

RESPONSE TO FREEDOM OF  
INFORMATION ACT (FOIA) REQUEST

2016-0775

1

RESPONSE  
TYPE☐

INTERIM

☒

FINAL

## REQUESTER:

Joshua Tallent

## DATE:

10/05/2016

## DESCRIPTION OF REQUESTED RECORDS:

Copies of any and all site-specific spent fuel pool accident consequence studies involving the spent fuel pools at Indian Point Nuclear Generating Units 1, 2, and and/or 3

## PART I. -- INFORMATION RELEASED

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

\$

\*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

- ☒ We did not locate any agency records responsive to your request. *Note:* Agencies may treat three discrete categories of law enforcement and national security records as not subject to the FOIA ("exclusions"). 5 U.S.C. 552(c). This is a standard notification given to all requesters; it should not be taken to mean that any excluded records do, or do not, exist.
- ☐ We have withheld certain information 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 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.
- ☒ You may appeal this final determination within 30 calendar days of the date of this response by sending a letter or email to the FOIA Officer, at U.S. Nuclear Regulatory Commission, Washington, D.C. 20555-0001, or [FOIA.Resource@nrc.gov](mailto:FOIA.Resource@nrc.gov). Please be sure to include on your letter or email that it is a "FOIA Appeal."

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

In conformance with the FOIA Improvement Act of 2016, the NRC is informing you that: (1) you have the right to seek assistance from the NRC's FOIA Public Liaison; (2) you have the right to seek dispute resolution services from the NRC's FOIA Public Liaison or the Office of Government Information Services; and (3) notwithstanding the language in Parts I.B and II.B of this form, you may appeal this final determination within 90 calendar days of the date of this response by sending a letter or email to the FOIA Officer, at U.S. Nuclear Regulatory Commission, Washington, D.C. 20555-0001, or [FOIA.Resource@nrc.gov](mailto:FOIA.Resource@nrc.gov). Please be sure to include on your letter or email that it is a "FOIA Appeal." Please note that the NRC does not generate site-specific spent fuel pool accident consequence studies.

SIGNATURE - FREEDOM OF INFORMATION ACT OFFICER

Stephanie Blaney, Acting

Dear FOIA Requester:

The FOIA Improvement Act of 2016, which was enacted on June 30, 2016, made several changes to the Freedom of Information Act (FOIA). Federal agencies must revise their FOIA regulations to reflect those changes by December 27, 2016. In addition to revising our regulations, we intend to update the Form 464, which we use to respond to FOIA requests.

In the interim, please see the comment box in Part I.C of the attached Form 464. The comment box includes information related to the recent changes to FOIA that is applicable to your FOIA request, including an updated time period for filing an administrative appeal with the NRC.

Sincerely yours,

*Stephanie Blaney /S/*

Stephanie Blaney  
FOIA Officer (Acting)

# INCOMING REQUEST



STATE OF NEW YORK  
OFFICE OF THE ATTORNEY GENERAL

CASE NO: 2016-0775  
DATE REC'D: 09/23/2016  
SPECIALIST:  
RELATED CASE:

ERIC T. SCHNEIDERMAN  
ATTORNEY GENERAL

DIVISION OF SOCIAL JUSTICE  
ENVIRONMENTAL PROTECTION BUREAU

September 22, 2016

**By Electronic Mail**

Frederick D. Brown  
Acting FOIA Officer  
U.S. Nuclear Regulatory Commission  
Mail Stop T-5 F09  
Washington, DC 20555-0001  
FOIA.resource@nrc.gov

**Freedom of Information Act Request**

Dear Mr. Brown:

Under the authority of the Freedom of Information Act and related regulations, the State of New York Office of the Attorney General respectfully requests that the Nuclear Regulatory Commission (NRC) disclose copies of any and all site-specific spent fuel pool accident consequence studies – including, but not limited to, any probabilistic risk assessment level 2 and/or level 3 analyses – involving the spent fuel pools at Indian Point Nuclear Generating Units 1, 2, and/or 3. These units are located 24 miles north of New York City.

This information is requested by the Office of the Attorney General in the course of its official governmental duties on behalf of the People of the State of New York. This request is not based on a commercial interest of the requester.

**Request for Waiver of Fees**

The Office of the Attorney General requests, pursuant to 5 U.S.C. § 552 (a)(4)(A)(iii) and 10 C.F.R. § 9.41, that the NRC waive all statutory fees associated with this request. Public disclosure of the requested information will contribute significantly to the public's understanding of the NRC's oversight role and activities with respect to the Indian Point facilities.

FOIA provides that disclosed documents "shall be furnished without any charge or at a charge reduced below the fees established [in the statute] if disclosure of the information is in the public interest"; disclosure is "in the public interest" where, as here, "it is likely to contribute

significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. §552 (a)(4)(A)(iii). Accordingly, a successful application for a public-interest fee waiver must establish that disclosure of the requested information will: “(1) shed light on the operations or activities of the government; (2) be likely to contribute significantly to public understanding of those operations or activities; and (3) not be primarily in the commercial interest of the requester.” *Cause of Action v. FTC*, 799 F.3d 1108, 1115 (D.C. Cir. 2015) (internal quotation marks and citations omitted). In keeping with the language of the statute, NRC regulations provide that the agency “will waive or reduce fees[] without further specific information from the requester if, from information provided with the [FOIA request], it can determine that disclosure of the information [sought] is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Federal Government and is not primarily in the commercial interest of the requester.” 10 C.F.R. § 9.41(c); *see id.* at § 9.41(d).

Congress intended that FOIA’s public-interest fee waiver provision be liberally construed in favor of granting fee waivers. *See e.g. Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) (“Congress amended FOIA to ensure that it is liberally construed in favor of waivers for noncommercial requesters.” [internal quotation marks and citations omitted]) ; *see also* 132 Cong. Rec. at S14, 298 (Sept. 30, 1986) (statement of Sen. Leahy); *id.* at H9464 (Oct. 8, 1986) (statement of Rep. English). In enacting the fee waiver provision, Congress sought to ensure that noncommercial requesters would be granted fee waivers on a routine basis. *See id.* at S16,496 (Oct. 15, 1986) (colloquy between Sens. Kerry and Leahy); *id.* at S14,299 (Sept. 30, 1986) (statement of Sen. Leahy).

The present request satisfies the statutory requirements for a public-interest fee waiver. The information sought in the request will contribute significantly to the public’s understanding of the NRC’s regulatory operations and activities as relates to the Indian Point facilities. The request seeks information pertaining to the NRC’s oversight of the Indian Point pressurized water reactors and their associated spent fuel storage pools. This information will significantly advance the public’s understanding of the NRC’s oversight activities in general and as pertains to the Indian Point facilities in particular. *See* 10 C.F.R. § 9.41(d)(1), (2). Release of responsive documents will enable public research into the NRC’s interactions with and management of aging nuclear facilities in New York State and beyond. *See id.* The Office of the Attorney General has no commercial interest in submitting the present request or in obtaining the records sought therein. Rather, it seeks the requested records in the exercise of its sovereign governmental function on behalf of the People of the State of New York. *See id.* at § 9.41(d)(3).

As required by 10 C.F.R. § 9.41(b)(1) through (8), the Office of the Attorney General provides the following information in support of its public-interest fee waiver request:

**(1) Describe the purpose for which the requester intends to use the requested information**

The Office of the Attorney General intends to use the requested information in furtherance of its sovereign governmental functions on behalf of the People of the State of New York. Such functions include informed participation in NRC administrative proceedings,

submission of public comments on proposed NRC regulatory activities, and evaluation of NRC staff documents including, but not limited to, Safety Evaluation Reports, Environmental Impact Statements, and licenses. The overarching purposes of these activities are to ensure the safety of the citizens of New York State, the continued integrity of the State's environmental resources, and NRC compliance with relevant federal laws and regulations.

**(2) Explain the extent to which the requester will extract and analyze the substantive content of the agency record**

The Office of the Attorney General will extract and analyze the information contained in the requested documents to its fullest ability as it seeks to develop a greater understanding of, among other things: potential issues impacting nuclear reactors and related infrastructure, including the reactors and spent fuel systems at Indian Point; potential material degradation and accident mechanisms impacting such facilities; the NRC's discussions with industry regarding pressurized water reactor safety issues, materials degradation and aging management, and spent fuel pool management; and the NRC's oversight of the Indian Point facilities and other nuclear facilities hosted by the State of New York.

**(3) Describe the nature of the specific activity or research in which the agency records will be used and the specific qualifications the requester possesses to utilize information for the intended use in such a way that it will contribute to public understanding**

The Office of the Attorney General represents and protects the interests of the People of the State of New York, a sovereign state currently hosting a number of nuclear generating facilities. The Office's attorneys and scientific staff will review and analyze the requested information. The information may be used in New York State or NRC administrative proceedings and/or to evaluate NRC staff work product. Additionally, employees of the Office have attended public NRC meetings concerning nuclear regulatory issues and intend to participate in such meetings in the future. Disclosure of the requested information will assist the State in preparing for and participating in such meetings. Finally, public dissemination and outreach is an important part of the Office's mission.

**(4) Describe the likely impact on the public's understanding of the subject as compared to the level of public understanding of the subject before disclosure**

Release of the requested information will likely result in a substantial increase in the public's understanding of the issues identified in Paragraph 2, *supra*. Inasmuch as the requested documents are not currently available to the public, the public currently has no information regarding their contents. Once released, the Office of the Attorney General can ensure that the public is aware of the information contained in those documents.

**(5) Describe the size and nature of the public to whose understanding a contribution will be made**

The State of New York has a population of approximately 20 million people. Moreover, more than 17 million people – citizens of the States of New York, Connecticut, and New Jersey – live within 50 miles of the Indian Point facilities. For these populations, disclosure of the requested information will contribute to an increased understanding of the NRC's oversight activities as regards operations at nuclear reactors and associated spent fuel pools such as those at the Indian Point facilities.

**(6) Describe the intended means of dissemination to the general public**

The Office of the Attorney General disseminates materials in a variety of ways. These modes of dissemination include, but are not limited to: participation in NRC and state Public Service Commission administrative proceedings; the posting of the State's filings in those proceedings on various web sites; and participation in NRC public meetings. Additionally, federal and state agencies typically post the aforementioned filings in a publicly available docket (e.g., NRC Rulemaking Docket; NRC Electronic Hearing Docket; PSC Electronic Database). As noted in Paragraph 3, *supra*, the requested information will inform the Office's participation in public proceedings before the NRC and other agencies. Various media and/or other commenters may report on such public activities or on the responsive documents in the future. Additionally, as it has done with responses to past FOIA requests, the NRC may post the requested information on the public area of its Agency-wide Document Access and Management System or in another portion of its website accessible to the general public.

**(7) Indicate if public access to information will be provided free of charge or provided for an access fee or publication fee**

None of the methods of dissemination described in Paragraph 6, *supra*, would involve a charge to the public.

**(8) Describe any commercial or private interest the requester or any other party has in the agency records sought.**

As noted, the Office of the Attorney General has no commercial or private interest in the agency records sought, nor is it aware of any other party with a commercial or private interest in such records.

**Request for Vaughn Index of Any Documents Withheld**

The Office of the Attorney General requests that the NRC produce and release all documents responsive to this request. Should the NRC withhold any responsive documents, the Office requests that the NRC provide the Office with an index of all documents withheld. Such index should: (1) identify the date, author, recipients, and title or subject line of each document; (2) state the statutory exemption alleged as the basis for nondisclosure; and (3) explain how disclosure would damage the interests protected by the alleged exemption. *See Vaughn v. Rosen*,

484 F.2d 820 (D.C. Cir. 1973), *cert. denied*, 415 U.S. 977 (1974); *Citizens Comm'n on Human Rights v. FDA*, 45 F.3d 1325, 1326 n.1 (9th Cir. 1995).

### **Conclusion**

As soon as possible, and in any event within 20 business days of receipt of this letter as prescribed by FOIA, please produce all responsive documents electronically to Teresa Manzi or to me at the e-mail addresses listed below. If you have any questions concerning this FOIA request, please contact me at the e-mail address or phone number below. Thank you for your attention to this matter.

Yours truly,

*Joshua Tallent*

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