

LAW OFFICE

**CLIFFORD & GARDE, LLP**

1130 CONNECTICUT AVENUE, N.W.

SUITE 500

WASHINGTON, D.C. 20036

(202) 289-8990

FAX (202) 289-8992

www.cliffordgarde.com

JOHN M. CLIFFORD\*  
BILLIE PIANNER GARDE\*\*  
JOHN D. CLIFFORD\*

\* ALSO ADMITTED IN ND, DC  
\*\* ALSO ADMITTED IN TX, WI, DC

CASE NO: 2016-0108A

DATE REC'D: 05/26/16

SPECIALIST:

RELATED CASE:

May 25, 2016

By Fax: (301-415-5130)

FOIA/Privacy Act Officer  
U.S. Nuclear Regulatory Commission  
Mail Stop T5 F09  
Washington, D.C. 20555-0001

Re: *Appeal of Documents/Information Withheld in response to  
FOIA Request Nos. FOIA/PA 2016-0382 & 0383*

To Whom It May Concern:

This is an appeal, pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. 522, as amended, and 10 C.F.R. 9.29 of the denial of the Agency (and specifically Roger Andoh, FOIA Officer) to produce records requested on March 15, 2016 -- the NRC Office of Investigations Report in OI Case No. 3-2012-021 and all attachments thereto (#382), and documents reflecting communications about the OI Report from March 10, 2015-February 22, 2016 (#383).

On March 30, 2016 in a telephone call with FOIA Specialist Scott Britt and Jim Heller of Region III, we were asked to withdraw our FOIA requests and re-submit them at a later date because, although the OI Investigation was completed in March 2015, the licensee was informed of apparent violations on February 22, 2016, and ADR was held on March 25, 2016, it would take at least another 30-60 days to draft the Enforcement Action and Consent Agreement and post it in the Federal Register for comment. We were told that until all this occurred the "enforcement action" would remain open and therefore the documents would be withheld pursuant to FOIA Exemption 7(A).

On April 1, 2016, we declined to withdraw our FOIA requests, given the length of time it had already taken since the end of the OI investigation over a year ago, and asked the FOIA office to go ahead and issue its denial so we could file an appeal..

By NRC Form 464, dated April 25, 2016, we were informed that our FOIA requests were being denied based on FOIA Exemption 7(A): "The withheld information consists of records compiled for law enforcement purposes and is being withheld for the reason(s) indicated. (A) Disclosure

could reasonably be expected to interfere with an enforcement proceeding..." The denying official was Roger D. Andoh and the Appellate Official was listed as the EDO. NRC Form 464 further indicated our right to appeal the denials within 30 days.<sup>1</sup> Therefore, this appeal is timely.

We learned on May 19, 2016, that the NRC had issued a Confirmatory Order to Entergy related to the OI Investigation Report 3-2012-021. By email on that date from Billie Garde to Jim Heller of Region III, we asked whether we would have to drop our right to appeal the FOIAs for the OI Report and records in order to have our original FOIA processed. By email to us on May 20, 2016, Scott Britt advised he had closed our initial FOIAs and could not re-open them. We were told we would have to re-open our request. His email also stated "Lastly, I want to let you know that the FOIA office has no record of receiving an appeal of the above-referenced FOIA requests."

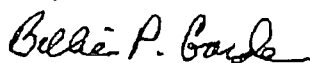
On a telephone call with Mr. Britt on May 20, 2016, Sandy Shepherd of our office, informed Mr. Britt that we did not file an appeal yet because our 30-day appeal period had not expired. We informed him that we never closed the initial request and made it clear previously (on April 1) that we did not wish to withdraw our initial requests and re-submit them at a later date.

#### Appeal

Please consider this an appeal of the April 25, 2016 denial. It is apparent to us that Exemption 7(A) no longer applies to our initial requests, as the Confirmatory Order and OI Report were released to the public on May 16, 2016.

For all of the foregoing reasons, we appeal the withholding of information redacted under the guise of FOIA Exemption 7(A) which is no longer applicable to our original FOIA requests, and request that that information be provided to us within 30 days.

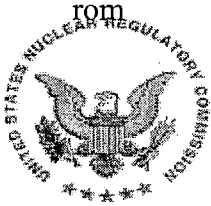
Sincerely,



Billie Pirner Garde

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<sup>1</sup> Form 464 Part I indicated we could appeal the denial "within 30 calendar days of the date of the response; however, Part II of Form 464 states "appeal must be made within 30 days of receipt of this response."



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, DC 20555 - 0001

May 26, 2016

FOIA/PA-2016-00108A  
FOIA/PA-2016-00382  
FOIA/PA-2016-00383

Billie Pirner Garde  
Clifford & Garde, LLP  
1130 Connecticut Ave NW  
Washington, DC 20036

Dear Ms. Garde:

We have logged your May 25, 2016 correspondence as an appeal about the denial of information with respect to FOIA/PA-2016-00382 and FOIA/PA-2016-00383, which sought NRC Office of Investigations Report in OI Case No. 3-2012-021 and all attachments thereto (#382), and documents reflecting communications about the Report from March 10, 2015-February 22, 2016 (#383).

Your appeal has been assigned the following reference number that you should use in any future communications with us about your appeal: FOIA/PA-2016-00108A.

The following person is the Government Information Specialist who has been assigned responsibility for your appeal: Scott Britt at 301-415-5025 or Scott.Britt@nrc.gov.

If you have questions on any matters concerning your FOIA appeal, please feel free to contact the Government Information Specialist assigned to your appeal or me. I can be reached at 301-415-7169.

Sincerely,

*Roger D. Andoh /s/*

Roger D. Andoh  
FOIA Officer  
Office of Information Services



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

May 27, 2016

FOIA/PA-2016-00481

Billie Pirner Garde  
Clifford & Garde, LLP  
1130 Connecticut Ave NW  
Suite 500  
Washington, DC 20036

Dear Ms. Garde:

We letter serves to confirm the conversation between Ms. Sheppard of your office and Margo Stevens of the FOIA Office on May 26, 2016, regarding a Freedom of Information Act (FOIA) appeal, originally assigned reference number, FOIA-2016-0108A, which we acknowledged receipt of yesterday. You acceded to our office's suggestion that we "convert" your appeal (in which you challenged the full denial of the Office of Investigations Report in 3-2012-021, all attachments, and any communications relating thereto, now that enforcement proceedings relating to that investigation have concluded) into a FOIA request. We appreciate your cooperation. We are treating this FOIA request as having been received on May 26, 2016.

Your request, which seeks access to the Office of Investigations' Report in 3-2012-021, any attachments, and any communications related thereto, has been assigned the following reference number that you should use in any future communications with us about your request: FOIA/PA-2016-00481.

To ensure the most equitable treatment possible of all requesters, the NRC processes requests on a first-in, first-out basis, using a multiple track system based upon the estimated time it will take to process a request. Based on your description of the records you are seeking, we estimate completion of your request will be on or before July 11, 2016. Please note that we are estimating that completion will take more than 20 working days because we may have to:

- ☒ search for, collect, and appropriately examine a voluminous amount of records
- ☒ consult with multiple program and/or regional offices within the NRC
- ☐ consult with other Federal agencies having equities in the records
- ☒ refer records to a licensee, or other business submitter
- ☐ undertake a declassification review of classified records; or
- ☐ retrieve records from Federal Records Centers or other off-site facilities.

Please know that this date roughly estimates how long it will take us to close requests ahead of yours in the respective track and complete work on your request. The actual date of completion might be before or after this estimate, based on the complexity of all of the requests in the complex track. We will advise you of any change in the estimated time to complete your request. In an effort to process your request promptly, you may wish to narrow the scope of your request to limit the volume of potentially responsive records.

For purposes of assessing fees in accordance with our regulations (10 CFR 9.33), we have placed your request in the following category: Non-excepted. If applicable, you will be charged appropriate fees for: Search & Duplication of Records. A sheet has been enclosed that explains in detail the fee charges that may be applicable. **Please do not submit any payment unless we notify you to do so.**

The following person is the Government Information Specialist who has been assigned responsibility for your request: Scott Britt at 301-415-5025 or [Scott.Britt@nrc.gov](mailto:Scott.Britt@nrc.gov).

If you have questions on any matters concerning your FOIA request, please feel free to contact the assigned Government Information Specialist or me at (301) 415-7169.

Sincerely,

*Roger D. Andoh /s/*

Roger D. Andoh  
FOIA Officer  
Office of the Chief Information Officer

Enclosure:  
Explanation of Fees

## EXPLANATION OF FEES

### Requester Fee Categories

**Commercial:** Fees are charged for document search, duplication, and review, when records are requested for commercial purposes. Fees (above the minimum fee charge) cannot be waived for this category of requester.

**Educational, Non-Commercial Scientific, News Media and Privacy Act:** Fees may be charged only for document duplication when records are not sought for commercial use and the request is made by an Educational or Non-Commercial Scientific Institution, whose purpose is scholarly or scientific research; or a Representative of the News Media; or a person requesting his/her own records that are in a Privacy Act system of records. No fee is charged for the first one hundred pages of duplication for this category of requester.

**Non-Excepted:** For any request not described above (Non-Excepted), fees may be charged for document search and duplication. No fee is charged for the first two hours of search time or for the first one hundred pages of duplication for this category of requester.

### Fee Schedules

Fee schedules provide only for the recovery of the direct costs of search, duplication, or review. Review costs include only the costs for initial examination of a document to determine whether it must be disclosed and to determine whether to withhold portions that are exempt from disclosure. The fee schedule is as follows:

<u>Search &amp; Review Conducted By</u>	<u>Rate</u>	
! SES/COMMISSIONER	\$90.53/hour	(ES-maximum)
! PROFESSIONAL	\$56.36/hour	(GG-13, Step 6)
! CLERICAL	\$25.16/hour	(GG-7, Step 7)
<u>Duplication Charges</u>	\$.20 per page	

Fees for non-standard search or duplication will be charged at the actual cost (e.g. providing copying of audio tapes or conducting computer searches).

**Minimum Fee:** No fee will be charged unless the fee is equal to or greater than \$25.00.

### When to Pay Fees

If we estimate that fees will not exceed \$25.00 or you have stated in your request a higher amount that you are willing to pay, we assume your willingness to pay up to \$25 or the amount stipulated and you will be billed after we have completed your request.

If we estimate that fees will exceed \$25.00 or any amount that has been stated by you in your request, we will not proceed with your request until we have notified you and obtained your agreement to pay the estimated fees.

If we estimate fees will exceed \$250, you will be required to pay the estimated fees in advance before we proceed further with your request. If, while processing your request, we find that the actual fees exceed the estimated fee, we will obtain your consent to pay the additional fees before continuing to process your request. If the actual fees to process your request are less than any advance payment you have made, you will be refunded the overpayment amount.

### Fee Waivers

A waiver or reduction of fees may be granted for furnishing documents if a requester, by fully addressing the eight factors in 10 CFR 9.41, clearly demonstrates that disclosure of the information is in the public interest because 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.

## **Britt, Scott**

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**From:** Heller, James  
**Sent:** Friday, May 20, 2016 2:48 PM  
**To:** Britt, Scott  
**Cc:** Stricklin, Rebecca  
**Subject:** RE: RE: FOIA 2016-0382 & 0383

Britt

Thanks for being proactive and contacting Sandy.

Jim

**From:** Sandy Shepherd [mailto:sshepherd@cliffordgarde.com]  
**Sent:** Friday, May 20, 2016 11:48 AM  
**To:** Britt, Scott <Scott.Britt@nrc.gov>; Billie Garde <bpgarde@cliffordgarde.com>  
**Cc:** Heller, James <James.Heller@nrc.gov>; Stricklin, Rebecca <Rebecca.Stricklin@nrc.gov>  
**Subject:** [External\_Sender] RE: FOIA 2016-0382 & 0383

Dear Mr. Britt -

According to my records our appeal of the above FOIA was not due until NEXT WEEK. NRC Form 464 is dated April 25, 2016, was not postmarked until April 26, 2016, and we were told we had 30 days from receipt. Please let us know if you will process this request or whether we have to pursue an appeal.

Sincerely,

Sandy Shepherd  
Clifford & Garde, LLP  
1130 Connecticut Avenue, NW  
Suite 500  
Washington, DC 20036  
(202) 280-6117 –Direct Phone  
(202) 289-8992 – Fax

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**From:** Britt, Scott [mailto:Scott.Britt@nrc.gov]  
**Sent:** Friday, May 20, 2016 12:39 PM  
**To:** Billie Garde  
**Cc:** Sandy Shepherd; Heller, James; Stricklin, Rebecca  
**Subject:** FOIA 2016-0382 & 0383

Hello Ms. Garde:

Ms. Stricklin, on behalf of Mr. Heller, has contacted me regarding the above FOIA. Please submit a new FOIA request that seeks as you state, "FOIA request for the underlying report and attachments," for the enforcement/investigation action that you are interested in. As a result of the FOIA statutory time requirements for responding and other timing issues we cannot reopen the prior request and modify per your directions. As I am familiar with the prior request I fully expect the new request to be assigned to me and the processing of

same should be relatively straight forward. Lastly, I want to let you know that the FOIA office has no record of receiving an appeal of the above referenced FOIA requests. I have attached your email to Mr. Heller.

**From:** Billie Garde (<mailto:bpgarde@cliffordgarde.com>)  
**Sent:** Thursday, May 19, 2016 12:59 PM  
**To:** Heller, James <[James.Heller@nrc.gov](mailto:James.Heller@nrc.gov)>  
**Cc:** Sandy Shepherd <[sshepherd@cliffordgarde.com](mailto:sshepherd@cliffordgarde.com)>  
**Subject:** Palisades

Jim, We have received a copy of the press release regarding the Confirmatory Order for the SIWRT tank – but we can't get on to ADAMS to review the actual Confirmatory Order. Could you fax or PDF it to us please? Also, since the Order has now been issued, can we drop the appeal and have you just go back to processing the FOIA request for the underlying report and attachments? Please let us know. Thanks. Billie

Billie Pirner Garde  
Clifford & Garde, LLP  
1130 Connecticut Ave., NW  
Ste 500  
Washington, D.C. 20036  
(202) 280-6116 (direct)  
(b)(6) (cell)  
(202) 289-8992 (fax)

Thank you for your consideration. If you have any questions let me know.

Scott David Britt, (contractor)  
FOIA Analyst  
OCIO  
USNRC  
11545 Rockville Pike, Mail Stop: T-2F05  
Rockville, Maryland 20852  
301-415-5025  
[Scott.britt@nrc.gov](mailto:Scott.britt@nrc.gov)