

GOVERNMENT ACCOUNTABILITY PROJECT

Institute for Policy Studies

1901 Que Street, N.W., Washington, D.C. 20009

(202) 234-9382

October 7, 1981

Director  
Office of Administration  
Nuclear Regulatory Commission  
Washington, D. C. 20555

FREEDOM OF INFORMATION  
ACT REQUEST

FOIA-81-407  
Rec'd 10-9-81

To Whom It May Concern:

On behalf of our client, Mr. Thomas Applegate, and pursuant to both the Freedom of Information Act (5 U.S.C. § 552) and the Privacy Act (5 U.S.C. § 522a), we request a copy of the report prepared by the Nuclear Regulatory Commission ("NRC") Office of Inspector and Auditor ("OIA") in response to Mr. Applegate's December 10, 1980 whistleblowing disclosure to the Office of the Special Counsel of the Merit Systems Protection Board.

Mr. Applegate alleged that an NRC inspector had violated statutory obligations and engaged in misconduct by failing to conduct an adequate investigation of criminal and safety abuses at the William H. Zimmer nuclear power plant, under construction in Moscow, Ohio. The Special Counsel found that Mr. Applegate's disclosure was based on a reasonable belief, and ordered Commissioner Ahearne to investigate and respond. The Office of Inspector and Auditor began an investigation into the conduct of the original probe, which NRC's Region III reopened simultaneously. Mr. Applegate is requesting a copy of the completed OIA report.

We understand that the report has been finished for over a month. In a September 9, 1981 discussion, Mr. James Cummings, Director of OIA, promised that GAP would receive a copy of the report for Mr. Applegate as soon as it is released in response to another FOIA request. That is the only reason we have delayed this long before turning to the FOIA. Since the NRC response to other FOIA requests is well past the time of statutory denial, we are submitting this request to begin the formal process that could lead to litigation releasing the report.

In our opinion, a formal request should not be necessary at all. The report was a direct result of Mr. Applegate's disclosure, an act of courage which subjected him to physical threats, emotional stress and professional disadvantage. If Mr. Applegate were a government employee, the Civil Service Reform Act would require the NRC to provide him with a copy of the OIA report.

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(5 U.S.C. § 1206(b)(5)(A)). The legislative history explained that the intent of the requirement is to "complete the circle" of a Special Counsel disclosure sparked by a government whistleblower. (Remarks of Senator Leahy, Congressional Record, S 14302 (August 24, 1978)). The same principle applies to Mr. Applegate. Even if he is not a federal employee, he deserves to see what his sacrifices produced -- the government's assessment of the issues he raised. The NRC should provide the report to Mr. Applegate as a matter of courtesy, without waiting for formal legal action under the FOIA.

For any documents or portions of documents that you deny due to a specific exemption, please provide any index itemizing and describing documents or portions of documents withheld. The index should provide a detailed justification of your grounds for claiming each exemption, explaining why each exemption is relevant to the document or portion withheld. This index is required under Vaughn v. Rosen (I), 484 F.2d 820 (D.C.Cir. 1973), cert. denied, 415 U.S. 977 (1974). We seriously doubt that any exemptions would apply. The GAO routinely issues public reports on the type of allegations Mr. Applegate charged.

If the Commission releases the report in response to other FOIA requests, we will withdraw this submission and accept Mr. Cummings' offer upon delivery of the document. We hope that is the case. Mr. Applegate's disclosure raised a fundamental challenge to the way NRC inspectors oversee the safe construction of nuclear power plants. He criticized paperwork reviews of narrow technical issues. Instead, he called for independent investigations to determine and correct both the symptoms and causes of safety defects. There is some suspicion that the OIA report agreed with Mr. Applegate, and the NRC does not want the public to know. The Commission could allay those concerns by releasing the report promptly. Particularly after Three Mile Island and other incidents, the NRC approach to nuclear safety must be a matter of public record -- not a guarded secret.

We look forward to your reply within ten working days.

Sincerely,

  
Thomas Devine  
Associate Director

TD/mcy

cc: Chairman Pallidino