. Its staff has demonstrated the ability to accurately interpret information and communicate that information in a form comprehensible to the general public. GAP is quoted in the media and has been cited as a reliable source of information in electronic and print media including newspapers such as the Washington Post and the New York Times. GAP is recognized and utilized as a reliable source of information in the electronic and broadcast media of television and radio.

GAP has a working relationship with nuclear engineers, physicists, nuclear plant operators, and other respected professionals who contribute to the full understanding of NRC oversight and enforcement actions.

Using the requested information, GAP intends to prepare press releases and reports on: (1) the NRC's ability/inclination to ensure that the operators it licenses to operate nuclear reactor plants are both competent and honest, (2) the NRC's ability/inclination to ensure that its licensees adequately identify problems and implement appropriate resolution, (3) the NRC's ability/inclination to ensure that—in accordance with the requirements of Generic Letter 82-04—its licensees actively participate in providing noteworthy Operating Experience to the Institute of Nuclear Power Operations (INPO), (4) the NRC's ability/inclination to address flooding concerns at nuclear power plant sites, (5) the NRC's ability/inclination to ensure nuclear safety related information—and particularly information regarding flooding and dam failures—is readily available to its technical staff and adequately disseminated to ensure a wide and diverse review, (6) the NRC's ability/inclination to ensure important nuclear safety information is transparently shared with the public, (7) the NRC's ability/inclination to ensure that its staff does not illegally obstruct the release of information under the Freedom of Information Act, and (8) the NRC's ability/inclination to ensure that its staff is not retaliated against for pursuing adequate resolution to nuclear safety concerns.

(4) Likely impact on the public understanding of the subject as compared to the level of understanding of the subject prior to disclosure:

Nuclear safety relies primarily upon the workers at nuclear facilities who are tasked with ensuring the plant is prepared to respond to an accident and responding to accidents when they

occur. These workers need to be able to report concerns to the NRC and rely on the NRC to competently evaluate and address their concerns. Similarly, NRC staff need to be able to rely on their superiors to competently evaluate and address their concerns. GAP believes that a thorough accounting of the manner in which the NRC addresses and distributes operating experience will greatly impact the public understanding of the challenges nuclear workers and NRC staff face in getting their management to address nuclear safety concerns. GAP desires the requested records in order to thoroughly review this topic and provide an accurate account of it.

(5) Size and nature of the public whose understanding a contribution will be made:

GAP is funded from approximately 20,000 donors and reaches approximately 18,000 readers via our newsletter. We have 65,772 active supporters on email, 15,466 on twitter and 15,657 between three affiliated Facebook sites.

GAP provides resource material to electronic and print media outlets with very broad outreach to the interested public at large so the actual public exposure to information potentially released as part of this FOIA request could be in the millions. Additionally, GAP maintains a web site and news blog at www.whistleblower.org where posts about the requested material will be publicly available.

(6) Means of distribution of the requested information:

GAP will use its publications and media contacts in both electronic and print media outlets to provide very broad outreach to the public on this issue. GAP will also share information with other interested parties and individuals concerned about NRC oversight and enforcement actions that pertain to the licensing of reactor operators, the sharing of operating experience throughout the nuclear industry, protection of reactor plants from flooding due to upstream dam failures, and protection of internal NRC whistleblowers from retaliation. Additionally, GAP will make information pertaining to the request available through its social media outlets (Facebook, Twitter, etc.).

(7) Whether free access to information will be provided:

GAP will provide the information without charge to all members of the public. Information from the FOIA request will be prepared for printed material and electronically posted on the web site for downloading free of charge. GAP will make the information publicly available to all interested public without charge.

(8) No commercial interest by GAP or any other party:

The sole interest of GAP is to promote a policy debate regarding how the NRC regulates nuclear utilities and how it ensures protection of internal whistleblowers.

Disclosure of this information by GAP is in no way connected with any commercial interest since GAP is a non-profit, tax-exempt organization under § 501 (c)(3) of the IRS Code. The

information we are seeking is crucial to advance public knowledge and will not be put to any commercial use.

The Government Accountability Project's Public Interest Status and History

GAP is a non-profit, non-partisan, public interest organization chartered under IRS Code §501 (C)(3) as a non-profit, educational and charitable organization. We seek to serve the public through achieving governmental accountability by protecting and encouraging federal and corporate employees who observe or are victimized by wrongdoing, gross waste of public funds, threats to public health and safety, environmental contamination, corruption, abuse of the public trust and other abuses of power.

GAP accomplishes these goals primarily by conducting advocacy campaigns before Congress, through the media, and for the general public and by providing legal representation to whistleblowers to combat the retaliation they have suffered in exercising their right of occupational free speech. Our twin aims are to promote corporate and government accountability and to expose, investigate, and correct substantive problems that formed the basis of protected whistleblowing disclosures. GAP's role is well-recognized by the courts and, as an organization, has informational standing under the First Amendment protecting its receipt of disclosed information. *Taylor v. RTC*, 56 F.3d 1437 (D.C. 1995); *United States v. Garde*, 573 F. Supp. 604 (D.D.C. 1987); generally *Virginia Pharmacy Bd. v. Virginia Consumer Council*, 425 U.S. 748, 756-57 (1976).

GAP has a 20-year history of working in the public interest. GAP does not take individual cases based on the client's ability to pay, how much money GAP believes it can recover in legal fees through litigation or any other commercial interest.

GAP takes cases of legitimately harassed whistleblowers, often pro-bono (without charge), that further public policy or legislative changes that make the law stronger for workers who witness and choose to tell the truth about corporate and taxpayer-financed wrongdoing and to pursue exposure and resolution of the wrongdoing.

GAP has, among other things, pushed for enactment of several whistleblower protection statutes, exposed unhealthy food at supermarket chains, pushed for independent reviews of the safety of the Alaska pipeline, exposed the threat of explosion in waste tanks at the Hanford nuclear site, and pushed for policy reform within numerous executive agencies. All this activity is done primarily with the interest of the public in mind.

Respectfully submitted,



Tom Devine

Jack Kolar