

2015-0250

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**RESPONSE TO FREEDOM OF  
INFORMATION ACT (FOIA) / PRIVACY  
ACT (PA) REQUEST**RESPONSE  
TYPE ☐ INTERIM ☒ FINAL

REQUESTER

Julian Tarver

DATE

May 4, 2015

**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
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 Agency records subject to the request that are identified in the specified group are already available in public ADAMS or on microfiche in the NRC Public Document Room.
- ☐

GROUP
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 Agency records subject to the request that are contained in the specified group are being made available in public ADAMS.
- ☒

GROUP A
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 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\*

- \$ 



☐ You will be billed by NRC for the amount listed. ☒ None. Minimum fee threshold not met.
- \* See comments for details ☐ You will receive a refund for the amount listed. ☐ Fees waived.

**PART I.B -- INFORMATION NOT LOCATED OR WITHHELD FROM DISCLOSURE**

- ☐ We did not locate any agency records responsive to your request. *Note:* Congress allowed agencies to treat three discrete categories of law enforcement and national security records as not subject to the FOIA ("exclusions"). See 5 U.S.C. 552(c). This is a standard notification that we give to all requesters; it should not be taken as an indication that any of these excluded records do, or do not, exist.
- ☐ We have withheld certain information in the records from disclosure pursuant to the FOIA exemptions described, and for the reasons stated, in Part II.
- ☐ Because this is an interim response to your request, you may not appeal this determination at this time. We will notify you of your right to appeal any of the responses we have issued in response to your request when we issue our final determination on your request.
- ☒ You may appeal this final determination within 30 calendar days of the date of this response, by writing to the FOIA Officer, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555-0001. Please be sure to mark your letter/envelope or email that it is a "FOIA Appeal."

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

The incoming FOIA request will be available in ADAMS at ML15120A325.

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

SIGNATURE - FREEDOM OF INFORMATION ACT AND PRIVACY ACT OFFICER

*Roger Andoh*

**Group A**

**FOIA/PA NO: 2015-0250**

**RECORDS BEING RELEASED IN THEIR ENTIRETY**

## **Exemption 5**

### **Predecisional Information**

- ❖ **This exemption covers information referred to as predecisional information. It is frequently used to cover records that (1) would reveal a deliberative process, portions of which are advice, opinions, or recommendations, (2) attorney work-products, and (3) records covered by the attorney-client privilege**
- ❖ **Normally records received from outside NRC cannot qualify for Exemption 5**
  - **Exception: External experts working as if an employee (such as contractors)**
- ❖ **Attorney Work Product**
  - **Records prepared by an OGC attorney in anticipation of litigation**
- ❖ **Attorney-Client**
  - **Confidential communications between an OGC attorney and client providing legal advice**
  - **Must be applied by client**
    - **usually OGC requests it be used**
    - **record referred by FOIA/PA caseworker to client**
    - **facts divulged by client to OGC attorney**
    - **opinions given by OGC attorney**
- ❖ **Inter-agency or intra-agency memoranda or letters which would not be available by law to a party in litigation with the agency**
- ❖ **On March 19, 2009, Attorney General Holder issued new guidelines reaffirming President Obama's commitment to accountability and transparency. Agencies must adopt a presumption in favor of disclosure and make discretionary releases in response to requests for records**
- ❖ **Request could ask the agency to release a draft containing preliminary recommendations. Such a record might be eligible for withholding under FOIA Exemption 5 because it contained analysis and recommendations that constituted part of a deliberative process, but that should not be the end of the agency's review. Rather, the age, content, and character of that particular draft should be reviewed in determining whether the agency reasonably foresees that disclosure would harm an interest protected by Exemption 5**
- ❖ **A Foreseeable Harm Statement must be provided for Exemption 5, Deliberative Process. Attorney-Client Privilege and Attorney-Work Product do not require a Foreseeable Harm Statement**