



7/2/96

U.S. NUCLEAR REGULATORY COMMISSION
**RESPONSE TO FREEDOM OF
INFORMATION ACT (FOIA) REQUEST**

NRC FOIA REQUEST NUMBER(S)

FOIA — 96-485

RESPONSE TYPE

FINAL

☒

PARTIAL

(5th)

DATE

FEB 10 1997

DOCKET NUMBER(S) (if applicable)

REQUESTER

Neil S. Binder

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) I 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 I and the releasable portions of the record identified on Appendix J are enclosed.

FOIA
0/1

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

9702110389 970210
PDR FOIA
BINDER 96-485 PDR

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

FOIA NUMBER(S)

FOIA — 96-485

DATE

FEB 10 1997

PART II.B — APPLICABLE EXEMPTIONS

Records subject to the request that are described in the enclosed Appendix(es) J, K 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).

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.)

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
Frank J. Miraglia	Director, Office of Nuclear Reactor Regulation	App J, K	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 I
RECORDS BEING RELEASED IN THEIR ENTIRETY

<u>NO.</u>	<u>DATE</u>	<u>DESCRIPTION/(PAGE COUNT)</u>
1.	Various dates	Investigation Status Records, Subject: Alleged Discrimination of I&C Technician for Reporting Safety Concerns - 3 pp
2.	Undated	E-mail, from James Dockery to LJW2, Subject: DOL Case Reply - 1 p
3.	03/03/95	Exhibit 1 to ROI 2-95-008, Investigation Status Record - 1 p
4.	03/09/95	Memorandum to Bruno Uryc from William J. McNulty, Subject: Notification of Initiation of Investigation: St. Lucie Nuclear Plant: Alleged Discrimination of I&C Technician for Reporting Safety Concerns (Case No. 2-95-008/RII-95-A-0026) - 1 p
5.	03/13/95	E-mail from JJD to LMS, Subject: Allegation #RII-95-A-0026 - 1 p
6.	03/17/95	E-mail from JJD to OXD, Subject: RII-95-A-0026 (OI Ref No.: 2-95-008) - 1 p
7.	06//07/95	E-mail from JDD to OXD, Subject: RII-95-A-0026 (2-95-008) - 1 p
8.	08/23/95	E-mail from JDD to LMS, Subject: EICS Files - 1 p
9.	09/25/95	Memorandum to: Carolyn F. Evans from William J. McNulty, Subject: St. Lucie Nuclear Plant: Alleged Discrimination Against an I&C Technician for Reporting Safety Concers (Case No. 2-95-008 - 1 p
10.	10/30/95	E-mail from JDD to BXU, Subject: RII-95-A-0026 - 1 p
11.	02/20/96	E-mail from James Dockery to SKD, Subject: Request for Court Reporter Services with attachment - 2 pp

12. 03/04/96 E-mail from James Dockery to SKD, Subject: Request for Court Reporter, with attachment - 2 pp
13. 04/02/96 E-mail from James Dockery to CFE, Subject: 2-95-008 - Alleger Interview - 1 p
14. 05/30/96 E-mail from James Dockery to CFE, Subject OI Case 2-95-008 - 1 p
15. 05/30/96 E. Mail from James Dockery to EXL2, Subject: St. Lucie (OI Investigation 2-95-008) - 1 p
16. 07/31/96 OI Report of Investigation, St. Lucie Nuclear Plant: Alleged Discrimination Against an Instrumentation and Control Technician for Reporting Safety Concerns - 13 pp
17. 08/05/96 Memorandum to S. D. Ebner from W. J. McNulty, Subject: St. Lucie Nuclear Plant: Alleged discrimination Against Instrumentation and Control Technician for Reporting Safety Concerns (Case No. 2-95-008/RII-95-A-0026) - 1 p
18. 08/22/96 Memorandum to File: Case No. 2-95-008, from James D. Dockery, Sr., Subject: Telephone Conversation with Alleger - 1 p

Re: FOIA-96-485

APPENDIX J
RECORDS BEING WITHHELD IN PART

<u>NO.</u>	<u>DATE</u>	<u>DESCRIPTION/(PAGE COUNT)/EXEMPTIONS</u>
1.	4/13/94	Memorandum for William Russell from Ashok Thadani Subject: Results of (SMM) Screening Meetings (2 pages) EX. 5

Re: FOIA-96-485

APPENDIX K
RECORDS BEING WITHHELD IN THEIR ENTIRETY

<u>NO.</u>	<u>DATE</u>	<u>DESCRIPTION/(PAGE COUNT)/EXEMPTIONS</u>
1.	11/18/94	Memorandum to Patrick Baranowsky et al., from Alfred Chaffee. Subject: Request for Review of Draft Technical Evaluation Report attaching Draft Technical Evaluation Report, Engineering Analysis and Incremental Core Damage Frequency Estimation for Four Unreported Potentially Risk Significant Events (UPRSE) and One Reported Event (170 pages) EX. 5

DEBEVOISE & PLIMPTON

875 THIRD AVENUE
NEW YORK, NY 10022
(212) 909-6000

555 13TH STREET, N.W.
WASHINGTON, DC 20004
TELEPHONE (202) 383-8000
TELECOPIER (202) 383-8118

21 AVENUE GEORGE V
75008 PARIS
TELEPHONE (33-1) 40 73 12 12
TELECOPIER (33-1) 47 20 50 82

1 CREED COURT, 5 LUDGATE HILL
LONDON EC4M 7AA
TELEPHONE (44-171) 329 0779
TELECOPIER (44-171) 329 0860

TELECOPIER: (212) 909-6836

13/F ENTERTAINMENT BUILDING
30 QUEEN'S ROAD CENTRAL
HONG KONG
TELEPHONE (852) 2810 7918
TELECOPIER (852) 2810 9828

1065 BUDAPEST
REVAY KOZ 2 III / 2
TELEPHONE (36-1) 131 0845
TELECOPIER (36-1) 132 7995

November 14, 1996

Russell Powell
Chief of the FOIA/LPDR
Nuclear Regulatory Commission
Mail Stop T6D8
Washington, D.C. 20555-0001

FOIA REQUEST
96-485
11-19-96
2002
Relator's Office

Dear Mr. Powell:

This is a request under the Freedom of Information Act, 5 U.S.C. § 552. I request that a copy of all records and other documents that fit the following description be sent to me:

- 1) All records or other documents from January 1, 1993 to the present that are not currently in the public documents room and that relate to Florida Power and Light's St. Lucie Nuclear Power Plant (Unit 1 and/or Unit 2).
- 2) The number of inspection hours (by quarter) devoted by the NRC to all licensed nuclear plants in region 2 since January 1, 1993.

In order to help determine my status for the purpose of assessing any fees, you should be advised that I represent a company, and I am seeking information for use related to the company's business.

Please advise me of any fees associated with processing this request.

Sincerely,



Neil S. Binder

INVESTIGATION STATUS RECORD (page 3)

Case No.: 2-95-008

Facility: ST. LUCIE NUCLEAR PLANT

Case Agent: DOCKERY

Priority: HIGH (L. REYES, DEP RA)

Subject/Allegation: ALLEGED DISCRIMINATION OF I&C TECHNICIAN FOR REPORTING SAFETY CONCERNS

Monthly Status Report:

06/30/96: Status: RID ECD: 07/96

07/31/96: Priority changed to High at 07/09/96 meeting with EICS and Deputy RA.
Closed/Unsubstantiated

08/05/96: Issued

Closed: 07/31/96

Issued: 08/05/96

Action: U

INVESTIGATION STATUS RECORD

Case No.: 2-95-008 Facility: ST. LUCIE NUCLEAR PLANT
Allegation No.: RII-95-A-0026 Case Agent: DOCKERY
Docket Nos.: 050-335; 050-389 Date Opened: 03/03/95
Source of Allegation: ALLEGER Priority: HIGH (L. REYES, DEP RA)
Notified by: EICS Staff Contact:
Category: IH Case Code: RP
Subject/Allegation: ALLEGED DISCRIMINATION OF I&C TECHNICIAN FOR REPORTING SAFETY CONCERNS
Remarks:

Monthly Status Report: page 2

10/31/95: On 10/06/95, the NRC RII Regional Administrator forwarded a letter to the licensee, Florida Power and Light Co. (FP&L) directing FP&L to provide the NRC with the basis for the employment action against the alleged, Gary L. PHIPPS, and action planned by the licensee to assure that the employment action against the alleged does not have a chilling effect on other employees. OI has requested to be timely advised when the licensee's response is obtained so that a response may be utilized in the formal OI interview of the alleged. Status: PEN ECD: unscheduled

11/30/95: FP&L requested and was granted an extension in filing its response to the NRC "Chilling Effect" letter sent to the licensee on 10/06/95. The FP&L response is anticipated during December 1995. Status: PEN ECD: unscheduled

12/31/95: No change status. Status: PEN ECD: unscheduled

01/31/96: On 01/10/96, OI received a copy of the licensee response to the NRC "Chilling Effect" letter with an attached licensee investigation of the alleged's concerns. On 10/30/95 the alleged and the licensee entered into an agreement to settle the alleged's DOL complaint. Neither party to the settlement admitted to any culpability. On 11/30/95 a DOL Administrative Law Judge issued a Recommended Order of Dismissal of the alleged's complaint based on the settlement agreement. The Secretary of Labor has not yet issued a final ruling on the matter. Status: PEN ECD: unscheduled

02/29/96: OI interview of the alleged, PHIPPS, scheduled for 02/27/96 had to be rescheduled due to commercial carrier problems. Status: FWP ECD: 08/96

03/31/96: Based upon the assignment of Special Agent Dockery to the Region I Millstone Nuclear Plant investigation (Case No. 1-96-010) on a full time basis, the case status has changed to "Pending." Status: PEN ECD: unscheduled

04/30/96: No change. Status: PEN ECD: unscheduled

05/31/96: No change. Status: PEN ECD: unscheduled

INVESTIGATION STATUS RECORD

Case No.: 2-95-008 Facility: ST. LUCIE NUCLEAR PLANT
 Allegation No.: RII-95-A-0026 Case Agent: DOCKERY
 Docket Nos.: 050-335; 050-389 Date Opened: 03/03/95
 Source of Allegation: ALLEGER Priority: NORMAL
 Notified by: EICS Set by: S. EBNETER, RA
 Category: IH Case Code: RP
 Subject/Allegation: ALLEGED DISCRIMINATION OF I&C TECHNICIAN FOR REPORTING SAFETY CONCERNS

Remarks:

Monthly Status Report:

03/03/95: The allegor, Gary PHIPPS, a Digital Instrumentation and Control (I&C) technician at St. Lucie, stated that his Florida Power and Light Company management discriminated against him for raising concerns regarding system configuration and maintenance, and for reporting safety concerns to SPEAKOUT (the site employee concerns program). PHIPPS stated that the adverse action was in the form of his being the only I&C technician that was not assigned any outage work. Status: FWP ECD: 07/95

03/31/95: The allegor was telephonically contacted by OI on March 16, 1995. The allegor advised that he was in the process of documenting his concerns for both the NRC and his anticipated DOL complaint. The allegor agreed to be interviewed by OI after he has completed documenting his allegation which he will forward to the RII allegation coordinator. OI has advised the regional allegation coordinator to expect the allegor's complaint in the near future and requested that OI be notified upon receipt. RA has set priority at normal on 03/27/95. Status: FWP ECD: 09/95

04/30/95: The allegor was contacted on 04/13 and advised that he was delayed in preparing documentation of allegations promised during OI telephone interview on 03/16. Further interview of allegor delayed pending notification of receipt of allegor's documentation by RII allegation coordinator and review by OI. Status: FWP ECD: 09/95

05/31/95: Awaiting notification from RII EICS of receipt of allegor's supporting documentation. Status: FWP ECD: 09/95

06/30/95: On June 28 EICS:RII provided OI with a copy of the allegor's April 11, 1995, letter to RII and the DOL detailing the allegor's discrimination complaint against the Florida Power and Light Company. This documentation was requested by OI from the allegor during March 1995. Status: FWP ECD: 09/95

07/31/95: No investigative resources available. Status: NRA ECD: unscheduled

08/31/95: No change in status. Status: NRA ECD: unscheduled

09/30/95: No change in status. Status: NRA ECD: unscheduled

Kilgus