



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

*Duplicate copy for
microfiche*

April 16, 1981

James N. Barnes, Esquire
Center for Law and Social Policy
1751 N Street, N.W.
Washington, DC 20036

IN RESPONSE REFER
TO FOIA-80-336

Dear Mr. Barnes:

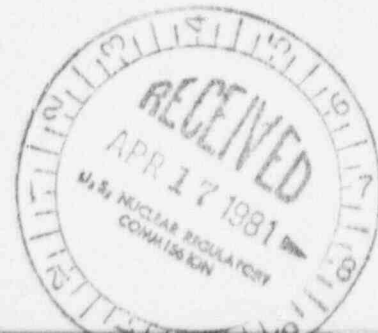
This is in further response to your letter of June 30, 1980, in which you and Mr. Jacob Scherr of the Natural Resources Defense Council requested, pursuant to the Freedom of Information Act (FOIA), records relating to export of special nuclear material and replacement parts to India.

We provided partial responses to your request in letters dated July 24, 1980, and August 12, 1980, enclosing Appendices A and B that list records placed in the NRC Public Document Room (PDR) for inspection and copying. This final response was delayed due to reviews by NRC for declassification and disclosure determinations for the remaining records subject to your request.

The enclosed Appendices C, D, and E list the remaining records subject to your request. Appendix C lists records which are being placed in the PDR in their entirety. Appendix D lists records from which portions have been deleted prior to being placed in the PDR. Appendix E lists records which are being withheld in their entirety. You may obtain access to the records listed in Appendices C and D by either presenting this letter to the PDR or requesting folder FOIA-80-336 filed under your name.

The records which are listed in Appendices D and E and which are being withheld in whole or in part contain (A) information that is classified pursuant to Executive Order No. 12065, which is being withheld from public disclosure pursuant to Exemption (1) of the FOIA (5 U.S.C. 552(b)(1)) and 10 CFR 9.5(a)(1) of the Commission's regulations; (B) information which identifies procedures for safeguarding licensed special nuclear material, which is being withheld pursuant to 10 CFR 2.790, Exemption 4 of the FOIA (5 U.S.C.(b)(4)) and 10 CFR 9.5(a)(4); and (C) information that constitutes advice, opinions and recommendations of the staff, which is being withheld pursuant to Exemption 5 of the FOIA (5 U.S.C. 552(b)(5)) and 10 CFR 9.5(a)(5). The denying official and appropriate exemption(s) are listed with each record on Appendices D and E.

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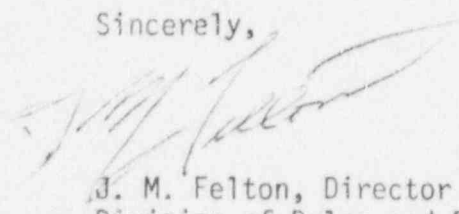


Pursuant to 10 CFR 9.15 and 10 CFR 9.9 of the Commission's regulations, it has been determined that the information withheld is exempt from production or disclosure and that its production or disclosure is contrary to the public interest.

This denial may be appealed to the Commission (in cases of denial by Mr. Samuel Chilk) or the Commission's Executive Director for Operations, (in cases of denial by another official) within 30 days from the receipt of this letter. Any such appeal must be in writing, addressed to either the Secretary of the Commission or the Executive Director for Operations, as appropriate, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should clearly state on the envelope and in the letter that it is an "Appeal from an Initial FOIA Decision."

This completes NRC's action on your request.

Sincerely,



J. M. Felton, Director
Division of Rules and Records
Office of Administration

Enclosures: As stated

APPENDIX C

1. 12/22/78 - Memo, Commissioner Ahearne to Acting Director, NMSS, "Tarapur"
2. (a) 1/11/79 - Memo, J. Becker to Chilk, "Re: In the Matter of Edlow International Company (Agent for the Government of India on Application to Export Special Nuclear Material) License No. XSNM-1222, Docket No. 70-2738," and enclosures:

(b) 1/11/79 - "NRC Staff Comments on Proposed Export of Special Nuclear Material to India for the Tarapur Atomic Power Station"

(c) Undated - Certificate of Service
3. 1/25/79 - Memo, Dircks to Shea, "Draft NRC Staff Recommendations Pertaining to Proposed License to Export Low Enriched Uranium to India (Application XSNM-122)"
4. 2/9/79 - Memo, Commissioner Bradford to Commission, "Tarapur"
5. 6/20/80 - Memo, C. Kammerer to Commission, "Exportation of Nuclear Fuel to India for the Tarapur Power Plant"
6. Undated - Memo, C. Kammerer to Commission, "Tarapur Hearing" (6/26/80 hearing)
7. Undated - Routing and Transmittal Slip, Oplinger to R. Page and J. Partlow
8. Undated - Memo, Dircks to Commissioner Bradford, "NRC Memoranda from December 1, 1978 to Present on the Tarapur Licensing Case"

APPENDIX D

1. 1/3/79 - Memo, Dircks to Commissioner Ahearne, "State Criticism of Table V Conclusions". Portions of this memo are withheld pursuant to Exemptions 1 and 4. (Denying Official: John G. Davis, Director, Office of Nuclear Material Safety and Safeguards)
2. (a) 1/8/79 - Memo, Oplinger to Sherr (released in entirety) transmitting
 - (b) Undated - Draft "NRC Staff Comments on Proposed Export of Special Nuclear Material to India for the Tarapur Atomic Power Station (License No. XSNM-1222)". Portions of this draft memo are withheld pursuant to Exemption 1. (Denying Official: James R. Shea, Director, Office of International Programs)
3. (a) 1/10/79 - Memo, Sherr to Dircks, Burnett, Carter, Perchonok, Page, and Partlow, "Draft NRC Staff Comments Proposed for the Hearing on Export of Special Nuclear Material (License No XSNM-1222)" (released in entirety) with:
 - (b) 1/10/79 - Memo, Sherr to Oplinger on the same subject (released in entirety) enclosing:
 - (c) Undated - "Comments on Draft NRC Staff Paper Pertaining to Export Hearing Dated 1/8/79". Portions of this record are being withheld pursuant to Exemptions 1 and 4. (Denying Official: John G. Davis, Director, Office of Nuclear Material Safety and Safeguards)
4. 1/11/79 - "NRC Staff Comments on Proposed Export of Special Nuclear Material to India for the Tarapur Atomic Power Station" submitting supplementary classified views. Portions of this record are being withheld pursuant to Exemption 1. (Denying Official: James R. Shea, Director, Office of International Programs)
5. 1/26/79 - SECY-78-596A. Portions of this record are being withheld pursuant to Exemption 1. (Denying Official: James R. Shea, Director, Office of International Programs)
6. 1/26/79 - Memo, Commissioner Bradford to Commission, "Tarapur". Portions are withheld pursuant to Exemptions 1 and 5. (Denying Official: Samuel J. Chilk, Secretary of the Commission)
7. 2/15/79 - Memo, Dircks to Commissioner Ahearne, "Tarapur - Adequacy of Safeguards". Portions of this memo are withheld pursuant to Exemptions 1 and 4. (Denying Official: John G. Davis, Director, Office of Nuclear Material Safety and Safeguards)
8. 4/17/79 - Memo, Gibbon to Commissioner Bradford, "SECY-79-260. Export of Reactor Components to India". Portions are withheld pursuant to Exemption 5. (Denying Official: Samuel J. Chilk, Secretary of the Commission)

APPENDIX D

9. 1/21/80 - SECY-79-674A (portions deleted) with enclosure "OELD's Views" (released in entirety). Portions of this SECY paper are withheld pursuant to Exemption 1. (Denying Official: James R. Shea, Director, Office of International Programs)
10. 1/22/80 - Memo, Gibbon to Commissioner Bradford, "Export of Components to Tarapur. Attachment withheld pursuant to Exemption 5. (Denying Official: Samuel J. Chilk, Secretary of the Commission)

APPENDIX E

1. 12/1/78 - Memo to Commission from Shea, "Tarapur Application (XSNM-1222) - Information on Indian Activities and Programs Relevant to Nuclear Explosions". This memo is being withheld pursuant to Exemption 1. (Denying Official: James R. Shea, Director, Office of International Programs)
2. 12/21/78 - Memo to Commissioner Kennedy from William Dircks, "Summarization of IAEA Safeguards Implementation Report; with enclosure. These are being withheld pursuant to Exemption 1 and 4. (Denying Official: John G. Davis, Director, Office of Nuclear Material Safety and Safeguards)
3. 2/14/79 - Memo to Leonard Bickwit from Peter A. Bradford on your February 13 memorandum on the Legislative History of the NNPA. This memo is withheld pursuant to Exemption 5. (Denying Official: Samuel J. Chilk, Secretary of the Commission)
4. 1/31/80 - Memo to Commissioner Bradford from Tom Gibbon on SECY-79-674A - Export of Components to India for the Tarapur Reactors. This memo is withheld pursuant to Exemption 1 and Exemption 5. (Denying Official: Samuel J. Chilk, Secretary of the Commission)
5. 6/13/80 - Memo to Tom Gibbon from Peter A. Bradford on thoughts on Tarapur. This memo is withheld pursuant to Exemption 5. (Denying Official: Samuel J. Chilk, Secretary of the Commission)
6. 6/18/80 - Memo to Commissioner Bradford from Tom Gibbon on Senate Tarapur Hearing. This memo is withheld pursuant to Exemption 5. (Denying Official: Samuel J. Chilk, Secretary of the Commission)

CENTER
FOR
LAW
AND
SOCIAL
POLICY

~~APPEAL OF INITIAL FOUNDATION~~

FOIA-80-335

rec'd. 06/30/80 June 1980

HAND-DELIVERED

Joseph M. Felton, Director
Div. of Rules & Records/U.S. NRC
Md. Nat'l Bank Bldg., Rm. 4210
7735 Old Georgetown Rd.
Bethesda, MD 20555

FREEDOM OF INFORMATION
ACT REQUEST

FOIA-80-335

rec'd 6/30/80

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Nancy Duff Campbell
Deborah C. Conlow
Clifton E. Curtis
Roger S. Foster
L. Thomas Galloway
Marcia D. Greenberger
Margaret A. Kahn
J. David McAteer
Leonard C. Meeker
Sanford A. Newman
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Heidi P. Sanchez
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Richard L. Webb
Attorneys at Law
* Not admitted in D.C.

Export of Special Nuclear Material and Replacement Parts
to India (License Nos. XSNM-1379, XSNM-1569, XCOM-0240,
XCOM-0250, XCOM-0376, XCOM-0381, XCOM-0395)--Request for
Production of Documents

Dear Mr. Felton:

This is a request under the Freedom of Information Act, as amended (5 U.S.C. §552), for access to the records specified below.

On June 19, 1980, the President submitted to Congress an Executive Order authorizing exports to India of special nuclear material and replacement parts for use at the Tarapur power station in India (licenses XSNM-1379, XSNM-1569, XCOM-0240, XCOM-0250, XCOM-0376, XCOM-0381, XCOM-0395).

Section 130(a) of the Atomic Energy Act allows 45 days of continuous session for the Committee on Foreign Relations of the Senate and the Committee on International Relations of the House of Representatives to prepare reports of views and recommendations and to pass resolutions approving or disapproving the President's actions. The undersigned have been invited to appear before these committees and to submit written statements on behalf of several public interest groups to assist members of Congress in making their decisions. The documents requested would enable the undersigned to contribute more effectively to the Congressional review procedure provided for in the Act in addition to enhancing the general public debate regarding this important question.

On May 14, 1976 and December 19, 1978 the undersigned presented similar requests to the Department of State (the "Department") for production of specified documents concerning the export of special nuclear materials to India pursuant to

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License Applications Nos. XSNM-805, XSNM-845 and XSNM-1222. Those requests were made in connection with public proceedings held on the above license applications by the Nuclear Regulatory Commission. This request should be considered supplemental to those earlier requests. Where the requests specified below are substantially the same as those previously made, the production should be deemed to refer to documents not previously made available. With that qualification, we hereby request access to any and all written reports, memoranda, studies, correspondence or other pertinent documents in the custody of the Department with respect to:

1. The effect on U.S. non-proliferation policy of India's failure to commit itself absolutely to refrain from the development of further nuclear explosive devices;
2. The effect on U.S. non-proliferation policy of India's failure to accept safeguards on all its nuclear facilities and of India's ability to develop nuclear weapons in unsafeguarded facilities;
3. The effect on U.S. non-proliferation policy of the absence of Indian agreement regarding safeguards for future reprocessing of spent fuel, including the risk that special nuclear material shipped to Tarapur will not be used for peaceful purposes;
4. The total amount of U.S.-supplied enriched nuclear fuel shipped to India to date, broken down by percentage of enrichment, size and date of each shipment, and the expected time frame for using any such fuels which have not yet been sent or used at Tarapur, including analysis of the documented present imbalance between the three fuel enrichments needed to power Tarapur, an explanation of the reasons for this imbalance, and its implications for the present fuel enrichment mixture in license applications XSNM-1379 and XSNM-1569 as opposed to alternative fuel enrichment mixtures;
5. The capability and likelihood that India will construct, test and/or use nuclear explosive devices, including the text of communications to and from India on this issue, analyses regarding Prime Minister Gandhi's assurances, and analyses as to how U.S. perceptions on these matters have been affected by the January 1980 change in India's government;

6. The negotiations that have transpired between the U.S. and Indian governments since the inception of the Nuclear Non-Proliferation Act in 1978 to gain India's acceptance of full-scope safeguards on all its nuclear facilities, including the text of all communications to and from the U.S. embassy in India on this issue, analyses of the likelihood that India will adopt full-scope safeguards on its remaining unguarded nuclear facilities in the near future, and analyses of how this timing and likelihood have been affected by the January 1980 change in India's government.

We ask that the records requested above be made available for inspection and copying at the Department's Public Document Room, Room 2811, Department of State, 21st Street and Virginia Avenue NW, Washington, D.C. At such time as the records requested are made available, we will determine whether we will want any of the records reproduced.

We believe that this request is "in the public interest, because furnishing the information can be considered as primarily benefitting the public," and that any applicable fees should therefore be waived as permitted under the amended Freedom of Information Act. The documents requested are relevant to the Congressional hearings and the debates scheduled with respect to the President's decision to ship special nuclear material and replacement parts to Tarapur. The documents requested will provide needed background and bases for assessing the issues raised by the pending exports. Their production will facilitate the formulation of issues for the written comments to be submitted by the undersigned for the record of these hearings and otherwise enhance the opportunity for a more complete discussion of the issues by all participants.

If you determine that some or all of the records requested are exempt from release, please state which exceptions you believe cover the materials you are not releasing. In this connection, we advise you that we are prepared, if necessary, to execute an appropriate protective agreement with respect to any confidential or proprietary document, or, if the document requested falls within the categories specified in 22 C.F.R. §6.4(a)(1), (3), (5), to abide by such protective orders or agreements as the Department may deem appropriate. Finally, if you determine that some portions of the requested records are exempt, we ask that you make available the remainder of the records, to the extent that the records determined to be exempt are "reasonable segregable," as provided in the amended Act.

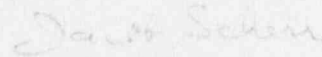
June 30, 1980

Page Four

It is our intent that this Freedom of Information Act request benefit all members of Congress and the public interested in the Tarapur exports and the hearings which have been scheduled to consider that issue. As provided for in the amended Freedom of Information Act, we expect to receive a reply at least within ten (10) working days. We urge that the documents be produced as quickly as possible, as they become available, in light of the fast-approaching deadline for Congress' decision on this matter.

If you have any questions concerning this request, we would appreciate your contacting us by telephone to expedite consideration of this matter.

Sincerely,



Jacob Scherr

Natural Resources Defense Council



James Barnes

Center for Law and Social Policy

/cp