



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

March 30, 2022

IN RESPONSE REFER TO:
NRC-2022-000095
(NRC-2022-000038)

Sent via email: egaglio@amslawyers.com, mseverson@amslawyers.com,
maguirre@amslawyers.com

Elijah T. Gaglio, Esq.
Aguirre & Severson LLP
501 West Broadway, Ste. 1050
San Diego, CA 92101

Dear Mr. Gaglio:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am responding to your letter dated March 3, 2022, in which you appealed, on behalf of Michael J. Aguirre, the agency's February 1, 2022 response to Mr. Aguirre's December 6, 2021 Freedom of Information Act (FOIA) request, NRC-2022-000038. Mr. Aguirre's request sought "all communications between any agent, employee, or officer of the [NRC], on the one hand, and any agent, employee, or officer of Southern California Edison, on the other hand, regarding recommendations of FOIA Exemptions to assert regarding the following requests: NRC-2020-000163, NRC-2020-000194, NRC-2021-000235 and NRC-2022-000014."

On behalf of Mr. Aguirre, you appealed the adequacy of search, the denial of information based on Exemptions 4 and 6, and whether the agency provided any reasonably segregable portions. Acting on Mr. Aguirre's appeal, I have reviewed the material that was denied to you and the basis for denial, as well as documentation of the search conducted to locate any responsive records. I have determined that the FOIA Office was the only program office reasonably expected to maintain any records responsive to Mr. Aguirre's request. Staff in the FOIA Office thoroughly searched and reviewed each FOIA case file to locate the responsive records. Those records were identified in the response to Mr. Aguirre's request. Accordingly, I have denied Mr. Aguirre's appeal insofar as it challenges the adequacy of the search.

With regard to the denial of information, I reviewed the denied material. The records in the agency's possession that have been identified as responsive to Mr. Aguirre's request and withheld under exemption (b)(4) of the FOIA were created by and obtained from a person outside the United States government (i.e., Southern California Edison (SCE)) and constitute SCE's confidential commercial or financial information. Pursuant to 10 C.F.R. § 9.28, the NRC contacted SCE to ascertain its views respecting its information. SCE confirmed that their representatives transmitted the information to the NRC in confidence and that this information is neither available in public sources nor customarily made available to members of the public. As such, I am upholding the assertion of exemption (b)(4) to protect this information¹.

¹ The inclusion of exemption (b)(6), on page 32 of the released records, was in error. Exemption (b)(4) was appropriately claimed for the entirety of that document.

I am upholding the application of exemption (b)(6) for the name of an SCE official that appeared in the records responsive to the prior FOIA requests for which the business submitter consultation process was undertaken, because the release of this information would constitute an unwarranted invasion of personal privacy of this individual. Mr. Aguirre's appeal letter does not discuss any public interests that might be served by the release of the redacted name, and I am unable to identify any legitimate public interest in the release of this information that would outweigh the personal privacy interests at stake. Accordingly, the information was properly withheld under exemption (b)(6) and I am denying the appeal.

Lastly, I have determined that SCE's analysis of records that originated with SCE were properly withheld in their entirety. To the extent SCE's analysis included any isolated non-meaningful fragments of nonexempt information, e.g. the repetition of the questions posed by the NRC (which were already released to Mr. Aguirre), such portions are inextricably intertwined with the exempt proprietary information and, therefore, no reasonable segregation is possible. Accordingly, I am denying the appeal insofar as it challenges NRC's duty to segregate.

This is the final agency decision with regard to this request. As set forth in the FOIA (5 U.S.C. 552(a)(4)(B)), you may seek judicial review of this decision in the district court of the United States in the district in which you reside, in which you have principal place of business. You may also seek judicial review in the district in which the agency's records are situated or in the District of Columbia.

The 2007 FOIA amendments created the Office of Government Information Services (OGIS) to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a nonexclusive alternative to litigation. Using OGIS services does not affect Mr. Aguirre's right to pursue litigation. You may contact OGIS in any of the following ways:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road-OGIS
College Park, MD 20740
Email: ogis@nara.gov
Telephone: 202-741-5770
Toll-free: 1-877-684-6448
Fax: 202-741-5769

Sincerely,

David J. Nelson

Digitally signed by David J.
Nelson
Date: 2022.03.30 12:46:27 -04'00'

David J. Nelson
Chief Information Officer
Office of the Chief Information Officer