



OFFICE OF THE
SECRETARY

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

PDR
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June 13, 1985

Ms. Billie P. Garde
Government Accountability Project
1555 Connecticut Avenue, N.W.
Suite 202
Washington, D.C. 20036

RE: FOIA APPEAL 85-A-1 (JANUARY 9, 1985) (84-210)

Dear Ms. Garde:

This is in response to your letter of January 7, 1985 appealing an agency decision under the Freedom of Information Act (FOIA), 5 U.S.C. 552, to withhold from public disclosure, inter alia, a one-page draft letter to E.J. Markey from N.J. Palladino concerning an investigation of the NRC's Region IV office. For the reasons set out below, the Commission has decided to deny your appeal as it pertains to the document described above.


The document at issue, the final version of which was released to the public in connection with your request under the FOIA, was prepared as part of the Commission's deliberative process in drafting written communications with members of Congress. Such drafts provide the basis for individual Commissioners or their personal staffs to comment on and/or concur in proposed Commission letters to Congress signed by the Chairman in his capacity as the principal spokesman for the Commission. See, Section 2, Reorganization Plan No. 1 of 1980. The public release of such draft documents would, in the Commission's view, likely stifle honest and frank communication among the Commissioners or between a Commissioner and his personal staff to the detriment of the quality of the agency's decisions and communications with Congress. In light of the above and because the document at issue was both predecisional and deliberative, including the deliberative process of converting the draft document into a final document, the Commission has determined that the draft letter is exempt from mandatory disclosure under exemption 5 of the FOIA. 5 U.S.C. 552(b)(5), 10 CFR 9.5(a)(5). See, Coastal States Gas Corp. v. DOE, 617 F.2d 854, 866 (D.C. Cir. 1980); Russell v. Dept. of the Air Force, 682 F.2d 1045, 104850 (D.C. Cir. 1983). The Commission has further concluded that there are no reasonably segregable portions of the letter. Finally, in light of the public disclosure of the final version of the draft letter, the Commission is unable to identify any overriding public intent in disclosure which requires release of the draft notwithstanding the availability of an exemption

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under the FOIA. Accordingly, your appeal from the agency's initial December 27, 1984 decision to withhold from public disclosure, inter alia, the draft letter described above is denied in its entirety.

This letter represents the final agency action on your FOIA January 7, 1985 appeal as it relates to the draft Markey letter. Judicial review of this decision is available in the federal district court in the district in which the Government Accountability Project has its principal place of business, or the District of Columbia.

Sincerely,



Samuel J. Chalk
Secretary of the Commission

GOVERNMENT ACCOUNTABILITY PROJECT

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

January 7, 1985

(202) 232-8550

William J. Dircks
Executive Director of Operations
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

APPEAL OF INITIAL FOIA DECISION
85-A-1 EAC (84-210)
Rec'd 1-9-85

Re: Appeal from Initial FOIA Decision 84-210

Dear Mr. Dircks:

This is an appeal from an agency decision to not disclose two documents regarding the NRC's investigation into misconduct by NRC officials. Those two documents are:

1. An undated draft letter and report to R. J. Gary from G. L. Madsen re: Special Inspection at Comanche Peak (15 pages).
2. Draft letter to E. J. Markey from N. J. Palladino re: Investigation of NRC's Region IV (1 page).

After a review of the case law and the legislative intent of the Freedom of Information Act ("FOIA"), we believe your agency's refusal to disclose these documents is in error. We therefore appeal the initial decision and request reconsideration.

Sincerely,

Billie Pirner Garde

Billie Pirner Garde
Citizens Clinic Director

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