

RESPONSE TO FREEDOM OF
INFORMATION ACT (FOIA) REQUEST

NRC-2018-000056

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RESPONSE
TYPE☐

INTERIM

☒

FINAL

REQUESTER:

Julian Tarver

DATE:

12/29/2017

DESCRIPTION OF REQUESTED RECORDS:

Copies of all ethics waivers granted pursuant to Executive Order 13370, for staff within the NRC, January 28, 2017 through current date

PART I. - INFORMATION RELEASED

You have the right to seek assistance from the NRC's FOIA Public Liaison. Contact information for the NRC's FOIA Public Liaison is available at <https://www.nrc.gov/reading-rm/foia/contact-foia.html>

- ☐ Agency records subject to the request are already available on the Public NRC Website, 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

NO FEES

AMOUNT*

*See Comments for details

☐

You will be billed by NRC for the amount listed.

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You will receive a refund for the amount listed.

☐

Fees waived.

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Minimum fee threshold not met.

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Due to our delayed response, you will not be charged fees.

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 90 calendar days of the date of this response by sending a letter or e-mail to the FOIA Officer, at U.S. Nuclear Regulatory Commission, Washington, D.C. 20555-0001, or FOIA.Resource@nrc.gov. Please be sure to include on your letter or email that it is a "FOIA Appeal." You have the right to seek dispute resolution services from the NRC's Public Liaison, or the Office of Government Information Services (OGIS). Contact information for OGIS is available at <https://ogis.archives.gov/about-ogis/contact-information.htm>

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

Signature - Freedom of Information Act Officer or Designee

Karen E. Danoff

Digitally signed by Karen E. Danoff
Date: 2017.12.29 08:02:55 -05'00'

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PART II.A -- APPLICABLE EXEMPTIONS

Records subject to the request are being withheld in their entirety or in part under the FOIA exemption(s) as indicated below (5 U.S.C. 552(b)).

- ☐ Exemption 1: The withheld information is properly classified pursuant to an Executive Order protecting national security information.
- ☐ Exemption 2: The withheld information relates solely to the internal personnel rules and practices of NRC.
- ☐ Exemption 3: The withheld information is specifically exempted from public disclosure by the statute indicated.
- ☐ Sections 141-145 of the Atomic Energy Act, which prohibits the disclosure of Restricted Data or Formerly Restricted Data (42 U.S.C. 2161-2165).
- ☐ Section 147 of the Atomic Energy Act, which prohibits the disclosure of Unclassified Safeguards Information (42 U.S.C. 2167).
- ☐ 41 U.S.C. 4702(b), which prohibits the disclosure of contractor proposals, except when incorporated into the contract between the agency and the submitter of the proposal.
- ☐ Exemption 4: The withheld information is a trade secret or confidential commercial or financial information that is being withheld for the reason(s) indicated.
- ☐ The information is considered to be proprietary because it concerns a licensee's or applicant's physical protection or material control and accounting program for special nuclear material pursuant to 10 CFR 2.390(d)(1).
- ☐ The information is considered to be another type of confidential business (proprietary) information.
- ☐ The information was submitted by a foreign source and received in confidence pursuant to 10 CFR 2.390(d)(2).
- ☐ Exemption 5: The withheld information consists of interagency or intraagency records that are normally privileged in civil litigation.
- ☐ Deliberative process privilege.
- ☐ Attorney work product privilege.
- ☐ Attorney-client privilege.
- ☒ Exemption 6: The withheld information from a personnel, medical, or similar file, is exempted from public disclosure because its disclosure would result in a clearly unwarranted invasion of personal privacy.
- ☐ Exemption 7: 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 open enforcement proceeding.
- ☐ (C) Disclosure could reasonably be expected to constitute an unwarranted invasion of personal privacy.
- ☐ (D) The information consists of names and other information the disclosure of which could reasonably be expected to reveal identities of confidential sources.
- ☐ (E) Disclosure would reveal techniques and procedures for law enforcement investigations or prosecutions, or guidelines that could reasonably be expected to risk circumvention of the law.
- ☐ (F) Disclosure could reasonably be expected to endanger the life or physical safety of an individual.
- ☐ Other

PART II.B -- DENYING OFFICIALS

In accordance with 10 CFR 9.25(g) and 9.25(h) of the U.S. Nuclear Regulatory Commission regulations, the official(s) listed below have made the determination to withhold certain information responsive to your request.

DENYING OFFICIAL	TITLE/OFFICE	RECORDS DENIED	APPELLATE OFFICIAL	
			EDO	SECY
Karen Danoff	Acting FOIA Officer/OCIO	PII	<input checked="" type="checkbox"/>	<input type="checkbox"/>
			<input type="checkbox"/>	<input type="checkbox"/>
			<input type="checkbox"/>	<input type="checkbox"/>

Appeals must be made in writing 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. Please be sure to include on your letter or email that it is a "FOIA Appeal."



CHAIRMAN

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

February 22, 2017

MEMORANDUM TO:

(b)(6)

FROM:

Kristine L. Svinicki, Chairman

SUBJECT:

REQUEST FOR TEMPORARY WAIVER FROM PROHIBITED
SECURITIES RESTRICTION

On January 9, 2017, you submitted to the Office of the General Counsel (OGC) a request for a temporary waiver from the requirements of 5 C.F.R. § 5801.102. This regulation establishes a list of securities that covered NRC employees, and the spouses and minor children of those employees, are prohibited from owning. Specifically, you asked that the requirements of 5 C.F.R. § 5801.102 be waived so that your son can continue owning 1,450 shares of General Electric stock until (b)(6), when he turns age 18 and is no longer a "minor child" subject to the prohibited securities rule. Because the NRC's Chairman is the deciding official on waiver requests of this type, OGC forwarded your request to me for review.

After reviewing your request, I find that a temporary waiver from the requirements of 5 C.F.R. § 5801.102 is appropriate. The waiver I am granting exempts your son from the requirement that he divest the General Electric securities he currently owns. Under the waiver, your son may continue to hold these securities until he turns 18, at which time he will no longer be subject to the prohibited securities rule. Your son may not acquire other prohibited securities prior to his 18th birthday, however, nor may he acquire additional shares of General Electric stock from the date of this memorandum until he turns 18. Furthermore, this waiver is contingent upon you not working on any matter involving General Electric until your son turns 18.

The waiver also covers the brief period when you were not in compliance with the NRC's prohibited securities rule. As you acknowledged in a signed statement upon joining the NRC, you had 90 days to ensure your son divested his interest in General Electric stock. Based on your NRC start date of (b)(6), your son needed to divest his stock by (b)(6). Accordingly, between that date and today's date, your son held securities that were prohibited under the NRC's rule.

Notwithstanding this brief period of noncompliance, I find that a waiver would not be inconsistent with the government-wide standards of ethical conduct in 5 C.F.R. Part 2635, nor would the waiver be prohibited by law. According to your waiver request, you have not worked on matters involving General Electric since you joined the NRC, and you do not expect any such matter to come before you prior to (b)(6). Assuming you do not work on matters involving General Electric before your son turns 18, granting a brief waiver for your son's stock interest would not be inconsistent with the government-wide standards of ethical conduct or be prohibited by law.

I further find that, under the circumstances involved here, strict application of the securities ownership restrictions in 5 C.F.R. § 5801.102 is not necessary to ensure confidence in the impartiality and objectivity of the NRC's programs. Your son will turn 18 on (b)(6), at which time he will no longer be covered by the prohibited securities rule. Although you should have

sought a waiver, or divested your son's stock interest, by (b)(6) I find no suggestion you were trying to evade the prohibited securities rule. In fact, prior to joining the NRC you consulted with both OGC and the Office of the Chief Human Capital Officer (OCFO) regarding this rule. You also emailed OCFO questions related to divestiture during the 90-day period after you joined the NRC. As your son's divestiture deadline approached, however, you should have contacted OGC directly with questions about your obligations under the prohibited securities rule. Should you have such questions in the future—or any other ethics-related questions—I encourage you to contact an ethics counselor at ethics.resource@nrc.gov.

To summarize, I grant you a waiver exempting your son from the requirement that he divest his General Electric securities. Under the waiver, your son can continue holding these securities until (b)(6) at which time he will no longer be a "minor child" subject to the prohibited securities rule. Your son may not, however, acquire additional shares of General Electric stock from the date of this memorandum until he turns 18. Furthermore, the waiver is contingent upon you not working on any matter involving General Electric while your son remains a minor.

cc: M. Doane, OGC
B. Ammon, OGC
M. Clark, OGC