

**From:** [Elijah Gaglio](#)  
**To:** [FOIA Resource](#)  
**Cc:** [Michael Aguirre](#); [Maria Severson](#); [Ennis, Tina](#)  
**Subject:** [External\_Sender] Appeal from FOIA Decision in NRC-2022-000014 (Original Request NRC-2021-000235)  
**Date:** Monday, December 06, 2021 12:36:06 PM  
**Attachments:** [image001.png](#)

---

Greetings:

This e-mail serves as an appeal under the Freedom of Information Act (FOIA) to the Nuclear Regulatory Commission's (NRC) adverse determination on November 17, 2021. While it granted Mr. Aguirre's "appeal challenging the adequacy of the search performed" and found additional documents not yet produced, the NRC improperly redacted and withheld material information. The NRC described request NRC-2021-000235 seeks: "All records of communications related to the August 3rd event between NRC agents and agents of the 'facility operator' regarding the August 3rd event, for the period August 3, 2018 and September 14, 2018."

Mr. Aguirre hereby appeals the NRC's decision to redact and withhold records critical to the public's understanding of the August 3rd event and seeks all redacted information withheld in the NRC's response dated November 17, 2021. First, the NRC improperly claimed Exemption 4 for five (5) of the thirteen (13) pages the NRC produced. Under this exemption, an agency may only withhold "trade secrets and commercial or financial information obtained from a person and privileged or confidential." The NRC's response provides no basis other than the summary conclusion that the information is being withheld. Accordingly, Mr. Aguirre appeals this determination for any information redacted under Exemption 4 including, but not limited to, the attachments (totaling 5 pages) withheld in their entirety.

Furthermore, under the FOIA, agencies cannot withhold non-exempt information found in a record merely because the record also contains exempt information. Agencies have a "duty to segregate" and provide releasable information. The FOIA requires that "[a]ny reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt." 5 U.S.C. § 552 (b). Accordingly, the NRC is required to comply with its duty to segregate.

Second, the NRC improperly claimed Exemption 7 because neither 7(c) or 7(f) apply. Exemption 7(c) does not apply because the disclosure is not reasonably expected to constitute an unwarranted invasion of privacy. Nor has the NRC provided a sufficient basis that the information will be an invasion of privacy. Regarding Exemption 7(f), the NRC claims this exemption applies because the "[d]isclosure could reasonably be expected to endanger the life or physical safety of any individual." However, there is no logical basis that Exemption 7(f) applies to the name of a document.

Therefore, the NRC must provide the public records and information withheld without any redactions.

Thank you,  
Elijah Gaglio

Elijah Gaglio, Esq.  
**Aguirre & Severson, LLP**

501 West Broadway, Ste. 1050  
San Diego, CA 92101  
Office: 619-876-5364  
Cell: 909-952-0062

---

**From:** Ennis, Tina <TINA.ENNIS@nrc.gov>  
**Sent:** Wednesday, November 17, 2021 4:22 AM  
**To:** Michael Aguirre <maguirre@amslawyers.com>  
**Cc:** Maria Severson <mseverson@amslawyers.com>; Elijah Gaglio <egaglio@amslawyers.com>  
**Subject:** NRC-2022-000014 Final Response

Dear Mr. Aguirre:

We are pleased to inform you that we have completed work on the above-referenced FOIA request. In addition to posting the response to FOIA Online, which should be available to you within a few hours (if you've created an account), we have attached a copy of the final response.

Please take a moment to help us improve our FOIA processes, and let us know what your experience has been. Just click on this embedded link: <http://www.nrc.gov/reading-rm/foia/foia-user-survey.html>. Once you have completed the survey, (Note: You will need Adobe Reader in order to complete the survey online. If you do not already have Adobe Reader, you may download it for free at <https://get.adobe.com/reader/>. Just click the "SUBMIT" button and your survey response will be returned to us.

Thank you for your patience.

*Tina Ennis*

FOIA Analyst (Pathfinder Consultants Contractor)  
OCIO/GEMS/FLIC  
U.S. Nuclear Regulatory Commission  
Location: T-6A00 | Mailstop: T-6A60M  
301-415-5616  [Tina.Ennis@nrc.gov](mailto:Tina.Ennis@nrc.gov)