



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

January 5, 2022

IN RESPONSE REFER TO:
NRC-2022-000037
(NRC-2022-000014)

Sent via email to: egaglio@amslawyers.com

Elijah Gaglio, Esq.
Aguirre & Severson, LLP
501 West Broadway Suite 1050
San Diego, CA 92101

Dear Mr. Gaglio:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am responding to your email dated December 6, 2021, in which you appealed, on behalf of Michael J. Aguirre, the agency's November 17, 2021 response to your November 1, 2021 Freedom of Information Act (FOIA) request, NRC-2021-000014. This response provided the additional records noted in the Chief Information Officer's grant of your September 30, 2021 appeal (NRC-2021-000255) of your initial request (NRC-2021-000235). Your request sought all records of communications, during the time period, August 3 – September 14, 2018, between NRC agents and agents of the "facility operator" regarding the August 3rd cask loading misalignment event.

Acting on your appeal, I have reviewed the information withheld under exemptions (b)(4), (b)(7)(C), and (b)(7)(F) of the FOIA. While processing your request, the NRC determined that the five pages of responsive records withheld in their entirety under exemption (b)(4) consisted of information, obtained from a person outside the United States government, that could potentially qualify as trade secrets or confidential commercial or financial information. An agency can withhold commercial and financial information if the information is held in confidence by its owner, and if it is submitted to the agency with the assurance it will remain confidential. Pursuant to 10 C.F.R. § 9.28, the NRC contacted the submitters of these documents, who confirmed that the information is held in confidence, and was transmitted to the NRC in confidence. These five pages consist of information that is neither available in public sources nor customarily made available to members of the public. Disclosure of these five pages would cause substantial harm to the submitters' competitive positions, and therefore were properly withheld under exemption (b)(4).

I have determined that the use of exemption (b)(7)(C) was appropriate. Exemption (b)(7)(C) provides protection for information compiled for law enforcement purposes that, if disclosed, could reasonably be expected to constitute an unwarranted invasion of personal privacy. The information withheld under exemption (b)(7)(C) consists of names and other personally identifiable information of individuals involved with, or interviewed in connection with, the subject matter of the allegation. Accordingly, the redaction of this information under exemption (b)(7)(C) was appropriate.

Exemption (b)(7)(F) permits the withholding of information compiled for law enforcement purposes that, if disclosed, could reasonably be expected to endanger the life or physical safety of an individual. The information redacted under exemption (b)(7)(F), if released, would provide potential adversaries with insight into NRC security-related strategies. As such, disclosure of such information can reasonably be expected to undermine the physical security at the NRC, thereby creating a risk of harm to facility personnel and other individuals living or working near the facility. Accordingly, the information was properly withheld under Exemption (b)(7)(F).

Your appeal does not provide a reasonable basis for altering the characterization of this information. Therefore, I have denied your appeal.

This is the final agency decision with regards to this request. As set forth in the FOIA (5 U.S.C. 552(a)(4)(B)), you may seek judicial review of this decision in the district court of the United States in the district in which you reside or in which you have principal place of business. You may also seek judicial review in the district in which the agency's records are situated or in the District of Columbia.

The 2007 FOIA amendments created the Office of Government Information Services (OGIS) to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a nonexclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. You may contact OGIS in any of the following ways:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road-OGIS
College Park, MD 20740
Email: ogis@nara.gov
Telephone: 202-741-5770
Toll-free: 1-877-684-6448
Fax: 202-741-5769

Sincerely,

**David J.
Nelson**

Digitally signed by
David J. Nelson
Date: 2022.01.05
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David J. Nelson
Chief Information Officer
Office of the Chief Information Officer