

GOVERNMENT ACCOUNTABILITY PROJECT

Institute for Policy Studies

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November 8, 1981

Executive Secretary
Office of Admin.
Nuclear Regulatory Commission
Washington, D.C. 20555

APPEAL OF INITIAL FOIA DECISION

81-A-17C (81-407)

Rec'd 11-9-81

To Whom it May Concern:

This is an appeal pursuant to subsection (a)(6) of the Freedom of Information Act, as amended (5 U.S.C. §552).

On October 7, 1981 we submitted a request on behalf of our client, Mr. Thomas Applegate, pursuant to the Freedom of Information Act for a copy of the report prepared by the Nuclear Regulatory Commission ("NRC" or "Commission") 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.

As you know, §552(a)(6)(A)(i) of the statute requires an agency to make an initial determination of whether to comply with an FOIA request within ten working days of receipt. The agency may take an additional ten days under unusual circumstances.

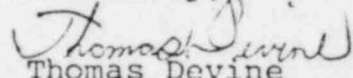
Obviously, the month time lag in this request covers both contingencies. In fact, the only unusual circumstance in this case appears to be the unnecessary delay in releasing the OIA report. We have strong reason to believe that the delay was designed to permit the Commission's Inspection and Enforcement ("IE") office to develop a response to serious questions raised about IE's performance at the Zimmer nuclear power plant. There is nothing in the FOIA that allows delays in order to fashion "cover stories" by offices exposed for failure to protect the public health and safety. These delays have increased our fears that the Commission's first priority with the Zimmer OIA report is to save face, rather than to reform the NRC nuclear safety inspection program.

Since there has been more than a reasonable amount of time for compliance, we are treating your agency's failure to respond as a denial of Mr. Applegate's request. This letter is a formal appeal of that denial. A copy of his October 7 request is enclosed so that you can see exactly what materials are under request.

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As with Mr. Applegate's October 7 request, we will withdraw this appeal upon receipt of the OIA report. Otherwise, we look forward to your reply within twenty working days as required by the amended Act.

Sincerely,


Thomas Devine
Legal Director