



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

DEC 19 1985

PDR 016

Ms. Nina Bell, Assistant Director
Nuclear Information and Resource Service
1616 P Street, NW, Suite 160
Washington, DC 20036

IN RESPONSE REFER
TO FOIA-85-536
AND FOIA-85-422

Dear Ms. Bell:

This is in response to your letters dated June 11 and July 23, 1985, in which you requested, pursuant to the Freedom of Information Act (FOIA), copies of documents related to the changes in the NRC's Government in the Sunshine Act Regulations.

The documents identified on enclosed Appendix A are being placed in the NRC Public Document Room (PDR) located at 1717 H Street, NW, Washington, DC 20555, in file folder FOIA-85-536/85-422 in your name. The documents identified on enclosed Appendix B are already available in the PDR. I have indicated the file location beside each document description.

The documents identified on enclosed Appendix C contain the predecisional legal advice, analyses, opinions, and recommendations of the Office of the General Counsel (OGC) to the Commissioners, and are being withheld under the deliberative process privilege of Exemption 5 of the FOIA (5 U.S.C. 552(b)(5)) and the Commission's regulations at 10 CFR 9.5(a)(5). In addition, the documents were prepared in response to a specific request for a legal interpretation and are being withheld under the attorney-client privilege of Exemption 5 of the FOIA. The documents do not contain any reasonably segregable factual portions and are being withheld in their entirety.

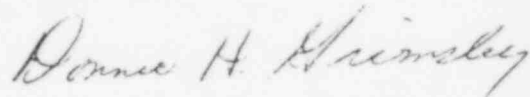
Portions of the documents identified on enclosed Appendix D and the documents identified on enclosed Appendix E contain the predecisional analyses, opinions, and recommendations of the Commissioners, and between the Commissioners and their staffs, on the changes to the Sunshine Act regulations. Because the documents reflect the predecisional process among the Commissioners, and between the Commissioners and their staffs, the documents are exempt from mandatory disclosure pursuant to Exemption 5 of the FOIA (5 U.S.C. 552(b)(5)) and the Commission's regulations at 10 CFR 9.5(a)(5). Release of the information would tend to inhibit the open and frank exchange of ideas essential to the deliberative process. The releasable portions of the documents on Appendix D are being placed in the PDR. The documents on Appendix E do not contain any reasonably segregable factual portions and are being withheld in their entirety.

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Pursuant to 10 CFR 9.15 of the Commission's 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 person responsible for the denial of the documents on Appendix C is Mr. James A. Fitzgerald, Assistant General Counsel. The person responsible for the denial of Document 28 on Appendix E is Mr. Carlton Kammerer, Director, Office of Congressional Affairs. The person responsible for the denial of portions of the documents on Appendix D, and the remaining documents on Appendix E is John C. Hoyle, Assistant Secretary of the Commission.

This denial may be appealed to the Secretary of the Commission within 30 days from the receipt of this letter. Any such appeal must be in writing, addressed to the Secretary of the Commission, 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."

Sincerely,



Donnie H. Grimsley, Director
Division of Rules and Records
Office of Administration

Enclosures: As stated

APPENDIX A

Documents Being Placed in the PDR

1. 02/25/85 Memo from F. Bernthal to Cmr., "Sunshine Act."
2. 03/22/85 Vote Sheet of J. K. Asselstine on SECY-85-67.
3. 05/01/85 Memo from J. K. Asselstine to S. J. Chilk, "Separate Views on Proposed Sunshine Rule."
4. 05/03/85 Letter from Rep. Markey to N. J. Palladino inviting NRC testimony at 5/21/85 hearing.
5. 05/06/85 Federal Register notice, "'Interim Rule With Request for Comments' on 10 CFR Part 9, Government in the Sunshine Act Regulations.
6. 05/08/85 Vote Sheet of J. K. Asselstine on "Draft Notice - Changes in NRC's Sunshine Act Regulations.
7. 05/15/85 Memo from P. Davis to D. Collins, OGC, "Request from Rep. Markey for Sunshine Documents.
8. 05/16/85 Letter from Kammerer to Markey, Subject: Changes to NRC's Sunshine Act Regulations.
9. 05/22/85 Memo from Kammerer to Comm., Subject: Markey Hearing on Sunshine Act Regulations.
10. 05/28/85 Memo from J. K. Asselstine to L. W. Zech, "Your May 23 Memorandum on Implementation of New Sunshine Act Rules."
11. 05/29/85 Memo for S. J. Chilk to H. H. E. Plaine, "Staff Requirements - Affirmation/Discussion and Vote, 2:00 p.m., Thursday, May 16, 1985."
12. 06/03/85 Letter from Reps. John Dingell, James T. Broyhill, Edward Markey, and Carlos Moorhead to N. J. Palladino.
13. 06/06/85 Letter Rep. Dennis Eckart to N. J. Palladino.
14. 06/06/85 Letter from N. J. Palladino to Reps. John Dingell, James T. Broyhill, Edward Markey, and Carlos Moorhead.
15. 06/17/85 Letter from J. C. Gibson, Citizens for Adequate Energy, to N. J. Palladino.
16. Undated Associated Press story by M. Yancey.

APPENDIX B

Documents Already Available in the PDR

1. 01/23/85 Letter from the Chairman to Rep. Tom Bevill responding to request for a reexamination of Chairman's authorities under Reorganization Plan No. 1 of 1980. Accession No. 8502060451
2. 06/19/85 Federal Register Notice, "'Interim Rule With Request for Comments: Extension of Comment Period' on 10 CFR Part 9, Government in the Sunshine Act Regulations." Accession No. 8506210143
- * 3. 07/05/85 Letter from Rep. Markey to S. J. Chilk - submits comments on rule change to Sunshine Act. Accession No. 8507150259

APPENDIX C

Documents Being Withheld

1. 05/21/84 Memo to the Commissioners from Herzel Plaine, General Counsel, Subject: Recent Supreme Court Decision on Sunshine Act (2 pages) w/attached Supreme Court Decision (Decision publicly available)
2. 02/26/85 SECY-85-67 - For the Commissioners from Herzel Plaine, General Counsel, Subject: NRC Sunshine Act Regulations. (21 pages)
3. Draft Attachment A to SECY-85-67 - Draft Proposed Rule -- Part 9, Subpart C -- Government in the Sunshine Act Regulations (13 pages)
4. 02/26/85 OGC copy of SECY-85-67 with handwritten comments to Peter Crane from M. Malsch (21 page)
5. 02/26/85 Note (unsigned) from Peter Crane, OGC to C. W. Reamer, OCM (1 page)
6. 03/06/85 Note to Bill (probably C. W. Reamer) from Peter (P. Crane, OGC) (1 page)
7. 03/28/85 Note to Bill (probably C. W. Reamer) from Peter (P. Crane, OGC) (1 page)
8. Undated Note to Marty (M. Malsch, OGC) from Peter (P. Crane, OGC) (1 page)
9. 04/01/85 Note to Bill (probably C. W. Reamer) from Peter (P. Crane, OGC) (1 page)
10. 04/15/85 Memorandum for Commissioner Asselstine from H. Plaine, OGC, subject: Draft Staff Requirements Memorandum on SECY-85-67 Sunshine Act Regulations. (10 pages)
11. 04/19/85 Memorandum for Commissioner Bernthal from H. Plaine, OGC, subject: Protecting Confidentiality of Meetings Closed Under the Government in the Sunshine Act. (7 pages)
12. 05/03/85 Memorandum for Commissioners from M. Malsch, OGC, subject: Draft Federal Register Notice -- Sunshine Act Changes w/attachments (15 pages)

APPENDIX D

Documents Being Released in Part

1. 04/08/85 Memo from Comm. Asselstine to J. C. Hoyle and H. H. E. Plaine, subject: Draft Staff Requirements Memorandum on SECY-85-67, Sunshine Act Regulations [released], w/enclosure: Undated draft memo from J. C. Hoyle to H. H. E. Plaine, subject: Staff Requirements -- SECY-85-67. (1 page) [Withheld]
2. 04/17/85 Memo from S. J. Chilk to H. H. E. Plaine, subject: Staff Requirements -- SECY-85-67, NRC Sunshine Act Regulations [released], w/enclosure: Draft proposed Federal Register notice. (13 pages) [Withheld]
3. 04/29/85 Memo from S. J. Chilk to N. J. Palladino (COMNP-85-20), subject: Staff Requirements Memorandum ton Sunshine Act Regulations [released], w/enclosures: Memo from F. Bernthal, 4/24/85; memo from L. Zech, 4/23/84; memo from J. Asselstine, 4/22/85; and memo from T. Roberts, 4/25/85. [All enclosures are addressed in Appendix D and are being withheld]

APPENDIX E

Documents Being Withheld

1. 03/01/85 Vote Sheet of L. W. Zech on SECY-85-67. (1 page)
2. 03/06/85 Briefing note from C. W. Reamer to N. J. Palladino (with handwritten note from N. Haller), "NRC Sunshine Act Regulations." (2 pages)
3. 03/07/85 Note from N. J. Palladino to C. W. Reamer. (1 page)
4. 03/07/85 Vote Sheet of N. J. Palladino on SECY-85-67. (2 pages)
5. 03/08/85 Memo from N. J. Palladino to F. Bernthal, "Sunshine Act." (1 page)
6. 03/11/85 Vote Sheet of T. M. Roberts on SECY-85-67.
7. 03/12/85 Note from S. Sohinki to F. Bernthal re: SECY-85-67. (1 page)
8. 03/14/85 Vote Sheet of F. Bernthal on SECY-85-67. (1 page)
9. 03/15/85 Memo from S. J. Chilk to J. K. Asselstine, "SECY-85-67 - NRC Sunshine Act Regulations." (1 page)
10. 03/27/85 Handwritten note from C. W. Reamer to N. J. Palladino. (1 page)
11. 03/27/85 Briefing note from C. W. Reamer to N. J. Palladino "Sunshine Act Proposed Rule." (3 pages)
12. 04/04/85 Memo from J. C. Hoyle to Cmr's, "Staff Requirements Memorandum," 1 page with attached 1 page draft memo from J. C. Hoyle to H. H. E. Plaine, "Staff Requirements -- SECY-85-67 - NRC Sunshine Act Requirements," which attaches a 13 page draft proposed Federal Register notice.
13. 04/11/85 Note from N. J. Palladino to J. K. Asselstine at bottom of 4/8/85 memo from J. K. Asselstine to J. C. Hoyle and H. H. E. Plaine, "Draft Staff Requirements Memorandum on SECY-85-67 Sunshine Act Regulations," 1 page (4/8/85 J. K. Asselstine memo is being released in Appendix B.)
14. 04/18/85 Handwritten note from N. J. Palladino to C. W. Reamer. (1 page)
15. 04/18/85 Handwritten note from C. W. Reamer to N. J. Palladino. (1 page)

APPENDIX E

Documents Being Withheld

Continued

16. 04/22/85 Response to J. A. Asselstine on bottom of memo from N. J. Palladino to Cmrs., CMNP-85-20, "Staff Requirements Memorandum on SECY-85-67 - Sunshine Act Regulations." (1 page)
17. 04/22/85 Response to J. A. Asselstine on bottom of memo from N. J. Palladino to Cmrs., COMNP-85-20, "Staff Requirements Memorandum on SECY-85-67 - Sunshine Act Regulations." (1 page)
18. 04/23/85 Memo from L. W. Zech to N. J. Palladino responding to latter's 04/22/85 memo, "Staff Requirements Memorandum on SECY-85-67 - Sunshine Act Regulations." (1 page)
19. 04/24/85 Memo from F. Bernthal to N. J. Palladino, COMNP-85-20. (1 page)
20. 04/25/85 Memo from T. M. Roberts to N. J. Palladino, "Staff Requirements Memorandum on SECY-85-67 - Sunshine Act Regulations." (1 page)
21. 05/02/85 Handwritten note from C. W. Reamer to N. J. Palladino. (1 page)
22. 05/02/85 Draft Separate Statement of N. J. Palladino re: Sunshine Act Rulemaking. (1 page)
23. 05/02/85 Memo from N. J. Palladino to H. H. E. Plaine, "Protecting Confidentiality of Meetings Closed Under the Government in the Sunshine Act." (1 page)
24. 05/03/85 Memo from C. W. Reamer to S. J. Chilk, "SECY-85-67 - NRC Sunshine Act Regulations," - 1 page, with 1 page attached entitled "Separate Statement of Chairman Palladino, Sunshine Act Rulemaking."
25. 05/07/85 Memo from C. W. Reamer to H. H. E. Plaine and C. Kammerer, "Congressman Markey's Hearing on the Sunshine Act Regulations," 1 page, with 1 page attached "Markey Questions on Sunshine Act Regulations."
26. 05/07/85 Memo from S. J. Chilk to Cmrs., "Draft Notice - Changes in NRC's Sunshine Act Regulations," - 1 page, with 1 page attached memo from M. Malsch to Cmrs., "Draft Federal Register notice -- Sunshine Act Changes," attaching 16 page draft proposed Federal Register notice, separate views and vote sheet.

APPENDIX E

Documents Being Withheld

Continued

27. 05/09/85 Vote Sheet of F. Bernthal on Draft Federal Register notice, "'Interim Rule With Request for Comments' on 10 CFR Part 9, Government in the Sunshine Act Regulations." (2 pages)
28. 05/22/85 Memo from Kammerer to Comm., subject: Talking Points on Sunshine Act Regulations per S. Kent, 12/12
29. 05/23/85 Memo from L. W. Zech to N. J. Palladino, "Possible Topics for Discussion Under the Interim Sunshine Act Regulations." (2 pages)
30. 05/28/85 Memo from F. Bernthal to L. Zech, "Your May 23 Memorandum on Implementation of New Sunshine Act Rules." (1 page)
31. 05/31/85 Memo from N. J. Palladino to L. W. Zech, "Gatherings - Topics in Your May 23 Memo." (1 page)
32. 06/04/85 Memo from L. W. Zech to N. J. Palladino responding to latter's 5/31/85 memo, "'Gatherings' - Topics in Your May 23 Memo." (1 page)
33. 07/15/85 Memo from S. J. Chilk to Cmrs., "Draft Procedures for Non-Sunshine Act Meetings." (5 pages)
34. Undated Draft Response to 6/3/85 letter from Reps. John Dingell, James T. Broyhill, Edward Markey, and Carlos Moorhead to N. J. Palladino.
35. Undated Draft response to 6/3/85 letter from Rep. John Dingell, James T. Broyhill, Edward Markey, and Carlos Moorhead to N. J. Palladino, with handwritten notes of S. Droggitis to J. K. Asselstine.
36. Undated Draft response to 6/3/85 letter from Rep. John Dingell, James T. Broyhill, Edward Markey, and Carlos Moorhead to N. J. Palladino, with handwritten notes of S. Droggitis to J. K. Asselstine.
37. Undated Note from E. Julian to P. Davis regarding proposed language for inclusion into proposed rule. (1 page)
38. Undated Draft Statement of U.S. NRC before Subcommittee on Energy Conservation and Power, Committee on Energy and Commerce. (10 pages)