

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

2013-0144

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RESPONSE
TYPE☐ FINAL☒ PARTIAL

REQUESTER

Rory Campbell

DATE

AUG 15 2013

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.
- ☒ **GROUP A,** Agency records subject to the request that are identified in the specified group are already available for public inspection and copying at the NRC Public Document Room.
- ☒ **GROUP B** Agency records subject to the request that are contained in the specified group are being made available for public inspection and copying at the NRC Public Document Room.
- ☒ **GROUP B** 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*

\$

0.00

* See comments
for details

- ☐ You will be billed by NRC for the amount listed.
- ☒ 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. For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. § 552(c) (2006 & Supp. IV (2010)). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.
- ☒ 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 incoming FOIA request can be located in ADAMS at ML13051A314.

Records with an ML accession number are available in the NRC Library at www.nrc.gov/reading-rm/adams.html. For assistance in obtaining any records, please contact the NRC's Public Document Room (PDR) at 1-800-397-4209 or by e-mail at pdr.resource@nrc.gov.

SIGNATURE - FREEDOM OF INFORMATION ACT AND PRIVACY ACT OFFICER

Donna L. Sealing

**RESPONSE TO FREEDOM OF INFORMATION
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AUG 15 2013

PART II.A -- APPLICABLE EXEMPTIONS

GROUP

B

Records subject to the request that are contained in the specified group 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 practices 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 4702(b), 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 2.390(d)(1).
- ☐ The information was submitted by a foreign source and received in confidence pursuant to 10 CFR 2.390(d)(2).
- ☐ Disclosure will harm an identifiable private or governmental interest.
- ☐ 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 wrong doing or a violation of NRC requirements from investigators).
- ☐ (C) Disclosure could 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
R. William Borchardt	Executive Director for Operations	Appendix B	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			<input type="checkbox"/>	<input type="checkbox"/>	<input 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 A
RECORDS ALREADY PUBLICLY AVAILABLE

<u>NO.</u>	<u>DATE</u>	<u>ACCESSION NUMBER</u>	<u>DESCRIPTION/PAGE COUNT</u>
1.	3/11/2003	ML023330359 (Package)	G20020670/LTR-02-0758 - Rep. Mark Udall Ltr re NRC's Proposed Rulemaking Dealing with Transfers of Low Concentrations of Radioactive "Source" Material to Persons Exempt from NRC Licensing Requirements (5 Pages Total)
2.	6/23/2005	ML051040031 (Package)	G20050245/LTR-05-0186 - Rep. Mark Udall Ltr re: Would Like to Know Whether the NRC is Considering a Request for Disposal of Radioactive Materials in Colorado (7 Pages Total)
3.	2/28/2011	ML110470068 (Package)	G20110080/LTR-11-0044/EDATS: SECY-2011-0052 - Ltr. from Mark Udall re: Concerns Status of Hyperion Power Generation, Inc. (9 Pages Total)
4.	7/12/2012	ML12157A275	G20120313/LTR-12-0202/EDATS: SECY-2012-0232 - Letter to Senator Mark Udall from R. W. Borchardt re: National Technology Transfer and Advancement Act of 1995. (15 Pages Total)
5.	8/13/2012	ML12214A455	G20120504/LTR-12-0328/EDATS: SECY-2012-0359-Ltr to Rep Mark E. Udall re: Pinon Ridge Uranium Mill. (17 Pages)

Appendix B
RECORDS BEING WITHHELD IN PART

<u>No.</u>	<u>DATE</u>	<u>DESCRIPTION/ (PAGE COUNT)/EXEMPTIONS</u>
1	07/13/12	G20120505/LTR-12-0327/EDATS: SECY-2012-0358 - Ltr. Mark Udall re: Constituent Correspondence - Provides 3 Letters concerning the Proposed Pinon Creek Uranium Mill (9 pages) Exemption 6