

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

June 18, 2015

Lawrence Criscione

(b) (6)

IN RESPONSE REFER  
TO FOIA/PA-2015-0033A  
(FOIA/PA-2015-0272)

Dear Mr. Criscione,

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am responding to your May 15, 2015, email, in which you appealed the agency's decision to administratively close your May 14, 2015, Freedom of Information Act (FOIA) request (FOIA/PA 2015-0272) on May 14, 2015.

In your FOIA request, you stated that you were requesting, under the Privacy Act, the November 15, 2012, memorandum from Kristy Remsburg on the subject of FOIA 2013-0008, including Appendix A.

This letter addresses your challenge to the agency's May 14, 2015, decision to administratively close your May 14, 2015, request. As stated in that decision, the agency administratively closed your request due to its overlap with FOIA/PA-2013-0262 and FOIA/PA-2015-0027A. In essence, the agency administratively closed this request for two reasons. First, it was not processed as a Privacy Act request because, as further explained in this letter, the requested document is not considered a "record" under the Privacy Act. Second, any FOIA aspects of this request were encompassed in FOIA/PA-2013-0262 and FOIA/PA-2015-0027A because the requested document was processed under FOIA and provided to you in response to FOIA/PA-2013-0262 (with two Exemption 5 redactions) and, in FOIA/PA-2015-0027A.

The Privacy Act only applies to certain records. Under the Privacy Act, the term "record" is defined as including only "information about an individual that is maintained by an agency, including, but not limited to, his education, financial transactions, medical history, and criminal or employment history and that contains his name, or the identifying number, symbol, or other identifying particular assigned to the individual." See 5 U.S.C. § 552a(a)(4). The document requested in your May 14, 2015, request does not fall within the definition of "record" under the Privacy Act because it is a FOIA referral memorandum and while it contains information about a

FOIA request that you submitted, it does not contain any information about *you*. See *Voinche v. CIA*, No. 98-1883, 2000 U.S. Dist. LEXIS 14291, at \*12 (D.D.C. Sept. 27, 2000) (holding that specific documents pertaining to a plaintiff's administrative appeal and previous FOIA requests were not "records" under the Privacy Act because "while identifying plaintiff by name, [the documents] are not 'about' the plaintiff, but rather are 'about' the administrative appeal and prior litigation under the FOIA"). Because this document is not considered a "record" within the scope of the Privacy Act, your request for this document was not processed as a Privacy Act request and thus was appropriately administratively closed. Consequently, I am denying your appeal.

This is the NRC's final decision. As set forth in the FOIA (5 U.S.C. § 552(a)(4)(B)), you may obtain judicial review of this decision in a district court of the United States in the district in which you reside or have your principal place of business. You may also obtain judicial review in the district in which the NRC's records are located or in the District of Columbia.

The 2007 FOIA amendments created the Office of Government Information Services (OGIS) to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. Please note that OGIS does not have the authority to handle requests made under the Privacy Act.

You may contact OGIS in any of the following ways:

Office of Government Information Services  
National Archives and Records Administration  
8601 Adelphi Road-OGIS  
College Park, MD 20740  
E-mail: [ogis@nara.gov](mailto:ogis@nara.gov)  
Telephone: 202-741-5770  
Fax: 202-741-5769  
Toll-free: 1-877-684-6448

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Ash', with a stylized flourish extending from the end.

Darren B. Ash  
Deputy Executive Director  
for Corporate Management  
Office of the Executive Director for Operations