

GOVERNMENT ACCOUNTABILITY PROJECT

Institute for Policy Studies
1901 Que Street, N.W. Washington, D.C. 20009

(202) 234-9382

August 6, 1984

Rec'd 8/7/84

J. M. Felton
Director, Division of Rules
and Records
Office of Administration
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Re: FOIA-84-206

Dear Mr. Felton:

I am responding to your letter of July 12, 1984. In that letter, you stated that the Nuclear Regulatory Commission ("NRC") would not produce any documents responsive to our document request regarding eight contractors and subcontractors' work at the Waterford 3 nuclear plant in Louisiana. The basis for your refusal is that the documents I requested are not reasonably described and therefore my request does not comply with the requirements of the Freedom of Information Act ("FOIA").

In addition, you state that in a conversation with Linda Robinson I refused to clarify my request.

Your letter contains both factual and legal errors which I feel compelled to correct.

First, I did attempt to clarify my request with Ms. Robinson. Unfortunately, she wished to convince me to accept those documents the NRC was willing to provide, even though those documents were not responsive to my request and are already available to us, e.g., inspection reports and 50.55e reports. I then attempted to define NRC "monitoring and oversight" to Ms. Robinson as the NRC's investigative and inspection efforts to review the work of these eight contractors at Waterford 3. As you know, the NRC has expended and is currently expending a great deal of time reviewing the work of these contractors because such a large number of serious problems have been found with their work in the past. Further, as you know, the licensee for Waterford, the Louisiana Power and Light Company ("LP&L") is not itself building the plant. Instead, Ebasco is the general contractor which has delegated the vast majority of work to subcontractors, including the eight listed in my letter. Therefore, the NRC in its routine and special inspection and investigate work oversees the construction and document work of these contractors, not the work of LP&L and Ebasco. It is these documents reflecting the NRC effort which I have requested.

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Second, I told Ms. Robinson that I would limit my request to the last five to seven years of Waterford's construction, and, as stated in my letter, my request does not request documents already made publicly available to the NRC's Public Document Room.

Finally, I indicated to her that I was primarily concerned with records documenting problems with these subcontractors' work and the corrective action taken to solve these problems.

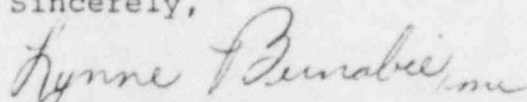
Apparently, Ms. Robinson failed to inform you accurately of our conversation or you deliberately misstated the nature of that conversation in your letter in stating that I declined to provide clarification of my request.

The case law provides that a document request reasonably describes the documents requested if "it enable[s] a professional employee of the agency who was familiar with the subject area of the request to locate the records with a reasonable amount of effort." Marks v. United States, 578 F.2d 261, 263 (9th Cir. 1978); Bristol-Myers Co. v. F.T.C., 424 F.2d 935, 938 (D.C.Cir.), cert. denied, 400 U.S. 724 (1970); H.Rep.No. 93-876, 93rd Cong., 2d Sess.6 (1974); U.S. Code Cong. & Admin. News, 1971 at 6271. This requirement of "reasonable description" relates to subject matter and place of search. Mason v. Callaway, 554 F.2d 129, (4th Cir. 1977).

In this case, it is absolutely clear the location in which a professional employee of the NRC would search for these records--is the inspection, investigative and other files of those inspectors and investigators reviewing the work of these eight contractors. Although these documents may be voluminous, the fact that the volume of documents requested is large, does not provide an agency an excuse to refuse to search for them. Sears v. Gottschalk, 502 F.2d 122 (4th Cir. 1974). Further, it is clear from directions from the U.S. Congress and the Department of Justice, that this provision of the FOIA is not to be used as a method for withholding documents and that an agency's superior knowledge of the contents of their files should be used to facilitate rather than hinder the handling of requests for documents. S.Rept., 89th Cong. 2d Sess. Moreover, the standard of identification applicable to the discovery of records in court proceedings is an appropriate definition of "reasonably identifiable." S. D. Thurman, The Right of Access to Information from the Government, "Attorney General's Memorandum-the Public Information section of the Administrative Procedure Act," (1973), at 100.

I have interpreted your refusal to produce any documents as a constructive denial and by my letter of June 7, 1984 administratively appealed this denial of my request.

Sincerely,



Lynne Bernabei

GOVERNMENT ACCOUNTABILITY PROJECT

Institute for Policy Studies
1901 Que Street, N.W., Washington, D.C. 20009

(202) 234-9382

March 21, 1984

FREEDOM OF INFORMATION ACT REQUEST

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

FREEDOM OF INFORMATION
ACT REQUEST

FOIA-84-206
Rec'd 3-27-84

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 and/or generated in connection with the Nuclear Regulatory Commission (NRC) monitoring and oversight of the following contractors at Louisiana Power and Light's Waterford Steam Electric Station, Unit 3: Mercury of Norwood, Inc.; Thompkins and Beckwith; Peabody; Slyne; Chicago Bridge and Iron; American Bridge; Gulf; and Fishbeck and Moore.

In addition, we request all documents related to problems, deficiencies, or flaws found in the work of the above-listed contractors.

You may simply list all NRC inspection reports or 10 C.F.R. 50.55(e) reports which document such problems.

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.

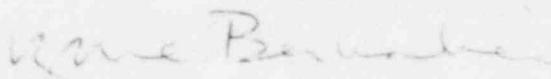
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For any documents or portions that you deny due to a specific FOIA exemption, please provide an index itemizing and describing the documents or portions of documents withheld. The index should provide a detailed justification of your grounds for claiming 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).

Please respond directly to Lynne Bernabei and Thomas Henderson, Jr. We will consider only a response to these two above-named individuals to be an acceptable response to this request. Please do not respond to Ms. Billie Garde, as this will not be considered responsive.

We look forward to your response to this request within ten days.

Sincerely yours,



Lynne Bernabei
Staff Counsel



Thomas Henderson, Jr.
Legal Intern