



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

January 14, 2014

Joe Dean Crawford  
4934 Gunther Street  
Capital Heights, Maryland 20772

RE: *Crawford v. Crawford*, Civ. No. 13-11055 Prince George's Co. (Md.) Circuit Ct.  
NRC File TR-14-01

Dear Mr. Crawford;

You have caused a subpoena to be served on Mariam L. Cohen of the U.S. Nuclear Regulatory Commission (NRC), in connection with the above-captioned litigation. (We have also received a form directed to the General Counsel, but the only operative provisions appear to be directed to Ms. Cohen.) The subpoena is a "demand for information" that falls under the provisions of 10 C.F.R. § 9.200, *et seq.* of the NRC's regulations and has been forwarded to the Office of the General Counsel for review in compliance with 10 C.F.R. § 9.201. This Office has assigned the processing number "TR-14-01" to your request; please refer to that number in any future correspondence regarding this matter.

Initially, you have served a state court subpoena on a federal agency. But state court subpoenas are not binding on federal agencies under the principles of sovereign immunity unless the agency has explicitly waived that immunity. *See, e.g., Boron Oil Company v. Downie*, 873 F.2d 67, 70 (4th Cir. 1989). Here, the NRC has not waived that immunity; thus, the subpoena is not enforceable against the NRC. However, the General Counsel will generally exercise her discretion to provide documents in response to a state court subpoena if – as discussed below – the requester can satisfy the requirements of 10 C.F.R. § 9.202 and, as applicable, the Privacy Act.

Specifically, Section 9.202 requires a requester to submit an affidavit describing (in some detail) (1) the nature of the information sought; (2) the nature of the issues in dispute in the litigation; (3) the relevance of the information sought; and (4) why the information is not available elsewhere. We will treat any submission under Section 9.202 as confidential to the extent

allowed by law; thus, we expect any submission to provide significant detail in response to the questions raised. Your affidavit should be addressed to:

Margaret M. Doane, General Counsel  
 Mail Stop 15-D-21  
 U.S. Nuclear Regulatory Commission  
 11555 Rockville Pike  
 Rockville, Maryland 20852  
 ATTENTION: Charles E. Mullins

You may email an advance copy of the affidavit to me at the email address below. If the requesting party does not comply with the agency's regulations governing these requests, the agency may deny the request. *United States ex rel Touhy v. Ragan* 340 US 462 (1951); *Davis Enterprises v. EPA*, 877 F.2d 1181 (3d Cir. 1989).

In addition, your request seeks records that fall under the protection of the Privacy Act, 5 U.S.C. § 552a ("the Act"). Thus, assuming that your affidavit satisfies the requirements of the NRC's regulations, the agency still cannot release the requested documents unless you (1) provide a release signed by the individual involved; (2) demonstrate that you meet a provision of the Act that allows for release of these records without the individual's permission; or (3) demonstrate that the Act does not apply to the records you are seeking.

The Act allows the agency to release the records pursuant to the order of a court of competent jurisdiction." 5 U.S.C. § 552a(b)(11). And as a general proposition, the Act "cannot be used to block the normal course of court proceedings, including court-ordered discovery." *Clavir v. United States*, 84 F.R.D. 612, 614 (D.D.C. 1979). But it is also clear that a subpoena issued by a court clerk is not a "court order" within the meaning of the statute. *Doe v. DiGenova*, 779 F.2d 74, 77-85 (D.C. Cir. 1985), *on remand*, 642 F. Supp. 624 (D.D.C. 1986), *aff'd in part and rev'd in part*, 851 F.2d 1457 D.C. Cir. 1988). At this time, you have submitted only a subpoena form signed by a court clerk that is not an "order" within the meaning of the law.

For purposes of Privacy Act compliance, the NRC considers itself legally bound only by a court order from the U.S. District Court for the District of Maryland (or another federal district court with appropriate jurisdiction); it is not bound by a state court order under the principles of sovereign immunity. Nevertheless, the General Counsel will give serious consideration to an order from the state court judge in your action requesting the agency release the records. In the alternative, you may submit a release signed by the individual whose records you seek.

If either you or your lawyer has any questions about this matter, please feel free to call me at (301) 415-1618 or you may reach me at [charles.mullins@nrc.gov](mailto:charles.mullins@nrc.gov) on the internet.

Sincerely,

A handwritten signature in cursive script, reading "Charles E. Mullins". The signature is written in dark ink and is positioned to the left of the typed name.

Charles E. Mullins  
Senior Attorney  
Office of the General Counsel