

JUN 3 1982

119

MEMORANDUM FOR: J. M. Felton, Director  
Division of Rules and Records, ADM

FROM: James J. Cummings, Director  
Office of Inspector and Auditor

SUBJECT: DISCLOSURE DETERMINATION FOIA 82-206

Original signed by  
James J. Cummings

As requested in your memorandum of May 26, 1982 on the above subject, the two documents in question have been reviewed. I have determined that there is no objection to the release of the August 10, 1981, memo from me to Keppler. However, the second document, with enclosures, i.e. Memo, Cummings to Davis re: Zimmer Interviews and Corporate Correspondence, dated November 11, 1981, should not be released pursuant to 5 U.S.C. 552(b)(5) and (7), 10 CFR 9.5(a)(5)(i) and (7) because the document constitutes an internal memorandum for use within the NRC and its release could interfere with enforcement proceedings in that it is part of an ongoing investigation.

Distribution:  
OIA FOIA 82-206 RSmith  
OIA Reading  
CONTACT: Ronald M. Smith, OIA  
492-7170

8505290487 841227  
PDR FOIA  
BAUSER84-415 PDR

OFFICE	OIA: RSmith:jw	OIA: AGauthier	OIA: JCummings				
JRNAME	6/3/82	6/3/82					
DATE		6/3/82					

United States District Court  
FOR THE  
District of Columbia

PENN., J. 1<sup>c</sup>

82- 1829

CIVIL ACTION FILE NO. \_\_\_\_\_

THOMAS APPLGATE  
3950 WOODBRIDGE ROAD  
COLUMBUS, OHIO 43220

Plaintiff

v.

SUMMONS

NUCLEAR REGULATORY COMMISSION  
1717 "H" ST. N.W.  
WASHINGTON, D.C. 20555

Defendant

To the above named Defendant : NUCLEAR REGULATORY COMMISSION

You are hereby summoned and required to serve upon

LYNNE BERNABEI, ESQ.

plaintiff's attorney, whose address is:

GOVERNMENT ACCOUNTABILITY PROJECT  
OF THE INSTITUTE FOR POLICY STUDIES  
1901 Q STREET, N.W.  
WASHINGTON, D.C. 20009

an answer to the complaint which is herewith served upon you, within 30 days after service of this  
summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be  
taken against you for the relief demanded in the complaint.

JAMES F. DAVEY

Clerk of Court.

Deputy Clerk.

Date: JUN 30 1982

[Seal of Court]

NOTE:—This summons is issued pursuant to Rule 7 of the Federal Rules of Civil Procedure.

81-39 ✓

United States District Court  
For the District of Columbia  
Office of the Clerk  
3rd and Constitution Avenue, N.W.  
Washington, D. C. 20001

James F. Davey  
Clerk

NOTICE OF RIGHT TO CONSENT TO TRIAL  
BEFORE A UNITED STATES MAGISTRATE

The Federal Magistrates Act of 1968, 28 U.S.C. §636(c), as amended on October 10, 1979, requires the Clerk of Court to notify all parties in each civil action, that they may voluntarily consent to have the case tried with a jury or without a jury before a United States Magistrate. If all parties so consent, and the Court concurs, the matter will be referred to a Magistrate for disposition.

The plaintiff (or counsel) has received a consent form. If the parties agree to trial before a Magistrate, plaintiff (or counsel) shall have all the parties (or counsel) jointly execute the consent form and file it in duplicate with the Clerk at any time prior to the pretrial Order.

In accordance with 28 U.S.C. §636(c), any aggrieved party may appeal from the judgment directly to the United States Court of Appeals for the circuit in the same manner as an appeal from any other judgment of the District Court. The parties may further stipulate, at the time of the reference to the Magistrate, that the appeal shall be taken instead to a District Court Judge.

The consent form is not required to be executed or returned to the Clerk of the Court unless all parties voluntarily consent to this procedure. If an executed consent form is not received by the Clerk prior to the pretrial Order, the case will proceed to disposition before a United States District Court Judge in the normal fashion.

James F. Davey  
JAMES F. DAVEY  
Clerk of the Court

CO-942A  
Rev 2/80

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

THOMAS APPLGATE  
3950 Woodbridge Road  
Columbus, Ohio 43220

Plaintiff

v.

NUCLEAR REGULATORY COMMISSION  
1717 "H" Street, N. W.  
Washington, D. C. 20555

Defendant

PENN, J.

Civil Action No. 82- 1829

JUN 30 1982

COMPLAINT FOR ACCESS TO RECORDS AND  
DECLARATORY AND INJUNCTIVE RELIEF

1. This is an action under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, as amended, to order the production of agency records.
2. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B).
3. Plaintiff Thomas Applegate is the requestor of the agency records which have been improperly withheld.
4. Defendant Nuclear Regulatory Commission ("NRC") is an agency of the United States and has possession of the records to which plaintiff seeks access.
5. On November 23, 1981, plaintiff made a written request to the NRC for all notes, memoranda, telephone logs, tapes, diaries and/or other records prepared by government employees in connection with an August 7, 1981 Report of the Office of Inspector and Auditor ("OIA") entitled "Special Inquiry re: Adequacy of IE Investigation, 50-358/80-9 at the William H. Zimmer Nuclear Power Station."



6. Under cover letter of December 31, 1981, defendant responded by releasing sixteen documents in their entirety, withheld two documents in part, and withheld four documents in their entirety.

7. On January 29, 1982, within the time limits allowed by the Act, plaintiff appealed this initial NRC decision.

8. By letter of March 22, 1982, the NRC affirmed its initial decision to withhold four documents in their entirety. Defendant also stated in unequivocal language that the NRC did not possess any informal records, drafts, or notes relating to the OIA Report, and indicated that those documents the NRC either released or withheld were the only documents responsive to plaintiff's request that the NRC currently possessed.

9. Plaintiff is entitled to access of all such records responsive to his request, including but not limited to the following documents which plaintiff has reason to believe exist:

(a) The summary of a March 6, 1981 interview conducted by OIA investigators with Mr. Terry Harpster, an NRC Reactor Preparations Specialist on detail to the House of Representatives Government Operations Committee, Subcommittee on Energy, Environment and Natural Resources Committee. In the interview Mr. Harpster allegedly stated that-- 1) another NRC inspector left the NRC after being introduced to the oversight program at Zimmer, because it was so inadequate; 2) the licensee, Cincinnati Gas and Electric ("CG&E"), was relying on personnel inexperienced in nuclear power to oversee construction; 3) he had raised these concerns with CG&E Vice President Earl Borgmann, but without success; 4) in July 1978 the licensee promised to upgrade its program; 5) at the time of the Three Mile Island accident the licensee only had one Quality Assurance staff person for operations at Zimmer; 6) a plant management official was afraid to tour the plant because of all the convicted felons working on site; 7) licensee officials made untrue statements to the Advisory Committee on Reactor Safety ("ACRS") and failed to correct the record after being

informed of the inaccuracies; 8) Charles Barth of the NRC Office of the Executive Legal Director advised that a letter from NRC Region III Administrator James Keppler about the inaccurate ACRS testimony should be thrown away; and 9) the situation at the Zimmer plant was "out of control" when he left the site at the time of the Three Mile Island accident.

(b) Any explanation in the text of the OIA final report, or any prior draft, concerning Attachment 10 that describes a course and instructions to NRC investigators on conducting a non-criminal investigation.

This explanation is not included in the publicly-released OIA Report and no reference to this text has been found in any other documents released to plaintiff in response to plaintiff's FOIA request.

10. There is no legal basis for defendant's denial of such access.

WHEREFORE, plaintiff prays that this Court:

(1) Order defendant to make the information available as requested, including but not limited to all information listed in subsection (9) above;

(2) Expedite the proceedings in this action as provided in 5 U.S.C. § 552(a)(4)(B);

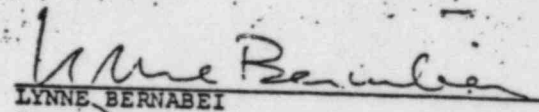
(3) Order defendant to provide plaintiff with an index of all documents withheld in part or in whole, as required by Vaughn v. Rosen, 484 F.2d 820 (D.C. Cir. 1973), cert. denied, 415 U.S. 977 (1974);

(4) Award plaintiff costs and reasonable attorney fees in this action, pursuant to 5 U.S.C. § 552(a)(4)(E);

(5) Issue a written finding, pursuant to 5 U.S.C. § 552(a)(4)(F), that the circumstances surrounding the withholding raise questions whether agency personnel acted arbitrarily or capriciously with respect to the withholding, and a written finding whether agency personnel acted illegally in denying the existence of certain documents; and

(6) Grant such other and further relief as the Court may deem just and proper.

Respectfully submitted,



LYNNE BERNABEI  
Government Accountability Project  
of the Institute for Policy Studies  
1901 "Q" Street, N. W.  
Washington, D. C. 20009  
(202) 234-9382

Attorney for Plaintiff

DATED: June 30, 1982



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CABLE "SHAWLAW"

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STEPHEN B. HEIMANN  
\*NOT ADMITTED IN D.C.

July 2, 1982

WRITER'S DIRECT DIAL NUMBER  
(202) 822-1032

Mr. James A. Cummings  
Director  
Office of Inspector and Auditor  
U. S. Nuclear Regulatory Commission  
Washington, D. C. 20555

Dear Mr. Cummings:

I represent Kaiser Engineers, Incorporated with regard to matters relating to the Zimmer Power Station near Cincinnati, Ohio, and specifically with regard to the Notice of Violation issued by the Nuclear Regulatory Commission to Cincinnati Gas & Electric Company in November 1981.

In the course of that representation, we reviewed Region III's investigation report No. 50-358/81-13. Attachment A to that Report reflects that Floyd Oltz, a Kaiser employee, was interviewed on February 25, 1981, (p. 11), and on June 4, 1981, (pp. 3-5), and that at least the latter interview was tape-recorded and a transcript produced. However, the transcript was not attached to the Report, nor was any statement by Mr. Oltz.

We, accordingly, requested from Region III a copy of the transcript of the June 4 interview, which was provided to us. We subsequently asked to be allowed to listen to the tape from which the transcript was prepared, and Mr. Robert Warnick of Region III agreed to make it available. However, he said it was in the custody of your office, and when we reached Mr. Puglia of your staff he suggested that we put our request in writing to you.

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Mr. James A. Cummings

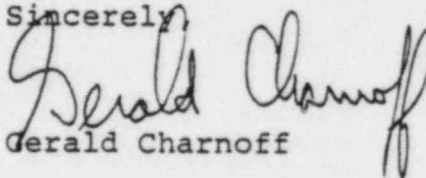
July 2, 1982

page two

We would like to listen to the tape of the June 4 interview of Mr. Oltz to verify the accuracy of the transcript we have received. We would also like to listen to any other tape recordings of interviews of Mr. Oltz or other Kaiser personnel during the course of that investigation. If it is more convenient, we can come to your office for this purpose, or we would borrow the tape and listen to it at our office if that is agreeable. Please call me at the above number, or my partner Patrick Hickey at 822-1103, and let us know a time when we could do this.

Thank you for your cooperation.

Sincerely,

A handwritten signature in dark ink, appearing to read "Gerald Charnoff". The signature is fluid and cursive, with the first name "Gerald" and last name "Charnoff" clearly distinguishable.

Gerald Charnoff