

FOIA — 96-485

RESPONSE TYPE

FINAL

X

PARTIAL (6th)

DATE

FEB 11 1997

DOCKET NUMBER(S) (if applicable)

Handwritten: nrc docs

RESPONSE TO FREEDOM OF INFORMATION ACT (FOIA) REQUEST

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) _____ 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

X

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 releasable portions of the records identified on Appendix L are enclosed.

Handwritten: FOIA 0/1

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

9702120255 970211
PDR FOIA
BINDER96-485 PDR

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

FOIA NUMBER(S)

FOIA —96-485

DATE

FEB 11 1997

PART II.B — APPLICABLE EXEMPTIONS

Records subject to the request that are described in the enclosed Appendix(es) L 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)

X 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))

X 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
Mr. Guy P. Caputo	Director, Office of Investigations	Appendix L	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 L
RECORDS BEING WITHHELD IN PART

<u>NO.</u>	<u>DATE</u>	<u>DESCRIPTION/(PAGE COUNT)/EXEMPTIONS</u>
1.	Undated	Handwritten Investigator's notes (1 page) EX. 7C
2.	Various	Case Chronology. Subject: 2-95-008 (9 pages) EX. 7C
3.	3/17/95	Memorandum for File Case No. 2-95-008 from James Dockery. Subject: Telephone Conversation with Allegor Gary Phipps re: Allegations RII-95-A-0026 (2 pages) EX. 7C
4.	4/3/95	E-Mail from James Dockery to LMS. Subject: EICS Files (1 page) EX. 7C
5.	Undated	Typewritten Investigator's Notes. Subject: 2-95-008 (1 page) EX. 7C
6.	3/8/96	Exhibit 3 to ROI 2-95-008. Investigative Interview of Individual (52 pages) EX. 7C

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
RÉVAY KÖZ 2 B / 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/PA REQUEST

Case No: 96-485
Date Rec'd: 11-19-96
Action Off: POOL
Related Case:

Dear Mr. Powell:

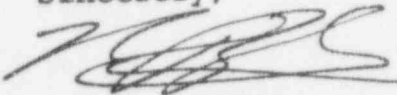
This is a request under the Freedom of Information Act, 5 U.S.C. § 552. I request that a copy of all records and other documents that fit the following description be sent to me:

- 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

WY

March 17, 1995

MEMORANDUM FOR FILE: CASE NO. 2-95-008

FROM:

James D. Dockery
James D. Dockery, Sr. Investigator
Office of Investigations Field Office, Region II

SUBJECT:

TELEPHONE CONVERSATION WITH ALLEGER GARY PHIPPS
RE: ALLEGATION RII-95-A-0026

On March 16, 1995, at approximately 6:10 p.m., Sr. Investigator James D. Dockery telephonically contacted Gary PHIPPS, the alleged in this matter, at his residence (telephone number [REDACTED]). Investigator Dockery identified himself to PHIPPS and explained the OI role in evaluating his discrimination allegation. PHIPPS responded to some preliminary questions as documented herein. 7c

PHIPPS is not represented by an attorney in this matter and does not currently anticipate retaining counsel in the future. The alleged is aware of the DOL (ERA 211) complaint procedure. His allegation dates back to October 26, 1994. Investigator Dockery advised PHIPPS that, by statute, he had 180 days within which to file the DOL complaint. PHIPPS was aware of this requirement and stated that he was currently in the process of documenting his concerns, per the request of the RII allegation coordinator. He expected to have this documentation, which would include a "time line," finished within a week to 10 days. According to the alleged, the documentation he is preparing will also serve as the basis for his DOL complaint in the matter. Investigator Dockery advised PHIPPS that he would be interviewed by OI as part of the NRC evaluation of his allegation; therefore, it would be beneficial if his documentation was reviewed by Investigator Dockery prior to that interview. PHIPPS will mail the documents to RII and arrangements have been made for OI to be advised and obtain the material when it is received by the RII allegation coordinator.

Investigator Dockery attempted to explain to the alleged that NRC interest in his discrimination allegation was purely regulatory and that any personal remedy he sought should be pursued through DOL and/or civil legal proceedings. PHIPPS preempted this explanation stating "I'm not out here to make money...I just don't want this to happen anymore." He stated "my supervisor threatened me...I just want to make sure I'm covered for the future..." and he "...just want(ed) to have it on the record."

It was also explained to PHIPPS that if it was determined that his allegations merited full investigation, due to the nature of the allegation OI could not guarantee him confidentiality. PHIPPS acknowledged that he understood he could not expect confidentiality if the matter was investigated by OI. 43

Information in this record was deleted
in accordance with the Freedom of Information
Act, exemptions 7C

FOIA- 16-485

9702120007

7C Returns

However, as PHIPPS claimed he indicated to the RII allegation coordinator, he does not want his name to become "public." Investigator Dockery explained that the NRC and OI had no intention of unduly publicizing his identity and that this concern could be discussed further when he was interviewed by OI after Investigator Dockery reviewed the documentation PHIPPS was preparing.

PHIPPS stated that he works at St. Lucie NP evenings from 11:30 p.m. until 7:30 a.m. Investigator Dockery advised that he would prefer to contact PHIPPS via his residence telephone as opposed to calling him at work and suggested that PHIPPS explain Investigator Dockery's identity to his wife. PHIPPS agreed. The telephone conversation with PHIPPS was concluded at approximately 6:40 p.m.