

**RESPONSE TO FREEDOM OF
INFORMATION ACT (FOIA) / PRIVACY
ACT (PA) REQUEST**

2003-0032

10

RESPONSE
TYPE☐

FINAL

☒

PARTIAL

REQUESTER

James Riccio

DATE

APR 11 2003

PART I. -- INFORMATION RELEASED

- ☐ No additional agency records subject to the request have been located.
- ☐ Requested records are available through another public distribution program. See Comments section.
- ☐ **APPENDICES**
Agency records subject to the request that are identified in the listed appendices are already available for public inspection and copying at the NRC Public Document Room.
- ☒ **APPENDICES**
CC Agency records subject to the request that are identified in the listed appendices are being made available for public inspection and copying at the NRC Public Document Room.
- ☐ Enclosed is information on how you may obtain access to and the charges for copying records located at the NRC Public Document Room, 2120 L Street, NW, Washington, DC.
- ☒ **APPENDICES**
CC 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 *

\$

* See comments
for details☐

You will be billed by NRC for the amount listed.

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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

- ☐ No agency records subject to the request have been located.
- ☒ Certain information in the requested records is being withheld from disclosure pursuant to the exemptions described in and for the reasons stated in Part II.
- ☒ This determination may be appealed within 30 days by writing to the FOIA/PA Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Clearly state on the envelope and in the letter that it is a "FOIA/PA Appeal."

PART I.C COMMENTS (Use attached Comments continuation page if required)

The denying official for documents BB/8 and BB/16 is Joseph R. Gray, Associate General Counsel for Licensing and Regulations. The appellate official is the Secretary of the Commission.

SIGNATURE - FREEDOM OF INFORMATION ACT AND PRIVACY ACT OFFICER

Carol Ann Reed

NRC FORM 464 Part II (6-1998)	U.S. NUCLEAR REGULATORY COMMISSION	FOIA/PA 2003-0032	DATE APR 11 2003
RESPONSE TO FREEDOM OF INFORMATION ACT (FOIA) / PRIVACY ACT (PA) REQUEST			

APPENDICES
CC, BB

PART II.A -- APPLICABLE EXEMPTIONS

Records subject to the request that are described in the enclosed Appendices are being withheld in their entirety or in part under the Exemption No.(s) of the PA and/or the FOIA as indicated below (5 U.S.C. 552a and/or 5 U.S.C. 552(b))

- ☐ Exemption 1: The withheld information is properly classified pursuant to Executive Order 12958.
- ☐ Exemption 2: The withheld information relates solely to the internal personnel rules and procedures of NRC.
- ☐ Exemption 3: The withheld information is specifically exempted from public disclosure by 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., Section 253(b), subsection (m)(1), prohibits the disclosure of contractor proposals in the possession and control of an executive agency to any person under section 552 of Title 5, U.S.C. (the FOIA), 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 commercial or financial information that is being withheld for the reason(s) indicated.
- ☒ The information is considered to be confidential business (proprietary) information.
- ☐ 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 2.790(d)(1).
- ☒ The information was submitted by a foreign source and received in confidence pursuant to 10 CFR 2.790(d)(2).
- ☒ Exemption 5: The withheld information consists of interagency or intraagency records that are not available through discovery during litigation. Applicable privileges:
- ☒ Deliberative process: Disclosure of predecisional information would tend to inhibit the open and frank exchange of ideas essential to the deliberative process. Where records are withheld in their entirety, the facts are inextricably intertwined with the predecisional information. There also are no reasonably segregable factual portions because the release of the facts would permit an indirect inquiry into the predecisional process of the agency.
- ☐ Attorney work-product privilege (Documents prepared by an attorney in contemplation of litigation)
- ☒ Attorney-client privilege (Confidential communications between an attorney and his/her client)
- ☐ Exemption 6: The withheld information 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 enforcement proceeding (e.g., it would reveal the scope, direction, and focus of enforcement efforts, and thus could possibly allow recipients to take action to shield potential wrongdoing or a violation of NRC requirements from investigators).
- ☐ (C) Disclosure would constitute an unwarranted invasion of personal privacy.
- ☐ (D) The information consists of names of individuals 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 (Specify)

PART II.B -- DENYING OFFICIALS

Pursuant to 10 CFR 9.25(g), 9.25(h), and/or 9.65(b) of the U.S. Nuclear Regulatory Commission 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 are those officials identified below as denying officials and the FOIA/PA Officer for any denials that may be appealed to the Executive Director for Operations (EDO).

DENYING OFFICIAL	TITLE/OFFICE	RECORDS DENIED	APPELLATE OFFICIAL		
			EDO	SECY	IG
Jessie L. Funches	Chief Financial Officer	App. BB/1, 3, 7 and 11		<input checked="" type="checkbox"/>	
Sandra Joosten	Executive Assistant, Office of the Secretary	BB/6 and B/10		<input checked="" type="checkbox"/>	
Samuel J. Collins	Director, Nuclear Reactor Regulation	BB/2, 9, 12, 13, 15, 17, 18; CC/2 and 8	<input checked="" type="checkbox"/>		
Ashok C. Thadani	Director, Nuclear Reactor Research	BB/4, 5, 14; CC/1, 3, 4, 5, 6, and 7	<input checked="" type="checkbox"/>		

Appeal must be made in writing within 30 days of receipt of this response. Appeals should be mailed to the FOIA/Privacy Act Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, for action by the appropriate appellate official(s). You should clearly state on the envelope and letter that it is a "FOIA/PA Appeal."

**APPENDIX BB
RECORDS BEING WITHHELD IN ENTIRETY**

<u>NO.</u>	<u>DATE</u>	<u>DESCRIPTION/(PAGE COUNT)/EXEMPTIONS</u>
1.	No date	Notes of Joel Dorfman's, CFO, from Meeting with RES on PBMR Reimbursable Agreement. (1 page) EX. 5 Deliberative process
2.	No date	Draft SECY paper from W. Travers to the Commission, subject: Legal and Financial Policy Issues Associated with Licensing New Nuclear Power Plants. (32 pages) EX. 5 Deliberative
3.	02/20/01	E-mail from Joel Dorfman to J. Golder, S. Park and T. Pulliam, subject: Pebble Bed Reactor Project. (1 page) EX. 5 Deliberative process
4.	03/02/01	Memo from Brian Kildee, OGC, to Thomas King. RES, subject: Constraints on DOE Funding Support in Pre-Application Environment (PBMR). (2 pages) EX. 5 Attorney-Client privilege
5.	3/23/01	Background Note on the Eskom Pebble Bed Modular Reactor (PBMR) prepared by A. J. Baer with A. Birkhofer and A. Thadani (INSAG). (2 pages) EX. 5 Deliberative process
6.	07/03/01	Memo from Karen Cyr to the Commission, subject: Prelicensing Antitrust Review of Applicants for Merchant Plants. (4 pages) EX. 5 Attorney-Client Privilege
7.	08/10/01	Draft Executive Summary - FY 2003 Budget Authority and FTEs. (10 pages) EX. 5- Deliberative process
8.	10/04/01	Memo from Geraldine Fehst to Martin O'Neill, subject: Annual Fees Questions from Exelon. (6 pages) EX. 5 - Deliberative process
9.	10/11/01	E-mail exchange between Diane Jackson, NRR, and G.

**APPENDIX BB
RECORDS BEING WITHHELD IN ENTIRETY**

<u>NO.</u>	<u>DATE</u>	<u>DESCRIPTION/(PAGE COUNT)/EXEMPTIONS</u>
		Mizuno, OGC regarding Section K on testing. EX. 5 Attorney-Client Privilege
10.	10/16/01	Memo from Karen Cyr to the Commission, subject: Status of Proposed Policy Statement on Prelicensing Antitrust Review of Applicants for Merchant Plants. (3 pages) EX. 5 - Attorney-Client privilege.
11.	02/20/02	FY 2004-FY2005 Budget Assumption for the Nuclear Reactor Safety Strategic Arena. (3 pages) EX. 5 Deliberative
12.	03/12/02	Memo from William Travers to the Commission, subject: Supplemental Information Regarding Proposed FY 2002 Resource Allocations for New Reactor Licensing Activities. (11 pages) EX. 5 Deliberative
13.	03/26/02	E-mails between Francis Cameron, OGC, and Amy Cubbage, NRR, regarding response to security comments at workshop. (1 page) EX. 5 Attorney-Client privilege.
14.	05/24/02	PBMR Nuclear Fuel, Revision 2. (63 pages) EX. 4 Proprietary information
15.	08/08/02	E-mail from Amy Cubbage to addressees, subject: Parallel concurrence on SECY on Policy Issues Associated with Licensing New Nuclear Power Plants.. (32 pages) EX. 5 Deliberative process
16.	08/09/02	E-mail from E. Neil Jensen, OGC, to J. Moore and R. Weisman, OGC, subject: Waste Confidence Issue re: Licensing Modular Reactors. (2 pages) EX. 5 Attorney-Client privilege, deliberative process

APPENDIX BB
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<u>NO.</u>	<u>DATE</u>	<u>DESCRIPTION/(PAGE COUNT)/EXEMPTIONS</u>
17.	08/16/02	E-mail from G. Jackson to L. Fields, subject: CFO concurrence on Commission paper re Policy Issues Associated with Licensing New Nuclear Power Plants. (37 pages) EX. 5 Deliberative process
18.	09/18/02	E-mail from Amy Cabbage to addressees, subject: Action - Revised draft SECY on legal and financial issues. (32 pages) EX. 5 Deliberative process

**APPENDIX CC
RECORDS BEING RELEASED IN PART**

<u>NO.</u>	<u>DATE</u>	<u>DESCRIPTION/(PAGE COUNT)/EXEMPTIONS</u>
1.	No date	Memo from A. Thadani to W. Travers, subject: Foregin Travel Trip Report: Seventh Meeting of the INSAG 5 th Term, Austria, with attachments. (91 pages) Portions withheld - EX. 4
2.	No date	Memo from Marsha Gamberoni to Joseph Shea, subject: Visit by William Magwood, IV, DOE, with Chairman Meserve. (8 pages) EX. 5 and outside scope
3.	01/12/01	Memo from A. Thadani to W. Travers, subject: Trip Report: A) Third Mtg of INSAG's 5 th Term; B) Tour of the Bohunice Nuclear Power Plant Site and the Research Institute in the Slovak Republic; C) Mtgs with the Swiss Federal Nuclear Safety Inspectorate; and D) The CSNI Bi-Annual Mtg, Paris France. (18 pages total, 1 page released) Portions withheld EX. 4
4.	03/13/01	Memo from A. Thadani to W. Travers, subject: Report on Trip to South Africa for Discussions on the Pebble Bed Modular Reactor (PBMR) (8 pages total, 3 pages released) Portions withheld - EX. 4
5.	04/09/01	Memo from A. Thadani to W. Travers, subject: Trip Report: INSAG 5 th Term Meeting: Vienna, Austria, March 7-9, 2001, with attachments. (25 pages total, 2 pages released) Portions withheld - EX. 4
6.	07/26/01	Memo from Ashok Thadani to William Travers, subject: Trip Report: A) The Mtg of the Extended CSNI Bureau 6/15/01; B) CNRA/CSNI Workshop o the Role of Research in Regulatory Contest, 6/18-20/01; C) The CSNI Bi-Annual Mtg; D) Seminar on PSA for CSN Execs; and E) Fifth Meeting of INSAG's 5 th Term, Vienna, Austria. (19 pages total, 1 page released) Portions withheld - EX. 4

APPENDIX CC
RECORDS BEING WITHHELD IN PART

<u>NO.</u>	<u>DATE</u>	<u>DESCRIPTION/(PAGE COUNT)/EXEMPTIONS</u>
7.	12/06/01	Memo from Ashok Thadani to William Travers, subject: Summary of the NRC Delegation Visit to China and Japan on Safety Aspects of High-Temperature Gas-Cooled Reactor Design and Technology, with attachments. (23 pages total, 6 pages released) Portions withheld EX. 4
8.	10/11/02	E-mail from Amy Cabbage to Richard McIntyre, subject: ESWBR testing and PBMR testing. (1 page) Portions withheld - EX. 5