



PDR-016

FOIA-88-125

RESPONSE TO FREEDOM OF
INFORMATION ACT (FOIA) REQUEST☒ FINAL ☐ PARTIAL
DATE

APR 8 1988

DOCKET NUMBER(S) (if applicable)

REQUESTER
Charles E. Ashbaugh, III

PART I - 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.☐ Agency records subject to the request that are identified in Appendix _____ are already available for public inspection and copying in the NRC Public Document Room, 1717 H Street, N.W., Washington, DC.☒ Agency records subject to the request that are identified in Appendix A are being made available for public inspection and copying in the NRC Public Document Room, 1717 H Street, N.W., Washington, DC, in a folder under this FOIA number and requester name.☐ 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, 1717 H Street, N.W., Washington, DC, in a folder under this FOIA number and requester name.☐ Enclosed is information on how you may obtain access to and the charges for copying records placed in the NRC Public Document Room, 1717 H Street, N.W., Washington, DC.☐ Agency records subject to the request are enclosed. Any applicable charge for copies of the records provided and payment procedures are noted in the comments section.☐ Records subject to the request have been referred to another Federal agency(ies) for review and direct response to you.☐ In view of NRC's response to this request, no further action is being taken on appeal letter dated _____.

PART II A - INFORMATION WITHHELD FROM PUBLIC DISCLOSURE

☒ Certain information in the requested records is being withheld from public disclosure pursuant to the FOIA exemptions described in and for the reasons stated in Part II, sections 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, 1717 H Street, N.W., Washington, DC, in a folder under this FOIA number and requester name.

Comments

You will be billed in the amount of \$40.05 by the NRC's Division of Accounting and Finance.

8804140222 880408
PDR FOIA
ASHBAUG88-125 PDR

SIGNATURE, DIRECTOR, DIVISION OF RULES AND RECORDS

Dennis H. Shirley

FREEDOM OF INFORMATION ACT RESPONSE

FOIA NUMBER(S):

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PART II B - APPLICABLE FOIA EXEMPTIONS

Records subject to the request that are described in the enclosed Appendices B1C are being withheld in their entirety or in part under FOIA Exemptions and for the reasons set forth below pursuant to 5 U.S.C. 552(h) and 10 CFR 9.5(a) of NRC Regulations.

1. The withheld information is properly classified pursuant to Executive Order 12356 (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)

Section 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 from a foreign source 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. 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. (EXEMPTION 5)

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 investigatory records compiled for law enforcement purposes and is being withheld for the reason(s) indicated: (EXEMPTION 7)

Disclosure would interfere with an enforcement proceeding because it could reveal the scope, direction, and focus of enforcement efforts, and thus could possibly allow them 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 would reveal identities of confidential sources. (EXEMPTION 7(D))

PART II C - DENYING OFFICIALS

Pursuant to 10 CFR 9.9 and/or 9.15 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 Rules and Records, 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

John C. Hoyle

Assistant Secretary
of the Commission

App B1C

SECRETARY

EDO

PART II D - APPEAL RIGHTS

The denial by each denying official identified in Part II C may be appealed to the Appellate Official identified in that section. Any such appeal must be in writing and must be made within 30 days of receipt of this response. Appeals must be addressed as appropriate to the Executive Director for Operations or 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."

Re: FOIA-88-125

APPENDIX A
DOCUMENT BEING RELEASED IN ENTIRETY

1. 11/24/87 Memo from Andrew Bates to Victor Stello, subject: SECY-87-186A (2 pages).

APPENDIX B
DOCUMENTS BEING WITHHELD IN PART

1. 7/22/87 Memo from H. Thompson to V. Stello, subject: Commission Paper on Radioactive Gems, (1 page), released, with attachment: Undated, unsigned draft Commission paper from V. Stello to the Commissioners with enclosures, subject: Distribution of Radioactive Gems Irradiated in Reactors to Unlicensed Persons (18 pages) withheld, Exemption 5.
2. 7/28/87 SECY-87-186, subject: Distribution of Radioactive Gems Irradiated in Reactors to Unlicensed Persons, (5 pages), released, with attachments: Enclosure 1: NMSS Staff Preliminary Radiological Assessment for Gemstones Containing Radioactive Material (3 pages), released; Enclosure 2: Draft Notice of Denial of Application, (2 pages), withheld Exemption 5; Enclosure 3: Draft Notice of Denial of Application, (2 pages), withheld, Exemption 5; Enclosure 4: Draft Generic Letter, (3 pages), withheld Exemption 5; Enclosure 5: Draft Public Announcement, (3 pages), withheld, Exemption 5.
3. 10/5/87 SECY-87-186A, entitled, Distribution of Radioactive Gems Irradiated in Reactors to Unlicensed Persons (Follow-up to SECY-87-186), (7 pages), portions withheld, Exemption 5, with attachments: Enclosure 1: Staff Response to Commissioner's Questions on SECY-87-186 (22 pages), withheld, Exemption 5; Enclosure 2: Letter with attachments from Peggy Willett to Richard Cunningham, (23 pages), released; Enclosure 3: Technical Issues Associated with Distribution of Radioactive Gems (1 page) released.

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APPENDIX C
DOCUMENTS BEING WITHHELD IN THEIR ENTIRETY
PURSUANT TO EXEMPTION 5

1. 8/25/87 Memo from S. Chilk to V. Stello, subject: SECY-87-186, attaching Commissioner comments. (5 pages)
2. 8/13/87 Notation Vote Response Sheet from Commissioner Roberts, re: SECY-87-186. (1 page)
3. 10/23/87 Notation Vote Response Sheet from Chairman Zech, re: SECY-87-186. (1 page)
4. 10/30/87 Notation Vote Response Sheet from Commissioner Bernthal, re: SECY 87-186A. (2 pages)
5. 11/2/87 Notation Vote Response Sheet from Commissioner Roberts, re: SECY-87-186A. (1 page)