



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

JUN 06 2019

IN RESPONSE REFER TO:
NRC-2019-000291
NRC-2019-000187

Mr. Matthew Arno
Foxfire Scientific, Inc.
4621 S. Cooper Street, #131-332
Arlington, TX 76017

Dear Mr. Arno:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am responding to your email dated May 7, 2019, in which you appealed the agency's response to your February 2, 2019, Freedom of Information Act (FOIA) request. In that request, NRC-2019-000187, you sought records related to evaluations and/or calculations performed to develop and/or support the suggested release criteria for cats treated for hyperthyroidism with I-131 contained in NUREG-1556, Volume 7, Revision 1, Appendix D, page D-4.

In your email dated May 7, 2019, you state that you are appealing "the decisions made regarding the withholding of certain information," and "that the information being withheld is not predecisional information as the relevant NRC decisions have already been made." Acting on your appeal, I have reviewed the December 21, 2001 and February 24, 2003 memoranda that were partially redacted, and I have conferred with the originating program office.

Initially, I find that the redacted portions of the memoranda contain deliberative-process information that the NRC permissibly redacted under FOIA exemption 5. Information can continue to be exempt from disclosure under exemption 5 even though the relevant decision has already been made. If the information is both predecisional and deliberative, and if harm would foreseeably result from its release, exemption 5 remains applicable.

The information here meets these criteria. The memoranda offer technical assistance from staff in the Office of Nuclear Material Safety & Safeguards (NMSS) to regional staff as they considered actions to take regarding veterinary licensees' treatment of cats with radioactive iodine. The later memorandum updates and clarifies the assistance initially given, based upon newly developed information. The predecisional character of these memoranda is not lost merely because the NRC subsequently made a final decision regarding the subject of the memoranda. Nor has the deliberative nature of the memoranda been lost, because the NRC has never expressly adopted, or incorporated by reference, the information in any final determination it has made.

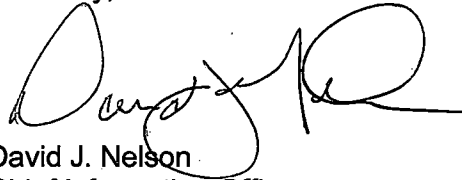
For exemption 5 to apply, the NRC must also find that harm would foreseeably result from release of the deliberative-process information. I find that harm is foreseeable in this case, because the redacted portions of the memoranda contain preliminary, and in some cases

inaccurate, information that would cause public confusion about the NRC's regulatory decisions or the basis of those decisions. Because the redacted portions of the memoranda contain predecisional and deliberative information that would cause foreseeable harm, I find that the NRC permissibly withheld this information from its initial response to your FOIA request.

Nonetheless, given your interest in the memoranda and the potential broader interest among the public at large, the NRC has decided to make a discretionary release of the redacted information. NMSS has prepared a memorandum to file that provides context for the previously redacted information and addresses its limitations, and this memorandum should lessen the harm resulting from release of the information.¹ I encourage you to read this memorandum in connection with your review of the newly released information, and I would request that you refer to the memorandum if you further distribute or reproduce the December 21, 2001 and February 24, 2003 memoranda.

In conclusion, I am granting your appeal by making a discretionary release of information that the NRC could have permissibly withheld from disclosure under FOIA exemption 5.

Sincerely,

A handwritten signature in black ink, appearing to read 'David J. Nelson', with a large, stylized flourish extending from the end of the signature.

David J. Nelson
Chief Information Officer
Office of the Chief Information Officer

¹ This memorandum to file, to which the December 21, 2001 memorandum is attached, is publicly available in ADAMS as ML19156A166. The February 24, 2003 memorandum is publicly available in ADAMS as ML030560258.