

FOIA/PA REQUEST

Case No.: 2005-012A
Date Rec'd: 8-1-05
Specialist: Brown
Related Case: 2005-0207

UNITED STATES NUCLEAR REGULATORY COMMISSION

In re: DOMINION NUCLEAR : FOIA-2005-0207
CONNECTICUT, INC. :
(MILLSTONE NUCLEAR POWER :
STATION : August 1, 2005

APPEAL

The Connecticut Coalition Against Millstone ("the Coalition") herewith appeals from the decision of Samuel J. Collins, Regional Administrator, Region I, issued on July 1, 2005, denying disclosure of certain records pertaining to the Class II Emergency declared at the Millstone Nuclear Power Station on April 17, 2005.

More particularly, the Coalition appeals from the denial of release of the following record:

"Fax transmittal sheet from Eric Laine to Ron Nomitz, transmitting Survey Data" dated April 19, 2005.

Mr. Collins premised denial on the asserted applicability of an exemption, namely that:

"Disclosure would risk circumvention of a legal requirement."

The Freedom of Information Act embodies a presumption that public records should be released upon request unless a specific legal exemption applies, such legal exemption to be construed narrowly.

The Act does not encompass a legal exemption whereby the NRC may lawfully withhold public records upon the assertion, as made here, that "Disclosure would risk

circumvention of a legal requirement." See 10 CFR Section 9.17 (attached).

Accordingly, the referenced document was wrongfully withheld in violation of the Freedom of Information Act.

WHEREFORE, the Coalition requests that the following relief be granted:

- (1) That this appeal be sustained; and
- (2) That the referenced public record be disclosed without further delay.

**CONNECTICUT COALITION
AGAINST MILLSTONE**

Nancy Burton
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Tel. 203-938-3852
ITS AUTHORIZED REPRESENTATIVE

§ 9.17 Agency records exempt from public disclosure.

(a) The following types of agency records are exempt from public disclosure under § 9.15:

(1) Records--

(i) That are specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy, and

(ii) That are in fact properly classified pursuant to such Executive Order;

(2) Records related solely to the internal personnel rules and practices of the agency;

(3) Records specifically exempted from disclosure by statute (other than 5 U.S.C. 552b), provided that the statute--

(i) Requires that the matters be withheld from the public in a manner that leaves no discretion on the issue; or

(ii) Establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Trade secrets and commercial or financial information obtained from a person that are privileged or confidential;

(5) Interagency or intra-agency memorandums or letters that would not be available by law to a party other than an agency in litigation with the agency;

(6) Personnel and medical files and similar files, the disclosure of which would constitute a clearly-unwarranted invasion of personal privacy;

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of these law enforcement records or information--

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority, or any private institution which

furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, or information furnished by a confidential source;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions, if the disclosure could reasonably be expected to risk circumvention of the law; or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual;

(8) Matters contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions; or

(9) Geological and geophysical information and data, including maps, concerning wells.

(b) Nothing in this subpart authorizes withholding of information or limiting the availability of records to the public except as specifically provided in this part, nor is this subpart authority to withhold information from Congress.

(c) Whenever a request is made that involves access to agency records described in paragraph (a)(7) of this section, the NRC may, during only the time as that circumstance continues, treat the records as not subject to the requirements of this subpart when--

(1) The investigation or proceeding involves a possible violation of criminal law; and

(2) There is reason to believe that--

(i) The subject of the investigation or proceeding is not aware of its pendency; and

(ii) Disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings.

From: <NancyBurtonEsq@aol.com>
To: <foia@nrc.gov>
Date: Mon, Aug 1, 2005 1:31 PM
Subject: Millstone Appeal - FOIA 2005-0207

Gentlemen:

Attached please find the appeal of the Connecticut Coalition Against Millstone.

Thank you for your assistance.

Sincerely,

Nancy Burton
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Tel. 203-938-3952

CC: <secy@nrc.gov>