



OFFICE OF THE
SECRETARY

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

June 13, 1985

Mr. Stephen Kohn
Clinical Director
Government Accountability Project
1555 Connecticut Avenue, N.W.
Suite 202
Washington, DC 20036

IN RESPONSE REFER TO:
85-A-19C
(FOIA-84-876)

Dear Mr. Kohn:

This is in response to your May 2, 1985, Freedom of Information Act appeal of the decision of Ben B. Hayes, Office of Investigations. The Commission has determined that the records which are the subject of the initial request remain exempt from mandatory public release and that their release would be contrary to the public interest. Accordingly, your appeal is denied.

The documents which you requested from the Office of Investigations (OI) are investigatory records compiled for law enforcement purposes. These documents meet the Exemption 7(A) threshold requirement of investigatory records because they reflect or resulted from specifically focused inquiries by the NRC. See generally Center for National Policy Review on Race and Urban Issues v. Weinberger, 502 F.2d 370 (D.C. Cir. 1974).

The disclosure of these documents, which concern an ongoing investigation, could result in interference with civil (regulatory) enforcement proceedings which qualifies for Exemption 7(A) protection. See, e.g., Ehringhaus v. Federal Trade Commission, 525 F. Supp. 21 (D.D.C. 1980). Because the disclosure of these documents could allow those under investigation to shield potential wrongdoing or wrongdoers or to conceal a violation of NRC requirements from our investigators, the Commission has determined that the documents should continue to be withheld in their entirety pursuant to Exemption 7(A) of the FOIA, 5 U.S.C. 552(b)(7)(A) and 10 CFR 9.5 (a)(7)(i) of the Commission's regulations.

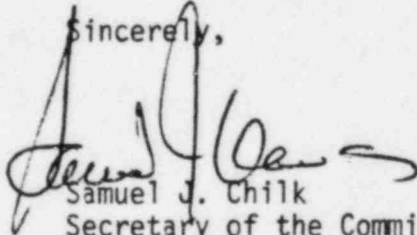
Exemption 5 was also asserted for Documents 4 and 5 on Appendix B of Mr. Felton's letter of April 3, 1985. These documents are drafts containing the preliminary advice, opinions, and recommendations of members of a field office to the Director, Office of Investigations. The release of these predecisional documents would inhibit the open and frank exchange of ideas, views, advice and recommendations between subordinates and their supervisors. Since the documents are both predecisional and deliberative, and since their release could, in the Commission's view, adversely affect the quality of the agency's future deliberations, they are of the type of documents contemplated by Congress as exempt from mandatory disclosure under the FOIA. See, NLRB v. Sears, Roebuck & Co., 421 U.S. 132, 150 (1975); Coastal States Gas

Corp. v. Dept. of Energy, 617 F.2d 854, 866 (D.C. Cir. 1980); Vaughn v. Rosen, 523 F.2d 1136, 1143-44 (D.C. Cir. 1975). For these same reasons, the Commission has decided that the release of these documents is not in the public interest. Moreover, the documents contain no reasonably segregable factual portions. See, Ryan v. Dept. of Justice, 617 F.2d 781, 790-91 (D.C. Cir. 1980); Mead Data Central, Inc. v. Dept. of the Air Force, 506 F.2d 242, 256 (D.C. Cir. 1977); Williams v. Dept. of Justice, 556 F. Supp. 63, 65 (D.D.C. 1982). Accordingly, the Commission has determined that the documents should continue to be withheld in their entirety pursuant to the "deliberative process" privilege incorporated by Exemption 5 of the FOIA, 5 U.S.C. 552(b)(5), and the Commission's regulations, 10 CFR 9.5(a)(5).

Exemption 6 and 7(C) were also asserted for documents 2, 8, 10, 13, 14, 15, 17, 18, 19, and 20 on Appendix B of Mr. Felton's letter of April 3, 1985. The agency is no longer asserting Exemption 6 and 7(C) for documents 19 and 20. The remaining documents contain information, the release of which could cause a clearly unwarranted invasion of the personal privacy of several individuals. As established above in the discussion of the applicability of Exemption 7(A) to these documents, these records are investigatory records compiled for law enforcement purposes. Nonetheless, the FOIA requires an agency to balance the public interest in disclosure, if any, against the privacy interests which would be invaded by the disclosure of those records. There are well-recognized privacy interests in the type of information these documents contain, such as home addresses and phone numbers. In this instance, the Commission finds the public interest to be in nondisclosure. Accordingly, the Commission has determined that this information should continue to be withheld pursuant to Exemptions 6 and 7(C) of the FOIA, 5 U.S.C. 552(b)(6) and (7)(C), and 10 CFR 9.5(a)(6) and (7)(iii) of the Commission's regulations.

This represents final agency action on your May 2, 1985 FOIA appeal. Judicial review of this decision is available in Federal district court in the district in which you reside, have your principal place of business, or in the District of Columbia.

Sincerely,



Samuel J. Chilk

Secretary of the Commission