



FOIA — 96-485

RESPONSE TYPE

FINAL

☒

PARTIAL (2nd)

DATE

JAN 28 1997

DOCKET NUMBER(S) (if applicable)

REQUESTER

Neil S. Binder

hndoc  
**RESPONSE TO FREEDOM OF  
INFORMATION ACT (FOIA) REQUEST****PART I.—AGENCY RECORDS RELEASED OR NOT LOCATED** (See checked boxes)☐ No agency records subject to the request have been located.☐ No additional agency records subject to the request have been located.☐ Requested records are available through another public distribution program. See Comments section.☐ Agency records subject to the request that are identified in Appendix(es) \_\_\_\_\_ are already available for public inspection and copying at the NRC Public Document Room, 2120 L Street, N.W., Washington, DC.☒ Agency records subject to the request that are identified in Appendix(es) C are being made available for public inspection and copying at the NRC Public Document Room, 2120 L Street, N.W., Washington, DC, in a folder under this FOIA number.☐ The nonproprietary version of the proposal(s) that you agreed to accept in a telephone conversation with a member of my staff is now being made available for public inspection and copying at the NRC Public Document Room, 2120 L Street, N.W., Washington, DC, in a folder under this FOIA number.☐ Agency records subject to the request that are identified in Appendix(es) \_\_\_\_\_ may be inspected and copied at the NRC Local Public Document Room identified in the Comments section.☒ Enclosed is information on how you may obtain access to and the charges for copying records located at the NRC Public Document Room, 2120 L Street, N.W., Washington, DC.☒ Agency records subject to the request are enclosed.☐ Records subject to the request have been referred to another Federal agency(ies) for review and direct response to you.**Fees**☐ You will be billed by the NRC for fees totaling \$ \_\_\_\_\_.☐ You will receive a refund from the NRC in the amount of \$ \_\_\_\_\_.☐ In view of NRC's response to this request, no further action is being taken on appeal letter dated \_\_\_\_\_, No. \_\_\_\_\_.**PART II. A—INFORMATION WITHHELD FROM PUBLIC DISCLOSURE**☒ Certain information in the requested records is being withheld from public disclosure pursuant to the exemptions described in and for the reasons stated in Part II, B, C, and D. Any released portions of the documents for which only part of the record is being withheld are being made available for public inspection and copying in the NRC Public Document Room, 2120 L Street, N.W., Washington, DC in a folder under this FOIA number.**COMMENTS**

\*Copies of the records identified on Appendix C, with the exception of record C/3, are enclosed. Record C/3 is copyrighted and may be inspected ONLY at the NRC's Public Document Room.

SPECIAL AGENT IN CHARGE, DIVISION OF FREEDOM OF INFORMATION AND PUBLICATIONS SERVICES  
*[Signature]*9701310280 970128  
PDR FOIA  
BINDER96-485 PDR

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RESPONSE TO FREEDOM OF  
INFORMATION ACT (FOIA) REQUEST  
(CONTINUATION)

FOIA NUMBER(S)

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## PART II. B — APPLICABLE EXEMPTIONS

Records subject to the request that are described in the enclosed Appendix(es) D, E are being withheld in their entirety or in part under the Exemption No.(s) and for the reason(s) given below pursuant to 5 U.S.C. 552(b) and 10 CFR 9.17(a) of NRC regulations.

1. The withheld information is properly classified pursuant to Executive Order. (Exemption 1)

X 2. The withheld information relates solely to the internal personnel rules and procedures of NRC. (Exemption 2)

3. The withheld information is specifically exempted from public disclosure by statute indicated. (Exemption 3)

Sections 141-145 of the Atomic Energy Act, which prohibits the disclosure of Restricted Data or Formerly Restricted Data (42 U.S.C. 2161-2165).

Section 147 of the Atomic Energy Act, which prohibits the disclosure of Unclassified Safeguards Information (42 U.S.C. 2167).

4. The withheld information is a trade secret or commercial or financial information that is being withheld for the reason(s) indicated. (Exemption 4)

The information is considered to be confidential business (proprietary) information.

The information is considered to be proprietary information pursuant to 10 CFR 2.790(d)(1).

The information was submitted and received in confidence pursuant to 10 CFR 2.790(d)(2).

X 5. The withheld information consists of interagency or intraagency records that are not available through discovery during litigation. (Exemption 5). Applicable Privilege:

X Deliberative Process: Disclosure of predecisional information would tend to inhibit the open and frank exchange of ideas essential to the deliberative process. Where records are withheld in their entirety, the facts are inextricably intertwined with the predecisional information. There also are no reasonably segregable factual portions because the release of the facts would permit an indirect inquiry into the predecisional process of the agency.

Attorney work product privilege. (Documents prepared by an attorney in contemplation of litigation.)

X Attorney-client privilege. (Confidential communications between an attorney and his/her client.)

6. The withheld information is exempted from public disclosure because its disclosure would result in a clearly unwarranted invasion of personal privacy. (Exemption 6)

7. The withheld information consists of records compiled for law enforcement purposes and is being withheld for the reason(s) indicated. (Exemption 7)

Disclosure could reasonably be expected to interfere with an enforcement proceeding because it could reveal the scope, direction, and focus of enforcement efforts, and thus could possibly allow recipients to take action to shield potential wrongdoing or a violation of NRC requirements from investigators. (Exemption 7 (A))

Disclosure would constitute an unwarranted invasion of personal privacy. (Exemption 7(C))

The information consists of names of individuals and other information the disclosure of which could reasonably be expected to reveal identities of confidential sources. (Exemption 7 (D))

OTHER

## PART II. C — DENYING OFFICIALS

Pursuant to 10 CFR 9.25(b) and/or 9.25(c) of the U.S. Nuclear Regulatory Commission 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 persons responsible for the denial are those officials identified below as denying officials and the Director, Division of Freedom of Information and Publications Services, Office of Administration, for any denials that may be appealed to the Executive Director for Operations (EDO).

DENYING OFFICIAL	TITLE/OFFICE	RECORDS DENIED	APPELLATE OFFICIAL		
			EDO	SECRETARY	IG
Stephen G. Burns	Associate General Counsel for Hearings, Enforcement and Administration	Appendix D		X	
James Lieberman	Director, Office of Enforcement	Appendix E	X		

## PART II. D — APPEAL RIGHTS

The denial by each denying official identified in Part II. C may be appealed to the Appellate Official identified there. Any such appeal must be made in writing within 30 days of receipt of this response. Appeals must be addressed, as appropriate, to the Executive Director for Operations, to the Secretary of the Commission, or to the Inspector General, 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."

APPENDIX C  
RECORDS BEING RELEASED IN THEIR ENTIRETY  
(If copyrighted identify with \*)

<u>NO.</u>	<u>DATE</u>	<u>DESCRIPTION/ (PAGE COUNT)</u>
1.	10/12/94	Memorandum to Record from James Taylor, Subject: Drop-In Visit -- Florida Power and Light (2 pages)
2.	01/02/96	Letter to Florida Power & Light Company from Joseph Gray (1 page)
3.	08/15/96	*Palm Beach Post, Newspaper Article (3 pages)

APPENDIX D  
RECORDS BEING WITHHELD IN THEIR ENTIRETY

<u>NO.</u>	<u>DATE</u>	<u>DESCRIPTION/(PAGE COUNT)/EXEMPTIONS</u>
1.	Undated	Draft letter to Florida Power and Light Company from Stewart Ebnetter, Subject: Notice of Violation and Proposed Imposition of Civil Penalty (6 pages) EX. 5 PREDECISIONAL
2.	Undated	Memorandum for Thomas Murley from Jack Goldberg, Subject: 2.206 Petition Submitted by Florida Municipal Power Agency, re: St. Lucie Antitrust License Conditions (22 pages) EX. 5 PREDECISIONAL AND ATTORNEY-CLIENT
3.	02/22/93	Review of 10 CFR 2.106 NRR package issuing Amendment (4 pages) EX. 5 PREDECISIONAL
4.	09/15/93	Code Relief Request - 10 CFR 50.55A(b) for IST and 50.55a(s) for ISI (5 pages) EX. 5 PREDECISIONAL
5.	03/17/94	Review of 10 CFR 2.106 NRR package issuing Amendment (3 pages) EX. 5 PREDECISIONAL
6.	07/25/94	Review of 10 CFR 2.106 NRR package issuing Amendment (5 pages) EX. 5 PREDECISIONAL
7.	10/27/94	Review of 10 CFR 2.106 NRR package issuing Amendment (5 pages) EX. 5 PREDECISIONAL
8.	02/03/95	Review of 10 CFR 2.106 NRR package issuing Amendment (3 pages) EX. 5 PREDECISIONAL
9.	04/28/95	Code Relief Request 10 CFR 50.55a(s) for ISI (7 pages) EX. 5 PREDECISIONAL
10.	09/26/95	Enforcement Control Sheet with Escalated Enforcement Panel Questionnaire (68 pages) EX. 5 PREDECISIONAL
11.	10/11/95	Enforcement Control Sheet with undated/unsigned Memorandum to James Lieberman from Stewart Ebnetter re: EA 95-180, Florida Power and Light Company (14 pages) EX. 5 PREDECISIONAL

12. 11/06/95 Code Relief Request - 10 CFR 50.55A(b) for IST;  
50.55(a)(s) for ISI (4 pages) EX. 5 PREDECISIONAL
13. 02/05/96 Enforcement Control Sheet for Region II Enforcement  
Panel (66 pages) EX. 5 PREDECISIONAL
14. 02/05/96 Enforcement Control Sheet for Region II Enforcement  
Panel (22 pages) EX. 2 and EX. 5 PREDECISIONAL
15. 05/28/96 Review of 10 CFR 2.106 NRR package Issuing Amendment  
(4 pages) EX. 5 PREDECISIONAL

APPENDIX E  
RECORDS BEING WITHHELD IN THEIR ENTIRETY

NO.	DATE	DESCRIPTION/(PAGE COUNT)/EXEMPTIONS
1.	08/25/95	EA Request Form (EA 95-180) (1 page) EX. 5 PREDECISIONAL
2.	09/20/95	E-Mail to OEmail et al., Request for EA Number with draft Chilling Effect Letter (5 pages) EX. 5 PREDECISIONAL
3.	09/20/95	EA Request Form (EA 95-209) (1 page) EX. 5 PREDECISIONAL
4.	10/17/95	Note to Jim Beall from Mike Stein, Comments on draft action with markup (8 pages) EX. 5 PREDECISIONAL AND ATTORNEY-CLIENT
5.	07/03/96	EA Request Form (EA 96-236) (1 page) EX. 5 PREDECISIONAL
6.	07/07/96	Enforcement Action Worksheet (11 pages) EX. 5 PREDECISIONAL
7.	07/10/96	EA Request Form (EA 96-249 (1 page) EX. 5 PREDECISIONAL
8.	08/22/96	EA Request Form (EA 96-236) (1 page) EX. 5 PREDECISIONAL
9.	08/22/96	EA Request Form (EA 96-249) (2 pages) EX. 5 PREDECISIONAL
10.	08/30/96	Memo to James Lieberman from Stewart Ebnetter Subject: EA 96-236 and 96-249: Florida Power and Light Company, St. Lucie Nuclear Plant - Notice of Violation and Proposed Imposition of Civil Penalty (Special Inspection Report Nos. 50-335/96-12 and 50-389/96-12) with attached draft enforcement action (12 pages) EX. 5 PREDECISIONAL
11.	09/04/96	Handwritten Note re: EAs 236 & 249 (1 page) EX. 5 PREDECISIONAL