



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

Joshua Tallent
Assistant Attorney General
Office of the Attorney General
of the State of New York
The Capitol
Albany, NY 12224-0341
Joshua.Tallent@ag.ny.gov
(518) 776-2456

CC (by e-mail):

Teresa.Manzi@ag.ny.gov