



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

June 18, 2015

Lawrence Criscione

(b) (6)

IN RESPONSE REFER
TO FOIA/PA-2015-0031A
(FOIA/PA-2015-0268)

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 6, 2015, Freedom of Information Act (FOIA) request (FOIA/PA-2015-0268) on May 14, 2015.

In your May 6, 2015, request, you stated that you were requesting, under the Privacy Act, the May 30, 2013, NRC Form 496A referral from Linda Kilgore to Kristy Remsburg pertaining to FOIA appeal 2013-0015A.

This letter addresses your challenge to the agency's May 14, 2015, decision to administratively close your May 6, 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 one Exemption 5 redaction) 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 6, 2015, request does not fall within the definition of "record" under the Privacy Act because it is an agency FOIA referral form and while it contains information about a FOIA request that you submitted, it does not contain any information about *you*. See *Voinche v. C/A*, 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 (See 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. In other words, if you use OGIS services, you can still later 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
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', is written over the printed name.

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