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RESPONSE TO FREEDOM OF
INFORMATION ACT (FOIA) REQUEST

FOIA — 96-398

RESPONSE TYPE

FINAL

☒

PARTIAL (5th)

DATE

FEB 03 1997

DOCKET NUMBER(S) (If applicable)

REQUESTER

Ms. Heidi Strobel

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) _____ 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.

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COMMENTS

The records identified on enclosed Appendix F are additional records which are responsive to your request. However, these records are being withheld in their entirety.

9/1

FOIA

SIGNATURE, DIRECTOR, DIVISION OF FREEDOM OF INFORMATION AND PUBLICATIONS SERVICES

9702070084 970203
PDR FOIA
STROBEL 96-398 PDR

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

FOIA NUMBER(S)

FOIA -- 96--398

DATE

FEB 03 1997

PART II. B -- APPLICABLE EXEMPTIONS

Records subject to the request that are described in the enclosed Appendix(es) F 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)
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).
5. The withheld information consists of interagency or intraagency records that are not available through discovery during litigation. (Exemption 5). Applicable Privilege:
- ☒ 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.)
- ☒ 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
Sandy Joosten	Executive Assistant, SECY	App. F		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 F

DOCUMENTS BEING WITHHELD IN THEIR ENTIRETY

NUMBER	DATE	DESCRIPTION/EXEMPTION/PAGES
1.	8/22/86	SECY-86-253, Memo for the Commission from Victor Stello, subject: "Proposed Technology Transfers to the People's Republic of China," (4 pgs.) - EX. 1.
2.	5/11/87	SECY-87-120, Memo for the Commission from Harold Denton, subject: "Proposed Technology Transfers to the People's Republic of China," (5 pgs.) - EX. 1.



RESEARCH INFORMATION SERVICES, INC.

July 26, 1996

DOCUMENT
RESEARCH &
RETRIEVAL

Freedom Of Information Act Officer
Headquarters, U.S. Department of Energy
1000 Independence Avenue, S.W.
Washington, DC 20585

RE: Freedom of Information Act (FOIA) Request.

To FOIA Officer,

SEARCH, REVIEW & REPRODUCTION
FOIA/PA REQUEST
Case No: 96-398
Date Rec'd: 10-7-96
Action Off: Rush
Related Case: DOE Referral

Pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C., section 522, as amended, I hereby request the following information:

- All records pertaining to the Energy Secretary's determination, under 10 CFR Part 810, dated July, 21, 1987, concerning the application of Stone and Webster Engineering Corporation ("SWEC"), including without limitation the SWEC application referred to in the Secretary's determination, all specific authorization documents provided to SWEC, all records concerning SWEC's capacity to "team" with any other entity pursuant to the authority of that determination and specific authorization, and all meeting notes and correspondence concerning all the foregoing; *and*
- All records dated after January 1, 1982, pertaining to any specific authorization under 10 CFR Part 810 sought by or granted to Westinghouse Electric Corporation (or any affiliate thereof) concerning direct or indirect assistance to the production of special nuclear material in the People's Republic of China (whether through manufacturing of nuclear fuel and/or equipment in China or in a third country (e.g., Japan, Spain, Belgium)), including without limitation all records interpreting the scope of such specific authorization(s), all applications therefor, and all meeting records and correspondence concerning all the foregoing; and
- All other records pertaining to any determination by the Secretary of Energy, dated on or after January 1, 1982, under 10 CFR Part 810 pursuant to which any person was or is authorized to utilize U.S.-origin technology for the manufacture of nuclear power reactors (or their components) or the fabrication of nuclear power reactor fuel, for ultimate use in the People's Republic of China (regardless of whether such manufacture/fabrication would occur in China or a third country and regardless of whether the authorization covered only China or other countries in addition to China), including without limitation all records interpreting the scope of such authorizations, all applications therefor, and all meeting records and correspondence concerning all the foregoing.

If this request is denied, I would like a detailed statement of the reasons for withholding the information in question. See Vaughn v. Rosen 484 F.2d 820 (DC Cir. 1973), cert. denied, 415 US 977 (1974). I also request the name(s) of the person(s) responsible for denying the request.

MAIN OFFICE

717 D STREET NW, SUITE 200 WASHINGTON, DC 20004-2891
202-737-7111 800-542-3320 202-737-3324 FAX

NEW YORK OFFICE	LOS ANGELES OFFICE	DELAWARE OFFICE	SEC OFFICE
800-477-3320	800-766-3320	800-685-3320	800-866-3320
212-349-4646	213-680-1972	302-426-9200	202-347-6666

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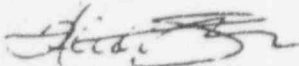
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Heidi M. Strobel
July 26, 1996
Page 2

In accordance with your regulations and with the terms of the FOIA, I agree to pay all reasonable search and copy charges upon presentation of an invoice, along with the requested material. I understand that in accordance with the regulations, a response to this request must be made by your office within ten (10) working days of its receipt.

I appreciate your attention to this matter. If you have any questions or problems, please contact me at (202) 737-7111.

Sincerely,



Heidi M. Strobel
Director, Legal Research

:hms



Department of Energy

Washington, DC 20585

October 2, 1996

Mr. Russell A. Powell
Chief, FOIA/LPDR
Division of Freedom of Information
and Publication Services
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

~~FOIA/PA REQUEST~~
~~Case No: 96-398~~
~~Date Rec'd: 10-7-96~~
~~Action Off: _____~~
~~Related Case: _____~~

Dear Mr. Powell:

Enclosed is a Freedom of Information Act request from Ms. Heidi Strobel and our response of September 25, 1996. Ms. Strobel is seeking records pertaining to determinations made by the Secretary of Energy, pursuant to Department of Energy regulation 10 CFR, Part 810, for United States companies to engage in nuclear activities in the People's Republic of China. Documents being sought in this request are similar to earlier requests that were forwarded to your agency for response from Tim Peckinpaugh (May 1995), Jay Baylon (March 1995), and Woody Voinche (June 1995).

We have informed Ms. Strobel that your agency will respond directly to her regarding any records originated by your agency falling within the scope of her request. We would appreciate receiving a copy of your response to Ms. Strobel.

Your cooperation and assistance in this matter are appreciated.

Sincerely,

Trisha Dedik
Director
Export Control Division
Office of Arms Control and Nonproliferation

Enclosures



Printed with soy ink on recycled paper

970H50000 APR



Department of Energy

Washington, DC 20585

Jim FUI

September 25, 1996

Ms. Heidi M. Strobel
Director, Legal Research
Research Information Services, Inc.
717 D Street, N.W.
Suite 200
Washington, D. C. 20004-2891

Dear Ms. Strobel:

Your Freedom of Information Act (FOIA) request of July 26, 1996, to the U. S. Department of Energy (DOE) has been referred to this office for reply.

In your letter you request, among other things, records on Part 810 determinations for the People's Republic of China (PRC) after January 1, 1982. In this regard, I wish to point out that specific determinations by the Secretary of Energy authorizing nuclear cooperation with the PRC were suspended in February 1990. With the passage of Public Law 101-246, the Secretary of Energy was precluded from authorizing assistance to the PRC under Section 57b.(2) of the Atomic Energy Act of 1954 through its implementing regulation, 10 CFR, Part 810. As a result, there have been no further Part 810 authorizations granted for the PRC since 1990.

During the past year, we have had other FOIA inquiries for records similar to that which you have requested. As a result, we have placed, with some exceptions, in the Freedom of Information Reading Room all records pertaining to specific determinations made by the Secretary of Energy authorizing U. S. firms, such as Westinghouse and Stone & Webster, to engage in specifically authorized activities in the PRC. The Reading Room is located at DOE Headquarters, Room 1E-190, 1000 Independence Ave., S.W., Washington, D.C. To insure that you have access to all 810 documents in the Reading Room, it is suggested that you direct your inquiries to Ms. Jennifer Houghton in that office at (202) 586-8050.

Excepted records, i.e., those records falling within the scope of your request that are not in the DOE Reading Room, at this time, are those originated by other Executive Branch agencies or designated as classified for national security reasons, and Stone & Webster's letter of application that led to the July 21, 1987, determination by the Secretary of Energy.

Access to Part 810 records originated by other Executive Branch agencies can be requested specifically from each of the agencies involved. I have forwarded your inquiry to the following agencies with a request that each agency respond to you separately: Departments of State, Commerce, and Defense; the Nuclear Regulatory Commission; the Arms Control and



Disarmament Agency; and the Central Intelligence Agency. Any DOE classified records pertaining to Part 810 determinations falling within the scope of your request have either been declassified and placed in the Reading Room or are undergoing declassification review. Once declassified, any such documents will be placed in the Reading Room. Authority for withholding these two categories of records pending declassification review and review by other agencies is set forth in 10 CFR, Part 1004.4(f) and 6(e).

Records pertaining to Part 810 authorizations granted to Stone & Webster to conduct activities in the PRC are in the Reading Room, albeit, most in redacted form. DOE made every effort to comply with FOIA regulations to make Stone & Webster's records publicly available, which explains the heavily redacted version of some of these documents now in the Reading Room. As noted above, Stone & Webster's application that led to the Secretary's July 21, 1987, determination is not in the Reading Room. Stone & Webster states that the withheld letter of application and the other records before being redacted are proprietary and constitute commercial information that reflects the corporation's current business development plans for China's nuclear power service market and the types and scopes of services they can offer. As such, they state that the public release of these records could cause substantial competitive harm by revealing key elements of business strategy.

DOE agrees with this and has determined that this information is commercial or financial information obtained from persons that is privileged or confidential, the release of which would be likely to cause substantial harm to the competitive position of those persons. It is, therefore, exempt from mandatory disclosure pursuant to Exemption 4 of the Freedom of Information Act, 5 U.S.C. section 552(b)(4), 10 CFR Section 1004.10(b)(4). This information has been held in confidence by the persons to whom it pertains. It is of a type customarily held in confidence by those persons, and there is a reasonable basis for doing so. The information was transmitted to and received by DOE in confidence; it is not available in public sources and, as previously stated, disclosure is likely to cause substantial harm to the competitive positions of the persons from whom it was obtained. See 10 CFR Section 1004.11(f).

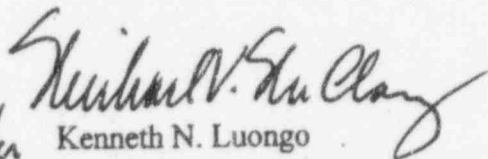
Discretionary disclosure of this information would not be in the public interest. Exemption 4 protects information implicating private commercial interests that is not ordinarily subject to discretionary FOIA disclosure. In addition, the Trade Secrets Act, 18 U.S.C. section 1905, a criminal statute effectively prohibiting the unauthorized disclosure of all data protected by Exemption 4, prohibits discretionary release of this information since no other law authorizes its release.

The Denying Official for this determination is Kenneth N. Luongo, Senior Advisor to the Secretary for Nonproliferation Policy and Director of the Office of Arms Control and Nonproliferation.

Should you wish to appeal this decision, your written appeal should be sent within 30 working days of your receipt of this letter to the Director, Office of Hearing and Appeals, HG-1, U. S.

Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585. The written appeal, including envelope, must clearly indicate that a Freedom of Information appeal is being made, and the appeal must contain all other elements required by Title 10, Code of Federal Regulations, Section 1004.8. Judicial review will thereafter be available to you: (1) in the district where you reside; (2) where you have your principal place of business; (3) where the DOE records are situated; or (4) in the District of Columbia.

Sincerely,

for 

Kenneth N. Luongo
Senior Advisor to the Secretary
for Nonproliferation and Policy and
Director of the Office of Arms Control
and Nonproliferation