

# GOVERNMENT ACCOUNTABILITY PROJECT

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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 ~~sur~~rounding 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*  
Lynne Bernabei  
General Counsel



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

APR 08 1985

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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 partial 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.

Your request asks for all records "relevant to or generated in connection with" eight specific categories of documents. Since the accident at TMI in March 1979, the Commission has created and/or received a voluminous record surrounding the events of that accident and the proceeding on whether TMI-1 should be restarted. A literal reading of your request would require identification of a large proportion of that mass of material, much of which has been provided to the parties to the restart proceeding and is also available in Docket No. 50-289 of the Public Document Room (PDR). We have therefore interpreted your request as being limited to the eight specific categories of requested documents. In addition, we are not attempting to identify those responsive documents already served on the parties to the restart proceeding since, as counsel to one of those parties, we assume you already have access to those documents, although some such documents will likely be identified in responding to you. Please advise us by April 12, 1985, of any specific additional types of documents you may be seeking.

The documents identified on enclosed Appendix A are already in the PDR. The file location is indicated beside each document description. I have also indicated beside each document description the category to which the document pertains.

The following documents, identified on enclosed Appendix B, are being withheld from public 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).

Documents 1, 2, 4, 5, 6, 7, and 9 are documents prepared jointly by the Office of the General Counsel and the Office of Policy Evaluation.



The documents are predecisional and contain the advice, analysis and recommendations of the Commission's policy and legal advisors on an adjudicatory matter pending before the Commission. The information discussed in these documents reflect the deliberative processes necessary for sound and effective agency decisionmaking. Release of these documents could tend to inhibit the open and frank exchange of ideas between the Commission and its senior policy and legal advisors in the future. There are no reasonably segregable factual portions and therefore documents 1, 2, 4, 5, 6, 7, and 9 are being withheld in their entirety pursuant to the "deliberative process" privilege of Exemption 5. Any factual information contained in these documents is already publicly available in Docket No. 50-289, Category G.

Documents 3, 8, 16 and 18 contain the legal advice, analysis and recommendations of the Commission's legal counsel on an adjudicatory matter pending before the Commission. These four documents are being withheld pursuant to the attorney-client privilege as well as the deliberative process privilege of Exemption 5. A copy of ALAB-791 attached to document 16 is already publicly available in Docket No. 50-289, Category G.

Documents 10, 12, 13, 14 and 17 are draft versions of SECY papers addressed above and are being withheld in their entirety as predecisional draft documents under Exemption 5. Document 11 contains several drafts of Congressional responses prepared by OGC in response to inquiries from members of Congress and Pennsylvania state representatives. These drafts are predecisional documents and are being withheld pursuant to Exemption 5. The final letters are all publicly available.

Document 15 is a 1-page handwritten interoffice memorandum. Because the information contained in this handwritten document would reveal significant facts which have been separated from a voluminous public record and constitutes an exercise of judgment by agency personnel, the document is being withheld pursuant to Exemption 5.

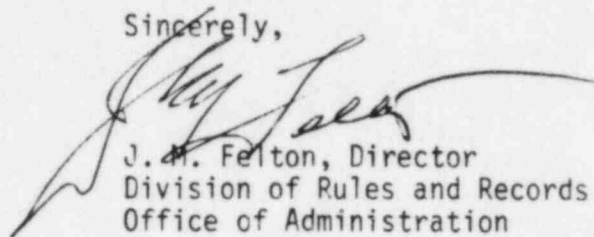
Also, document 15 addressed in the above paragraph contains the identity of certain individuals associated with TMI allegations and is being withheld under Exemption 6 of the FOIA, 5 U.S.C. §552(b)(6), and 10 CFR 9.5(a)(6) of the Commission's regulations, for personal privacy considerations.

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 these denials is James A. Fitzgerald, Assistant General Counsel.

These denials 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", with a long, sweeping horizontal flourish extending to the right.

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

Enclosures: As stated

Appendix A  
Documents Already in the PDR

| Doc. # | Date    | Description                                                                                                                                             |
|--------|---------|---------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1.     | 12/3/84 | Ltr to David Gamble, DCIS from Herzel Plaine, OGC, PDR accession no. 8412040176 [Category 2]                                                            |
| 2.     | 12/5/84 | Ltr to David Gamble, DCIS from Herzel Plaine, OGC, PDR accession no. 8412070335 [Category 2]                                                            |
| 3.     | 1/25/85 | Ltr to the Honorable Bruce Smith, Commonwealth of Pennsylvania from Herzel Plaine, General Counsel, PDR accession no. 8502040279 [Category 5]           |
| 4.     | 1/25/85 | Ltr to Hon. Robert Edgar, U.S. House of Representatives from Herzel Plaine, PDR accession no. 8502010512 [Category 5]                                   |
| 5.     | 2/22/85 | Ltr to Franklin Linn, Bd. of Commissioners, Lower Swatara Townships from M. Malsch, Deputy General Counsel, PDR accession no. 8502250256 [Category 5]   |
| 6.     | 3/5/85  | Ltr to U.S. Senator Arlen Specter from Chmn. Nunzio Palladino, PDR accession no. 8503080379 [Category 5]                                                |
| 7.     | 3/6/85  | Ltr to Hon. George Gekas, U.S. House of Representatives from M. Malsch, Deputy General Counsel, Commission Correspondence File [Categories 5, 6, and 7] |
| 8.     | 3/7/85  | Ltr to Hon. Wm. Goodling, U.S. House of Representatives from M. Malsch, Deputy General Counsel, Commission Correspondence File [Categories 5, 6, and 7] |