



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

JUN 06 1985

PDR
016

Ms. Lynne Bernabei, Esquire
Government Accountability Project
1555 Connecticut Avenue, NW, Suite 202
Washington, DC 20036

IN RESPONSE REFER
TO FOIA-85-122

Dear Ms. Bernabei:

This is in further response to your letter dated February 19, 1985, in which you requested, pursuant to the Freedom of Information Act (FOIA), documents related to the Three Mile Island (TMI) Nuclear Power Plants and/or the Department of Justice's inquiry into potential wrongdoing by NRC employees.

The documents identified on the enclosed Appendices pertain to Categories 5, 6 and 7 of your request.

The documents identified on enclosed Appendix C are being placed in the NRC Public Document Room (PDR) located at 1717 H Street, NW, Washington, DC 20555, in file folder FOIA-85-122 in your name. The document identified on enclosed Appendix D is already in the PDR. I have indicated the file location beside the document description.

Portions of the documents identified on enclosed Appendix E and the documents identified on the enclosed Appendix F are being withheld. The documents contain the predecisional analyses, opinions and recommendations of the Commissioners, and between the Commissioners and their staffs, on issues in the TMI-restart proceeding. Because the documents reflect the predecisional process among the Commissioners, and between the Commissioners and their staffs, the documents are exempt from mandatory disclosure pursuant to Exemption 5 of the FOIA, 5 U.S.C. §552(b)(5), and the Commission's regulations, 10 CFR §9.5(a)(5). Release of the documents would tend to inhibit the open and frank exchange of ideas essential to the deliberative process. The releasable portions of the documents identified on Appendix E are being placed in the PDR. The documents identified on Appendix F do not contain any reasonably segregable factual portions and are being withheld in their entirety.

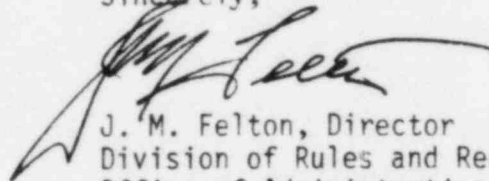
The documents identified on enclosed Appendix G are drafts which contain the predecisional analyses, opinions and recommendations of the staff on the response to the Commonwealth of Pennsylvania, Three Mile Island Alert and the Union of Concerned Scientists' Motion to Disqualify Judge Ivan Smith. The documents are being withheld from public disclosure pursuant to Exemption 5 of the FOIA, 5 U.S.C. §552(b)(5), and 10 CFR 9.5(a)(5) of the Commission's regulations. The documents do not contain any reasonably segregable factual portions, and are being withheld in their entirety.

Pursuant to 10 CFR 9.15 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. The person responsible for the denial of the documents on Appendix G is Guy H. Cunningham, III, Executive Legal Director. The person responsible for the denial of the documents on Appendix E and 1 through 66 on Appendix F is John C. Hoyle, Assistant Secretary of the Commission. The person responsible for the denial of Document 67 on Appendix F is B. Paul Cotter, Jr., Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

This denial may be appealed to the Commission within 30 days from the receipt of this letter. Any such appeal must be in writing, addressed to the Secretary of the Commission, 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."

The search for and review of documents that are subject to your request are continuing. We will notify you upon completion of the search and review.

Sincerely,

A handwritten signature in dark ink, appearing to read "J. M. Felton", is written over the typed name and title.

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

Enclosures: As stated

APPENDIX C

Documents Being Placed in the PDR

1. 06/25/84 Vote sheet of J.K. Asselstine on SECY-84-251, "Licensee's Request for Stay of ALAB-772 (Management Decision of TMI-1 Restart Proceeding)." (1 page)
2. 09/06/84 Vote sheet of J.K. Asselstine on SECY-84-330B, "Revision: Review of ALAB-772 (The Management Decision in the TMI-1 Restart Proceeding) and ALAB-738 (Reopening on Hartman Allegations)." (1 page)
3. 09/06/84 Vote Sheet on J.K. Asselstine on SECY-84-317 "Licensee's Request for Stay of ALAB-772 (Management Decision on TMI-1 Restart Proceeding) and TMIA Request to Lift Stay of ALAB-738 (Decision Reopening Record of Hartman Allegations)." (1 page)
4. 09/07/84 Vote sheet of J.K. Asselstine on SECY-84-323, "Review of ALAB-774 -- In The Matter of Metropolitan Edison Company" (1 page)
5. 09/07/84 Memo from P. Davis to A. Bates, "TMI-1 Order-Dissent," with attached, "Dissenting Views of Commissioner Asselstine." (4 pages)
6. 11/15/84 Vote sheet of J.K. Asselstine on SECY-84-431, "TMI-1 Restart -- Hearings on Accuracy of Dieckamp Mailgram and Adequacy of Licensee's Training Program." (1 page)
7. 12/04/84 Memo from S.J. Chilk to H.H.E. Plaine and J.E. Zerbe, "SECY-84-431 - TMI-1 Restart -- Hearings on Accuracy of Dieckamp Mailgram and Adequacy of Licensee's Training Program." (1 page)
8. 01/15/85 Letter from Rep. Robert Edgar to Chairman Palladino (1 page)
9. 01/16/85 Letter from Sen. Arlen Specter to Cmrs. (1 page)
10. 01/18/85 Vote sheet of J.K. Asselstine on SECY-84-475, "Whether Further Hearings are Warranted in TMI-1 Restart Proceeding on Issues Other Than Training and Dieckamp Mailgram." (2 pages)

APPENDIX C

(Continued)

11. 01/24/85 Memo from S.J. Chilk to J.E. Zerbe & H.H.E. Plaine, "Staff Requirements - Discussion of Need for and Impact of Further TMI-1 Hearings, 2:00 P.M., Wednesday, January 16, 1985, Commissioners' Conference Room, D.C. Office (Open to Public Attendance) (1 page)
12. 01/31/85 Letter from F.D. Linn, Lower Swatara Township Board of Commissions to NRC (1 page)
13. 02/08/85 Vote sheet of J.K. Asselstine on SECY-85-51, "Motions to Disqualify Judge Ivan Smith in TMI-1 Restart Proceeding." (1 page)
14. 02/12/85 Letter from Rep. George Gekas to Chairman Palladino (2 pages)
15. 02/12/85 Vote sheet of J.K. Asselstine on SECY-84-475A, "Revised TMI-1 Order." (1 page)
16. 02/13/85 Memo from P. Davis to A. Bates, "Dissenting Views on TMI Hearings Order," with attached, "Dissenting Views of Commissioner Asslestine." (13 pages)
17. 02/19/85 Memo from S.J. Chilk to H.H.E. Plaine, "Secy-85-51-Motions to Disqualify Judge Ivan Smith in TMI-1 Restart Proceeding." (1 page)

Re: FOIA-85-122

APPENDIX D

Document Already in the PDR

1. 02/13/85 Open Commission Meeting Transcript - Affirmations on Hearings Warranted and Discussion of Impact of Hearings on Possible Restart of TMI-1 (30 pages) Accession No. 8502200546, PDR/10 CFR/PT 9.7

APPENDIX E

Documents Being Withheld In Part

1. 08/24/84 Vote sheet of J.K. Asselstine on CR-84-78, Letter to Sen. Arlen Specter re possible restart of TMI-1, enclosing draft response letter. (The draft letter is being withheld, the remaining portions are being placed in the PDR) (2 pages)
2. 09/07/84 Vote sheet of J.K. Asselstine on CR-84-84, letter to Sen. Heinz re TMI-1 restart, enclosing 2 page draft response. (The draft response is being withheld, the remaining portions are being placed in the PDR) (1 page)
3. 09/07/84 Vote sheet of J.K. Asselstine on CR-84-83, letter to John Minnich re Commission vote on TMI-1 restart, enclosing 2 page draft response. (The draft response is being withheld, the remaining portions are being placed in the PDR). (1 page)

APPENDIX F

Documents Being Withheld

1. Undated Handwritten notes of P. Davis on 8/9/84 paper, "SECY-84-317 - Licensee's Request for Stay of ALAB-772 (Management Decision in TMI-1 Restart Proceeding) and TMIA Request to Lift Stay of ALAB-738 (Decision Reopening Record of Hartman Allegations).
2. Undated Handwritten notes of P. Davis and J. Austin on 8/30/84 paper, "SECY-84-330B - Revision: Review of ALAB-772 (The Management Decision in the TMI-1 Restart Proceeding) and ALAB-738 (Reopening of Hartman Allegations)."
3. 09/04/84, 9/5/84, 9/6/84, 9/7/84, Vote sheets of L.W. Zech, T.M. Roberts, N.J. Palladino and F. Bernthal respectively on SECY-84-330B-Revision: Review ALAB-772 (The Management Decision in the TMI-Restart Proceeding) and ALAB-738 (Reopening of Hartman Allegations)."(1, 3, 1 & 5 pages respectively)
4. 11/02/84 Handwritten note to file from P. Davis on 11/1/84 memo from B. Reamer to Cmr. Legal Assts., "Memo to OGC/OPE Regarding TMI-1 (Restart)," (1 page)
5. 11/05/84 Memo from N.J. Palladino to H.H.E. Plaine, "TMI-1 (Restart)," (1 page)
6. 11/13/84, 11/14/84, 11/21, 84, 11/25/84 Vote sheets of L.W. Zech, T.M. Roberts, N.J. Palladino and F. Bernthal respectively on "SECY-84-431-TMI-1 Restart--Hearings on Accuracy of Dieckamp Mailgram and Adequacy of Licensee's Training Program." (1, 4, 1 & 1 pages respectively)
7. 11/27/84 Memo from N.J. Palladino to Files "Progress and Status on TMI-1 Restart." (2 pages)
8. 11/28/84 Memo from S.J. Chilk to Cmr., "Staff Requirements Memorandum," which attached draft memo from S.J. Chilk to H.H.E. Plaine and J.E. Zerbe, "Secy-84-431-TMI-1-Restart--Hearings on Accuracy of Dieckamp Mailgram and Adequacy of Licensee's Training Program." (2 pages)
9. 12/06/84 Vote sheet of J.K. Asselstine on CR-84-114, Response to Rep. Bevill regarding NRC's credibility and effectiveness in responding to TMI-1 restart
10. 12/07/84 Memo from W. Russell to E. Goodwin re: Status of Operating Licenses for Six Individuals with marginal notations and with various related handwritten notes attached. (6 pages)

APPENDIX F

(Continued)

11. 12/18/84 Two sets of SECY-84-475, "Whether Further Hearings are Warranted in TMI-1 Restart Proceeding on Issues Other Than Training and Dieckamp Mailgram," from Zerbe/Plaine to Comm'n dated 12/18/84 w/marginal notations and with various related handwritten notes attached. (82 pages each)
12. 12/18/84 Undated handwritten notes of P. Davis and J. Asselstine on 12/18/84 paper, "SECY-84-475-Whether Further Hearings Are Warranted in TMI-1 Restart Proceeding on Issues other than Training and Dieckamp Mailgram."
13. 12/21/84 Advance copy of SECY-84-480, w/marginal notes and with various related handwritten notes attached. (Palladino office) (48 pages)
14. 12/26/84 Chairman's office annotated copy of SECY-84-480, -"TMI-Restart: Deciding Whether to Lift Effectiveness While Hearings are Ongoing from Zerbe/Plaine to Comm., (42 pages)
15. 01/07/85 TMI Notes (Palladino office) (3 pages)
16. 01/14/85 Memo from NJP to Comm'n re: Letters from Judges in TMI-1-Restart Proceeding to Federal District Court Judge Rambo (2 copies)
17. 01/14/85 Undated handwritten note of P. Davis on 1/14/85 memo from B. Reamer to Cmr. Legal Assts., "SECY-84-475."
18. 01/15/85, 01/17/85, 01/23/85, and 02/06/85 Vote sheets of L.W. Zech, T.M. Roberts, N.J. Palladino and F. Bernthal respectively on "SECY-84-475-Whether Further Hearings are Warranted in TMI-1 Restart Proceeding on Issues Other than Training and Dieckamp Mailgram," (2, 7, 3 & 3 pages respectively)
19. 01/15/85 Note for Comm. Bernthal from Steve subj: TMI-1 Restart. (7 pages)
20. 01/15/85 Memo from NJP to Comm'n re: January 16 Meeting on TMI-1 Hearings. (1 page)
21. 01/16/85 Notes: Questions regarding SECY-84-475; (Bernthal office) (1 page)
22. 01/16/85 Notes: Status of TMI Issues Discussed in SECY-84-475 by Steve Sohinki. (4 pages)

APPENDIX F

(Continued)

23. 01/16/85 Draft opening Remarks, Discussion of Need for an Impact of Further TMI Hearings, Wed 1/16/85 (Palladino Office) (5 pages)
24. 01/16/85 Questions for Zerbe regarding January 16, 1985 meeting. (Palladino Office) (2 pages)
25. 01/16/85 Memo from NJP to Chilk re: Public Release of TMI-1 (Restart) (2 pages)
26. 01/16/85 Summary Statement re: TMI- Issues, circa 1/16/85 (Palladino office) (3 pages)
27. 01/25/85 Memo from C. W. Reamer to Cmr. Legal Assts., "SECY-84-475," (1 page)
28. Undated Handwritten notes of P. Davis on 1/25/85 memo from H. H. E. Plaine to L. Zech, "TMI-1 Restart -- Hearings on Accuracy of Dieckamp Mailgram and Adequacy of Licensee's Training Program."
29. 01/25/85 Memorandum from B. Reamer to For The Files re: Telecon with Rick Levi, OGC. (3 pages)
30. 01/25/85 Note from Bill Reamer to NJP re: TMI-1 Order on Further Hearings enclosing memo from Reamer to Legal Assts re SECY-84-475; NJP response dated 1/27. (9 pages)
31. 01/28/85 Note for Comm Bernthal from Steve, subject: SECY-84-475. (2 pages)
32. 01/28/85 Note for Comm Bernthal from Steve, subject: SECY-84-475. (2 pages)
33. 01/31/85 Draft document entitled "Public Statement Regarding TMI-1 Restart Meeting" (Palladino Office) (3 pages)
34. 02/01/85 Memo from L. W. Zech to Chairman Palladino, "TMI-1 Restart - Licensee's Training Program," COMLZ-85-1. (1 page)
35. 02/01/85 TMI-1 Restart-Asselstine Proposal dated 2/1/85 w/marginal notes. (Palladino office) (5 pages)
36. 02/01/85 Memo from L. Zech to N.J. Palladino, "TMI-1 Restart-Licensee's Training Program." (1 page)
37. 02/04/85 Note from Comm Bernthal from Steve, subject: SECY-84-475. (2 pages)

APPENDIX F
(Continued)

38. 02/06/85 Memo from N. J. Palladino to Cmr's., "SECY-84-475-Whether Further Hearings are Warranted in TMI-1 Restart Proceeding on Issues Other Than Training and Dieckamp Mailgram." (1 page)
39. 02/06/85 Memo from NJP to Comm'n re: SECY-84-475 Whether Further Hearings are Warranted in TMI-1 Restart Proceeding on Issues Other than Training and Dieckamp Mailgram," w/attached notes and NJP vote sheet on SECY-84-475. (7 pages)
40. 02/07/85 Draft SECY-85-51-Motions to Disqualify Judge Ivan Smith in TMI-1 Restart Proceeding circa 2/7/85 (Palladino Office). (7 pages)
41. 02/08/85 Advance Copy of REVISED TMI-1 ORDER dated 2/8/85 from Zerbe/Malsch w/marginal notations (Palladino office). (101 pages)
42. 02/09/85, 02/10/85, 02/11/85 and 02/11/85 vote sheets of L. W. Zech, T.M. Roberts, N.J. Palladino and F. Bernthal respectively on "SECY-85-51, Motions to Disqualify Judge Ivan Smith in TMI-1 Restart Proceeding." (1 page each)
43. 02/11/85, 02/11/85, 02/12/85 and 02/12/85 vote sheets of L.W. Zech, T.M. Roberts, N.J. Palladino and F. Bernthal respectively on "SECY-84-475A-Revised TMI-1 Order," (1, 1, 1, & 2 pages respectively).
44. 02/11/85 NJP Vote Sheet re: SECY-84-475A. (1 page)
45. 02/11/85 NJP Vote Sheet, SECY-85-51-Motions to Disqualify Judge Ivan Smith in TMI-1 Restart Proceeding. (3 pages)
46. Undated Handwritten notes of P. Davis on 2/11/84 paper, "SECY-84-475A-Revised TMI-1 Order."
47. 02/11/85 SECY-84-475A-REVISED TMI-1 ORDER, from Zerbe/Malsch to Comm'n w/marginal notations." (Palladino office) (101 pages)
48. 02/12/85 Note from J.K. Asselstine to Lando typed on copy of 2/1/85 memo from L.W. Zech to Palladino re TMI-1 Restart Licensee's Training Program (1 page)
49. 02/13/85 Proposed Talking Points for 2/13 meeting (Palladino Office) (10 pages)
50. Undated Draft of notation vote. (Palladino office) (10 pages)
51. Undated Draft, with handwritten notes, of Chairman Palladino's Opening Remarks, Affirmation of Hearings and Discussion of Impact Wednesday, February 13, 1985, 10:30 AM." (2 pages)

APPENDIX F
(Continued)

52. 02/13/85 2 copies of memo from P. Davis to A Bates re: Dissenting Views on TMI Hearings Order; one copy with NJP cover note; 2nd copy w/RL comments. (13 pages)
53. 02/15/85 Memo from Chilk to Comm'n re Staff Requirements Memorandum covering meeting held 2/13/85 w/NJP cover notes. (3 pages)
54. 02/15/85 Memo from S.J. Chilk to Cmr., "Staff Requirements Memorandum, which attached draft memo from S.J. Chilk to J.E. Zerbe and H.H.E. Plaine, "Staff Requirements-Affirmation on Hearings Warranted and Discussion of Impact of Hearings on Possible Restart of TMI-1, 10:30 AM, Wednesday, 2/13/85, Commissioners' Conference Room, DC Office (Open to Public Attendance)." (2 pages)
55. 02/27/85 Memo from J.K. Asselstine to Joe typed on copy of 2/26/85 memo from N.J. Palladino to Cmr., "TMI-1 (Restart)." (2 pages)
56. Undated Draft of SECY-84-475 Vote Sheet (Palladino Office). (5 pages)
57. Undated Talking Points on TMI (Palladino office). (5 pages)
58. Undated NJP handwritten remarks regarding TMI meeting (Palladino office). (3 pages)
59. Undated Notes: Public Policy Argument for Additional Hearings on all outstanding Issues; no date. (Bernthal office) (1 page)
60. Undated Notes: General Points on SECY-84-475, no date (Bernthal office). (1 page)
61. Undated Draft Hartman Statement (Palladino office). (3 pages)
62. Undated Draft questions for TMI Meetings (Palladino office). (2 pages)
63. Undated Document, "TMI-1 Restart--Asselstine Proposal;" (627 pages)
64. Undated Handwritten comments of P. Davis on page 1 of draft letter to PA State Rep. Bruce Smith regarding his request that Ivan Smith be replaced as Chairman of TMI-1 restart ASLB. (1 page)
65. Undated One page draft of vote sheet, one page of draft order w/related handwritten notes (Palladino office). (4 pages)

APPENDIX F
(Continued)

- 66. Undated Draft of Chairman's Separate Statement. (39 pages)
- 67. Undated Draft sections of the Order of Judge Smith concerning the motion for his recusal.

APPENDIX G

Documents Being Withheld

- 1-12. Various undated drafts of the NRC Staff's Response to Commonwealth of Pennsylvania, Three Mile Island Alert and Union of Concerned Scientists Motions to Disqualify Judge Ivan Smith.

GOVERNMENT ACCOUNTABILITY PROJECT

1555 Connecticut Avenue, N.W., Suite 202
Washington, D.C. 20036

(202) 232-8550

February 19, 1985

FREEDOM OF INFORMATION ACT REQUEST

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

FREEDOM OF INFORMATION ACT REQUEST

FOIA-85-122
Rec'd 2-21-85

To Whom It May Concern:

Pursuant to the Freedom of Information Act (FOIA) 5 U.S.C. § 552, et seq., the Government Accountability Project (GAP), requests copies of all agency records and information, including but not limited to notes, letters, memoranda, drafts, minutes, diaries, logs, calendars, tapes, transcripts, summaries, interview reports, procedures, instructions, engineering analyses, drawings, files, graphs, charts, maps, photographs, agreements, handwritten notes, studies, data sheets, notebooks, books, telephone messages, computations, voice recordings, and other data compilations on which or through which information is transmitted, interim and/or final reports, status reports, and all other records relevant to or generated in connection with the following:

- (1) The Department of Justice grand jury convened to investigate or inquire into potential wrongdoing by Nuclear Regulatory Commission ("NRC") employees or officials in dealing with, inter alia, the Three Mile Island and Zimmer nuclear power plants;
- (2) The proposed and/or admitted testimony of David H. Gamble before the Atomic Safety and Licensing Board ("ASLB") which is presiding over the Three Mile Island restart proceedings, including but not limited to any memoranda, correspondence or other communication between or among the Commissioners or their offices, the Office of General Counsel, the Office of Inspector and Auditor, the Office of Executive Legal Director, the Atomic Safety and Licensing Board Panel, ASLB Judge Ivan W. Smith; ASLB Judge Robert Lazo, and/or the NRC Staff

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concerning Mr. Gamble's testimony, the possible application of the Ethics in Government Act to his testimony, and/or any restrictions on his testimony before the TMI restart ASLB;

- (3) The inquiry by the Department of Justice and/or the NRC's Office of Inspector and Auditor into potential harassment or intimidation of Dave Gamble appearing as a witness for the intervenor Three Mile Island Alert in the TMI-1 restart proceedings and into possible ex parte contacts between the Commission or any office acting on behalf of the Commission and the NRC Staff or the ASLB;
- (4) The proposed testimony of former NRC Commissioners Victor Gilinsky and Peter Bradford in the TMI-1 restart proceedings, including but not limited to any opinions or position papers issued by the Office of General Counsel concerning this matter;
- (5) The removal and/or recusal of Ivan W. Smith, requested by all parties except licensee in the TMI-1 restart proceeding, including but not limited to any memoranda prepared for the Commission concerning this matter;
- (6) All proposed orders and other documents which justify and/or explain the basis for the Commission's decision in the TMI restart proceeding announced publicly on February 13, 1985, to refuse to hold further hearings on management integrity other than those already held, including but not limited to documents which address the concerns raised by Commissioner Asselstine at the February 13, 1985 meeting about the need for further hearings;
- (7) All proposed orders or other documents which constitute, justify, or support a Commission decision to restart TMI-1 prior to completion of all hearings on management integrity before the ASLB or prior to a decision being issued by the ASLB on those hearings already held; and
- (8) Any communications between or among Commissioners, Commissioners' offices, the Office of General Counsel, or any other office of the NRC, on the

one hand, and, on the other hand, any executive agency or the White House concerning the grand jury investigation references in item 1 above, including but not limited to any communications with Edward Meese concerning the grand jury investigation.

The items listed above are to be construed as separate items, which may be interrelated but are not necessarily interrelated.

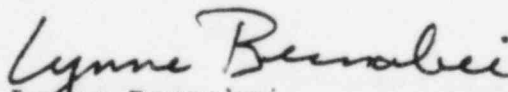
If any records have been destroyed and/or removed, please provide all surrounding records, including but not limited to a list of all records which have been or are destroyed and/or removed, a description of the action(s) taken, relevant date(s), individual, office and/or agency-wide policies and/or justification(s) for the action(s), identification of all personnel involved with the action(s), and any and all records relevant to, generated in connection with, and/or issued in order to implement the action(s).

GAP requests that fees be waived, because "finding the information can be considered as primarily benefitting the general public." 5 U.S.C. § 552(a)(4)(A). The Government Accountability Project is a non-profit, nonpartisan public interest organization concerned with honest and open government. Through legal representation, advice, national conferences, films, publications and public outreach, the Project promotes whistleblowers as agents of government accountability. GAP requests the above information as part of an ongoing monitoring project on the adequacy of the NRC's efforts to protect public safety and health at nuclear power plants.

For any documents or portions that you deny due to a specific FOIA exemption, please provide an index itemizing and describing the 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 of the document 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 look forward to your response to this request within ten days.

Sincerely yours,


Lynne Bernabei
General Counsel