



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

December 12, 2019

IN RESPONSE REFER TO:
NRC-2020-000053
(NRC-2019-000390)

Mr. Robert Leyse
P.O. Box 2850
Sun Valley, ID 83353

Dear Mr. Leyse:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am responding to your letter dated November 19, 2019 (and received in the FOIA Office on November 25, 2019), in which you appealed the agency's November 1, 2019¹ response related to your August 7, 2019 Freedom of Information Act (FOIA) request, NRC-2019-000390, which requested that the NRC make publicly available certain documents created by the Institute of Nuclear Power Operations ("INPO") and/or the Nuclear Safety Analysis Center (NSAC). The documents that you seek are referenced in Licensing Topical Report NEDO-33262, which was submitted to the NRC by GE Hitachi Nuclear Energy in 2008 (ML081560316). In its response to your request, the NRC informed you that it was not able to locate in its possession some of the records included in your request, and that with respect to records the NRC did locate in its possession, those records would be withheld in their entirety under FOIA exemption (b)(4). You have appealed the NRC's use of this exemption.

Acting on your appeal, I have reviewed the information withheld under exemption (b)(4) of the FOIA. The documents in the agency's possession that have been identified as responsive records to your request were created by and obtained from INPO, a person outside the United States government. INPO has previously submitted an affidavit to the NRC, consistent with 10 C.F.R. § 2.390, that information and reports voluntarily submitted to the NRC—including event reports and operating experience products that are the subject of your request—are considered by INPO to include trade secrets and confidential commercial information; that these documents are not customarily made available to the public and are held in confidence by INPO; and that disclosure would cause substantial harm to INPO's competitive position. Pursuant to 10 C.F.R. § 9.28, upon receiving your request the NRC contacted INPO to confirm whether INPO would object to the release of these records. Notwithstanding the age of these records, INPO confirmed that it still considers these reports to contain confidential business information and objected to disclosure. Based on these facts, I have denied your appeal.

¹ The FOIA Officer issued her original response to your request on October 2, 2019. In that response, the FOIA Officer misconstrued your reference to NSAC (thinking it pertained to the Nuclear Science Advisory Committee, rather than the Nuclear Safety Analysis Center). Although having no effect on the outcome of her response, this was corrected in the November 1st revised response.

Lyse, R.

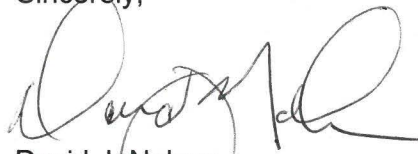
- 2 -

This is the final agency decision with regards to this request. As set forth in the FOIA (5 U.S.C. 552(a)(4)(B)), you may seek judicial review of this decision in the district court of the United States in the district in which you reside, in which you have principal place of business. You may also seek judicial review in the district in which the agency's records are situated or in the District of Columbia.

The 2007 FOIA amendments created the Office of Government Information Services (OGIS) to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a nonexclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. You may contact OGIS in any of the following ways:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road
College Park, MD 20740
Email: ogis@nara.gov
Telephone: 202-741-5770
Toll-free: 1-877-684-6448
Fax: 202-741-5769

Sincerely,

A handwritten signature in black ink, appearing to read "David J. Nelson", written over a circular stamp.

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