

FOIA — FOIA-97-0068

RESPONSE TYPE

FINAL

☒ PARTIAL (3rd)

DATE

MAY 14 1997

DOCKET NUMBER(S) (if applicable)

REQUESTER

John R. Kyte

**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) D 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) E 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**

The records identified on enclosed Appendices D, E, F, and G, are responsive to your request. Appendix D records have already been made publicly available at NRC's Public Document Room (PDR). I have enclosed instructions to assist you in obtaining these records directly from the PDR. Appendix E records are enclosed. The Appendix F record is being withheld in part and the Appendix G records are being withheld in their entirety.

01
FIA

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

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PDR

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

FOIA NUMBER(S)

FOIA — 97-0068

DATE

MAY 14 1997

PART II.B — APPLICABLE EXEMPTIONS

Records subject to the request that are described in the enclosed Appendix(es) F&G 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
Carl J. Paperiello	Director, NMSS	App. F&G	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 D
RECORDS ALREADY AVAILABLE IN THE PDR

Re: FOIA-97-0068

<u>NO.</u>	<u>DATE</u>	<u>ACCESSION NUMBER</u>	<u>DESCRIPTION/(PAGE COUNT)</u>
1.	12/18/96	9701300038	Ltr. to Ratliff, Texas Dept. of Health from Egan, Egan & Assoc. re Review of WCS' application (2 pages) *
2.	Various		PDR Printout as of 4/10/97 of Publicly Available Records

*NOTE: This record is not enclosed. You may obtain a copy
from NRC's Public Document Room.

Appendix E
DOCUMENTS TO BE RELEASED IN THEIR ENTIRETY

<u>NO.</u>	<u>DATE</u>	<u>DESCRIPTION</u>
1.	03/29/96	Texas Natural Resource Conservation Commission's Draft License for Radioactive Material License No. RW3100 (27 pages)
2.	04/04/96	Article from LLW Forum News Flash entitled Licensing Documents Issued for Texas Site (2 pages)
3.	05/30/96	Note to TCJohnson from HLeFebvre re: Review of annual surety update for Envirocare of Utah (1 page)
4.	06/25/96	Ltr to WSinclair enclosing Bi-monthly NRC/State of Utah Report - fm: HLeFebvre - (6 pages)
5.	07/30/96	Memo to Holonich from Weber re: Review of Annual surety update submitted by Envirocare of Utah, Inc., for the Clive, Utah, Facility, Source Mat'l License SNM-1559 (1 page)
6.	09/06/96	Ltr to WSinclair enclosing Bi-monthly NRC/State of Utah Report - fm HLeFebvre - (6 pages)
7.	09/12/96	Ltr to GCopeland re: Transmitting final copy of recently modified Groundwater Discharge Permit fm; WSinclair - (75 pages)
8.	09/25/96	Article on Envirocare of Texas Statement of Basis and Purpose - (1 page)
9.	10/04/96	Memo to HLeFebvre from VAndrews re: notification of exceedences in several ground water wells at Clive, UT disposal facility - (2 pages)
10.	10/24/96	Legal documents "In the Third Judicial District Court of Salt Lake County - State of Utah" (11 pages)
11.	11/30/96	Faxed Ltr to MWeber on Comments on Envirocare's Draft EIS fm: CJudd - (5 pages)
12.	12/30/96	Ltr to WSinclair enclosing Bi-monthly NRC/State of Utah Report - fm HLeFebvre - (6 pages)

<u>NO.</u>	<u>DATE</u>	<u>DESCRIPTION</u>
13.	01/07/97	Ltr to CJudd providing a current statement relating to the status of Envirocare - fm DNIelson - (1 page)
14.	01/16/97	Memo to TCochran re: NRDC's recent petition with the NRC calling for the revocation of Envirocare's license fm: SBaughman - (3 pages)
15.	01/30/97	Note to Holonich from Lefevre re: Assessment of Staff Reliance upon State of Utah in Envirocare-Related Licensing Action - (3 pages)
16.	02/07/97	E-mail from HLefevre enclosing Envirocare talking Points - (7 pages)
17.	02/14/97	Ltr. to HLafevre from JCarter re: Forwards pages 5 and 6 of 2.206 petition and copies of first & signature pages of Anderson's complaint and Semnanis' answers (10 pages)
18.	02/18/97	Presentation package entitled, "Envirocare of Utah, NRC Groundwater Demonstration" - (22 pages)
19.	3/97	Paper entitled, "Envirocare Blending of Waste" (1 page)
20.	Undated	Article from House Research Organization entitled Andrews County Landfill Proposal (2 pages)
21.	2/7/97	Director's Decision Under 10 C.F.R. & 2.206, (15 pgs.)

Re: FOIA 97-68

APPENDIX F

DOCUMENTS BEING RELEASED IN PART

NUMBER	DATE	DESCRIPTION/EXEMPTION
1.	02/07/97	NRC Staff Evaluation of Natural Resources Defense Council Request to Suspend Sec. 274 Agreement with the State of Utah, (5 pgs.) - EX. 5.

APPENDIX G

DOCUMENTS BEING WITHHELD IN THEIR ENTIRETY

NUMBER	DATE	DESCRIPTION/EXEMPTION/PAGES
1.	04/05/96	Memo to R. Nelson re: Clarification of the Safe Concentration Limits for PU and U from R. Pierson, (1 pg.) - EX. 5.
2.	05/02/96	Note to File re: Clarification of draft calculations of 3/25/96 from R. Codeli, (3 pgs.) - EX. 5.
3.	01/21/97	E-mail to J. Kennedy and K. Schneider re: Final Revision to Utah/Envirocare memo from F. Ross, (1 pg.) - EX. 5.
4.	Undtd	DRAFT Memo to R. Bangart from K. Schneider, subject: "1994 Utah Radiation Program Review," containing handwritten notes, (4 pgs.) EX. 5.

EGAN & ASSOCIATES, P.C.

Counselors at Law

2300 N Street, N.W.
Washington, D.C. 20037
Telephone (202) 663-9200
Fax (202) 663-9066

February 24, 1996

VIA FACSIMILE ((301) 415-7010)

AND VIA FIRST CLASS MAIL

Mr. Russell A. Powell, Chief
FOIA/LPDR Branch
Division of Freedom of Information
and Publications Services
Office of Administration
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

FOIA/PA REQUEST

Case No: 97-0068
Date Rec'd: 2-25-97
Action Off: Pugh
Related Case: _____

RE: Freedom of Information Act Request

Dear Mr. Powell:

Pursuant to the Freedom of Information Act (5 U.S.C. § 552) and the U.S. Nuclear Regulatory Commission (NRC) regulations (10 C.F.R. Part 9, Subpart A), please provide me with a copy of the following documentation:¹

1. All documentation submitted to any office of NRC from or pertaining to Envirocare of Utah, Inc., since April 1, 1996.
2. All documentation sent by any office of NRC to or pertaining to Envirocare of Utah, Inc., since April 1, 1996.
3. All documentation submitted to any office of NRC from or pertaining to Waste Control Specialists LLC (WCS) of Pasadena, Texas, since April 1, 1996,

¹ "Documents" means any written, recorded or graphic material of any kind, whether prepared by NRC or by any other person, that is in NRC's possession, custody or control. The term includes, but is not limited to: letters; telegrams; cables; interoffice communications; memoranda; reports; analyses; authorizations; notebooks; lists; outlines; schedules; charts; applications; and minutes or notes of meetings or conferences (in each case whether stored in electronic/computer form or hard copy).

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Mr. Russell A. Powell

February 24, 1997

Page 2

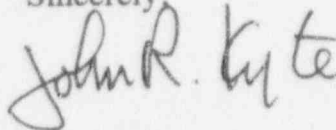
including but not limited to documentation from members of the Texas Legislature and/or representatives of Texas state government or regulatory agencies.

4. All documentation sent by any office of NRC to or pertaining to Waste Control Specialists LLC (WCS) of Pasadena, Texas, since April 1, 1996, including but not limited to documentation to members of the Texas Legislature and/or representatives of Texas state government or regulatory agencies.

If any or all of this request is denied, please cite the specific exemption(s) relied upon by NRC for such denial, and inform me of any appeal procedures available under the law. I would greatly appreciate NRC handling this request as quickly as possible as responsive documents may have relevance to on-going legal proceedings. In any event, I look forward to hearing from you within 10 days as required by law.

If you need any further information to process this request, please do not hesitate to contact me during the day at (202) 663-9051.

Sincerely,

A handwritten signature in dark ink, appearing to read "John R. Kyte". The signature is written in a cursive, slightly stylized font.

John R. Kyte