

UNITED STATES  
NUCLEAR REGULATORY COMMISSION

September 21, 1978

SECY-78-508

**CONSENT CALENDAR ITEM**

**For:** The Commissioners

**From:** James L. Kelley  
Acting General Counsel

**Subject:** Kranish FOIA Appeal 78-A-22

**Purpose:** To discuss the portion of FOIA Appeal 78-A-22 which is pending before the Commission and to recommend a letter from the Secretary granting the appeal in part and denying it in part.

**Discussion:** On July 19, 1978 Mr. Kranish made a request for six specified documents which had been discussed in the Commission's Weekly Information Reports. On August 14, 1978 ADM granted Kranish's request for two documents which were already publically available, denied his request for three documents, and notified him that review of the last document had not been completed. Mr. Kranish promptly appealed the partial denial of his FOIA request including the failure to act on the last document. The appeal of one of the denied documents is being handled by the EDO and will not be discussed here.

The first two documents which were denied were working drafts of Commission papers from I&E and NMSS entitled "Comprehensive Evaluation of Safeguards at the Babcock & Wilcox (B&W) Facility, Leechburg, Pennsylvania" and "Comprehensive Evaluation of Safeguards at the Babcock & Wilcox (B&W) Facility, Apollo, Pennsylvania." Both of these documents

**Contact:**  
Stephen S. Ostrach  
634-3224


were denied under exemptions 1 (classified information), 4 (proprietary information)<sup>1</sup> and 5 (predecisional) of the FOIA. We have reviewed the documents and believe that use of each of the exemptions is appropriate. The documents discuss in detail the safeguards at the B&W facilities, and the Commission's evaluation of their adequacy including identification of possible weaknesses. They also demonstrate how the Commission generally analyzes safeguards adequacy information which would be useful to a potential adversary.

Furthermore, there appears to be some classified information concerning the nature of the work done at Leechburg and Apollo. Since the papers are working drafts, they are withholdable under exemption 5 as predecisional intra-agency memoranda.

The third document requested was SECY 78404 "Response to Commission Direction ... Review of OIA/OGC Report, Inquiry into Testimony of the EDO." One of the recommendations in SECY 78-404 was that the paper itself should be publicly released. The Commission agreed with the recommendations in SECY 78-404, but requested minor changes in the paper itself. Those changes have been made and the revised paper has been numbered SECY 78-404A, which is to be released. We recommend releasing not only 78-404A, but also 78-404, since it was approved by the Commission, and since its withholding is not necessary to protect predecisional advice.

<sup>1</sup> 10 CFR 2.790(d) defines proprietary information as including safeguards information.

A draft letter from Mr. Chilk to Mr. Kranish is attached denying the appeal for the first two documents and granting it for SECY 78-404 and 404A. The statutory deadline for resolving this FOIA appeal expires Friday, September 29, so please provide SECY with your comments or concurrences by Tuesday, September 26. I have asked SECY to schedule this matter for an affirmation session during that week.



James L. Kelley  
Acting General Counsel



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

OFFICE OF THE  
SECRETARY

Mr. A. Kranish, Editor  
Trends Publishing, Inc.  
National Press Building  
Washington, D.C. 20045

Dear Mr. Kranish:

This is a partial response to your August 30, 1978 letter to the Executive Director for Operations appealing the partial denial of your Freedom of Information Request FOIA 78-195 by Mr. J.M. Felton, Director of the Division of Rules and Records. You appealed the denial of three documents listed in Appendix B of Mr. Felton's letter and also requested document 4 in that Appendix as to which review had not been completed. A copy of that Appendix is attached. Your appeal of the denial of document 3 in Appendix B is being handled by the Executive Director for Operations. This letter addresses your request for the other three documents.

Your appeal for documents 1 and 2 is denied. Those documents have been properly classified, contain proprietary information relating to the safeguarding of special nuclear material and are drafts containing advice, opinions and recommendations of the NRC staff. Accordingly they may be withheld pursuant to exemptions 1, 4 and 5 of the Freedom of Information Act (5 USC 552(b)(1), (4) and (5)) and 10 CFR 9.5(a)(1), (4) and (5). Furthermore, the Commission has determined that release of either of these documents would be contrary to the public interest in ensuring the safeguarding of special nuclear material.

Your request for document 4 is granted. At the Commission's request, that document has been revised by the originating office and both the original document and the revised version are being placed in the Commission's Public Document Room at 1717 H Street, N.W., Washington, D.C. 20555.

This partial denial of your request is a final agency action. Judicial review of this action is available in the United States District Court for the district in which you reside, or in the District of Columbia.

Sincerely,

Samuel J. Chilk  
Secretary of the Commission

Attachment as stated

1. Undated

Draft Working Paper: (1) memorandum to the Commissioners from Clifford V. Smith and Ernest Volgenau - "Comprehensive Evaluation of Safeguards at the Babcock and Wilcox (B & W) Facility, Leechburg, Pennsylvania

2. Undated

Memorandum for the Commissioners from Clifford V. Smith and Ernest Volgenau Comprehensive Evaluation of Safeguards at the Babcock and Wilcox (B & W) Facility, Apollo, Pennsylvania

3. July 19, 1978

Draft Working Paper: Comprehensive Evaluation Report on the Atomic International - Desoto Avenue Plant at Canoga, California

4. July 21, 1978

Memorandum for the Commissioners from Clifford V. Smith, Jr. - "Response to Commission Direction Provided in S. J. Chiik's June 2, 1978 memorandum to L. V. Gossick concerning Review of OGC/OIA Report, Inquiry into Testing of the EDO."  
(SECY 78-404)

August 30, 1978

Executive Director for Operations  
US Nuclear Regulatory Commission  
Washington, DC 20555

FREEDOM OF INFORMATION APPEAL

Dear Sir:

I hereby appeal the denial of material requested  
in FOIA-78-195, and, in addition, Document 4, of  
Appendix B, which was not released within the  
statutory time period.

Cordially,

  
A. Kranish

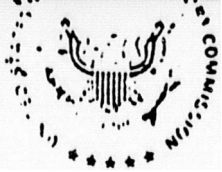
APPEAL OF INITIAL FOIA DECISION

78-A-22-78-195

rec'd 8-31-78

28252

NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D. C. 20555



Mr. A. Kranish, Editor  
Trends Publishing, Inc.  
National Press Building  
Washington, D.C. 20045

AUG 14 1978

IN RESPONSE REFER  
TO FOIA-78-195

Dear Mr. Kranish:

This is in response to your letter dated July 19, 1978 in which you requested, pursuant to the Freedom of Information Act, six documents, which were described in the Weekly Information Reports for June 16 and June 30, 1978. Your request was received by the Office of Administration on July 21, 1978.

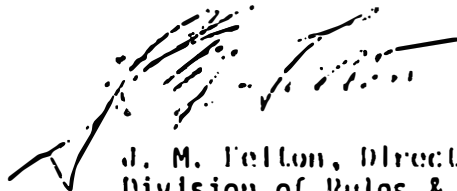
In response to your request, a copy of document 1 of Appendix A is being placed in the NRC Public Document Room (PDR), 1717 H Street, N.W., Washington, D.C. Document 2 of Appendix A is already located in the PDR and access can be requested by the identification provided on Appendix A. Documents 1, 2, and 3 of Appendix B have been classified pursuant to Executive Order 11652 and are drafts containing advice, opinions and recommendations of the staff. In addition, portions of these three documents contain information which are procedures for safeguarding licensed special nuclear material. Such material is considered proprietary pursuant to 10 CFR 2.790(d) of the Commission's regulations. Documents 1, 2, and 3 of Appendix B are being withheld from public disclosure pursuant to exemptions (1), (4), and (5) of the Freedom of Information Act (5 U.S.C. 552(b)(1), (4), and (5)) and 10 CFR 9.5(a)(1), (4), and (5) of the Commission's regulations.

Pursuant to 10 CFR 9.9 and 9.15 of the Commission's 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 person responsible for the denial of documents 1 and 2 is Samuel J. Chilk, Secretary of the Commission. The persons responsible for the denial of document 3 are the undersigned and Dr. Clifford V. Smith, Jr., Director, Office of Nuclear Materials Safety and Safeguards.

The denials by Dr. Smith and myself may be appealed to the Executive Director for Operations within 30 days from the receipt of the letter. Any such appeal must be in writing, addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and should clearly state on the envelope and in the letter that it is an "Appeal from an Initial FOIA Decision". The denial by Mr. Chilk may be appealed within 30 days to the Commission and should be addressed to the Secretary of the Commission.

The review of document 4 of Appendix B has not been completed. As soon as that review is completed, we will advise you of our disclosure determination.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. M. Felton', written over a series of horizontal lines that serve as a guide for the signature's placement.

J. M. Felton, Director  
Division of Rules & Records  
Office of Administration

Enclosures: Appendices A and B



1. July 3, 1978

Memorandum for the Commissioners  
from James R. Shea: Subject  
Health and Safety (H & S). Con-  
siderations in NRC Reactor Export  
Licensing and Nuclear Assistance  
Programs. (SECY 78-365)

2. January - March 1978

Report to Congress on Abnormal  
Occurrences (NUREG - 0090, Vol.  
I, No. 1)

1. Undated  
Draft Working Paper: (1) memorandum to the Commissioners from Clifford V. Smith and Ernest Volgenau - "Comprehensive Evaluation of Safeguards at the Babcock and Wilcox (B & W) Facility, Leechburg, Pennsylvania
2. Undated  
Memorandum for the Commissioners from Clifford V. Smith and Ernest Volgenau Comprehensive Evaluation of Safeguards at the Babcock and Wilcox (B & W) Facility, Apollo, Pennsylvania
3. July 19, 1978  
Draft Working Paper: Comprehensive Evaluation Report on the Atomic International - Desoto Avenue Plant at Canoga, California
4. July 21, 1978  
Memorandum for the Commissioners from Clifford V. Smith, Jr. - "Response to Commission Direction Provided in S. J. Chilk's June 2, 1978 memorandum to L. V. Gossick concerning Review of OGC/OIA Report, Inquiry into Testing of the EDO."  
(SECY 78-404)

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WASHINGTON, D.C. 20045  
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FREEDOM OF INFORMATION  
ACT REQUEST

FOIA-78-195  
rec'd 7-21-78

July 19, 1978

Freedom of Information Officer  
Nuclear Regulatory Commission  
Washington, DC 20555

## Freedom of Information Request

Dear Sir:

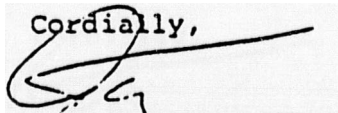
Under the terms of the Freedom of Information Act, I hereby request copies of, or access to, the following documents, in draft or final form, as described in the Weekly Information Report for June 30, 1978:

- 1 - Report of Assessment of B&W, Leechburg, and accompanying staff paper. *B-1*
- 2 - Report of the B&W Apollo Assessment. *A-2*
- 3 - Draft of the International Atomic Assessment Report. *B-3*
- 4 - Health and Safety Considerations in Reactor Export Licensing and Nuclear Assistance Programs. *A-1*
- ✓ 5 - First Quarter CY 1978 Abnormal Occurrences Report to Congress. *A-2*

In addition, I request the following citation from the June 16 Report:

- 1 - Analysis of Alleged Successful Thefts of SSNM. *A-4*

Cordially,



A. Kranish, Editor