



OFFICE OF THE
SECRETARY

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

February 7, 2002

Mr. Edgar D. Bailey
Chief, California Radiologic Health Branch
Department of Health Services
P.O. Box 942732, MS-178
Sacramento, CA 94234-7320

IN REPLY REFER
TO FOIA-2002-004A
(FOIA-2001-0374)

Dear Mr. Bailey:

I am responding to your request of January 23, 2002, in which you appealed the agency's response of December 21, 2001, to your FOIA request (FOIA 2001-0374). This response denied, in part, portions of the record identified on Appendix A.

Acting on your appeal, the record in this case has been carefully reviewed. Certain previously withheld portions of the record identified on Appendix A will continue to be withheld from public disclosure pursuant to Exemption 5 of the FOIA (5 U.S.C. § 552(b)(5)) and 10 C.F.R. § 9.17(a)(5) of the Commission's regulations.

The information that will continue to be withheld from the six-page historical chart under Exemption 5 constitutes confidential communications between attorneys and their clients on legal matters for which the client sought professional advice, and which staff confirms has not been divulged to the licensee.

I have determined that some additional portions of the record may be released to you. These portions include a recommendation from a draft page of the SECY Paper (information which is included in the final SECY Paper but in different format) and information from the historical chart which has been either shared with the licensee or is in the public domain. Copies of the releasable portions of the record are enclosed. The decision to allow these additional disclosures is made as a matter of administrative discretion and is in no way intended to waive any claim of exemption privileges that NRC may invoke in the future to deny access to similar documents or information.

Accordingly, your appeal is partially granted and partially denied. This is a final agency decision on this record pursuant to 10 C.F.R. § 9.29(c)(3)(2001). As set forth in the FOIA (5 U.S.C. § 552(a)(4)(B)), judicial review of this decision is available in a district court of the United States in the district in which you reside or have your principal place of business, or in the District of Columbia.

Sincerely,


Annette L. Vietti-Cook
Secretary of the Commission

Enclosures: As stated

APPENDIX A
RECORDS BEING WITHHELD IN PART

<u>NO.</u>	<u>DATE</u>	<u>DESCRIPTION/(PAGE COUNT)/EXEMPTIONS</u>
1.	05/19/99	SECY-99-136: Staff Analysis of the Past Uses of 10 CFR 40.14(a). (14 pages) EX. 5