



April 22, 2004

FOIA/PA REQUEST

Case No.: 2004-0220
Date Rec'd: 04-28-04
Specialist: Brown
Related Case:

NATURAL RESOURCES DEFENSE COUNCIL

NRC Freedom of Information Act
& Privacy Act (FOIA/PA) Officer
U.S. Nuclear Regulatory Commission
Mail Stop T6-D8
Washington, DC 20555-0001

Re: Freedom of Information Request

Dear Sir or Madame:

This is a request under the Freedom of Information Act ("FOIA"), 5 U.S.C. Section 552. We hereby request, on behalf of the Natural Resources Defense Council (NRDC), any and all documents:¹

- a) relating to the analysis cited by Dr. Thadani, NRC Director of Office of Nuclear Regulatory Research, when he told the NRC Commissioners on March 27, 2003 of "the new insights we gained from a recently completed integral analysis of a spent fuel pool accident scenario" (*Briefing on the Status of Research Programs, Performance, and Plans*, p. 10), and,
- b) produced by the Commission, the NRC staff or NRC contractors, or reviewed by the Commission or the NRC staff in their review of potential safety issues related to spent fuel pools arising since the terrorist attack on September 11, 2001, that provide a quantitative assessment or assessments of the vulnerability of spent fuel storage pools (including actual or hypothetical pools assumed for modeling purposes), to a postulated attack or attacks by terrorists or other external threats, including threats with and without insider assistance.

As you know, an agency cannot rely simply on the markings of a document to deny its release. For a document to be withheld under Exemption 1 of FOIA, it must be reviewed and found to be in fact properly classified pursuant to both procedural and substantive criteria found in the governing executive order. 5 U.S.C. § 552(b)(1)(B). See also *Lesar v. U.S. Dep't of Justice*, 636 F.2d 472, 483 (D.C. Cir. 1980); *Southam News v. INS*, 674 F. Supp. 881, 884 (D.D.C. 1987). This requires an actual, substantive review of the materials and their classification markings.

¹ The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda; reports; studies; reviews; analyses; presentations; working papers; records; notes; letters; notices; confirmations; telegrams; receipts; appraisals; interoffice and intra office communications; electronic mail (E-mail); contracts; cables; notations or logs of any type of conversation, telephone call, meeting or other communication; bulletins; printed matter; computer printouts; teletype; invoices; transcripts; diaries; analyses; returns; summaries; minutes; bills; accounts; estimates; projections; comparisons; messages; or correspondence. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.

A 2

Should you decide to invoke a FOIA exemption, please include in your full or partial denial letter sufficient information for us to appeal the denial. To comport with legal requirements this information must include, *inter alia*:

1. Basic factual material about each withheld item, including the originator, date, length, general subject matter, and location of each item.
2. Explanations and justifications for denial, including the identification of the category within the governing executive order or statutory provision under which the withheld document (or portion thereof) was found to be subject to classification; at what level the entire document was ultimately classified and the nature and variety of the document's portion-marking; and, most importantly, explanations of how each exemption fits the withheld material.

NRDC is a national, non-profit, tax-exempt, public-policy research and environmental organization. We make information available to thousands of citizens by means of our numerous and varied publications, our website (www.nrdc.org), educational programs, seminars, media initiatives, and public interest litigation. The information disclosed pursuant to this request will be made available to the public and others engaged in policy analysis and research, including historians, area specialists, and journalists. NRDC has repeatedly proven its ability to disseminate the information it obtains through FOIA to large segments of the public by means of membership correspondence, publications, our website, educational programs, media initiatives, comments to administrative agencies, and congressional testimony.² Each of these means is a well-accepted avenue for disseminating information to the public in a manner that can further public understanding of policy issues similar to those at issue here. NRDC intends to use one or more of these means to educate the public concerning the information contained in the records requested here. The particular selection of means for dissemination will of course depend on the volume and content of the records that DOE provides.

FOIA permits the waiver of search and copy fees where the release of information is in the public interest. 5 U.S.C. § 552(a)(4)(A)(iii). See also 10 C.F.R. § 1004.9(a)(8). Release of the documents requested here would contribute significantly to public understanding of these matters. Moreover, NRDC has no commercial interest in obtaining this information; we instead intend to make the information available to the public through the methods specified above. For these reasons we qualify for a fee waiver, and we ask that you waive all fees in connection with this request.

² We are attaching to this letter a sampling of materials revealing NRDC's past record of disseminating information to the public that was obtained from government agencies specifically in response to FOIA requests.

FOIA Request
April 22, 2004
Page 3

We appreciate your help in obtaining this information. As provided in FOIA, we will expect a reply within ten working days. If you need further information about this request or NRDC, please contact us by phone at (202) 289-6868 in order to speed consideration of this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'T. B. Cochran', with a long horizontal flourish extending to the right.

Thomas. B. Cochran
Director, Nuclear Program
Wade Greene Chair for Nuclear Policy