

FOIA REQUEST  
Case#: 2013-0016A  
Date Recd: 05/29/13  
Specialist: Kelgore  
Related Case: 2013-0213

**From:** Lawrence Criscione (b)(6)  
**Sent:** Wednesday, May 29, 2013 12:05 AM  
**To:** Borchardt, Bill  
**Cc:** Sealing, Donna; Ash, Darren; [kdouglas@peer.org](mailto:kdouglas@peer.org); [paul@times.org](mailto:paul@times.org); Jim Riccio; Louis Clark; [tomd@whistleblower.org](mailto:tomd@whistleblower.org)  
**Subject:** This is an Appeal for FOIA 2013-0213

Mr. Borchardt:

This email is an appeal for FOIA/PA 2013-0213 which is being submitted in accordance with 10 CFR §9.25(j):

*If the NRC does not respond to a request within the 20 working-day period, or within the extended periods described in paragraph (b) of this section, the requester may treat that delay as a denial of the request and immediately appeal as provided in § 9.29(a) or sue in a Federal District Court as noted in § 9.29(c).*

On Thursday, April 11, 2013 I requested 69 documents from the NRC. My incoming FOIA request is contained in the email trail below.

On Monday, April 15, 2013 I was sent an Acknowledgement Letter informing me it would take longer than 20 days for me to receive my response and informing me that the NRC was assigning tracking number 2013-0213 to my request. As of the date of this letter, it has been 31 days since FOIA/PA 2013-213 was received by the NRC.

To my knowledge, all of the documents requested are official agency records. At least sixty-two of the documents are already in the NRC's internal ADAMS but to my knowledge are not available publicly. Documents 1, 2, 3, 4, 5 & 10 might not yet be in ADAMS, but are referenced in ML081640244 and should be readily retrievable since these are either formal correspondence between the NRC and a licensee or they are internal NRC memoranda. Document 7 is likely in ADAMS already, but I do not know the ADAMS accession number. However, it should be readily found since it is associated with ML080780143. For the 62 documents already in ADAMS, the accession numbers have been provided.

On January 4, 2012 Paul Koberstein of the Cascadia Times made the following request under FOIA 2012-0106 ([ML12005A074](#)):

*"all documents that pertain to the issue of potential flooding of nuclear plants following upstream dam failures."*

Although the 69 official agency records requested under FOIA 2013-0213 clearly fell under Mr. Koberstein's 2012-01-04 FOIA request, we did not provide him any of these documents. Instead, 180 days after his request we closed FOIA 2012-0106 by providing Mr. Koberstein a mere one document. After waiting six months, all Mr. Koberstein received was a highly redacted copy of the "Screening Analysis Report for the Proposed Generic Issue on Flooding of Nuclear Power Plant Sites Following Upstream Dam Failures". We did not even provide Mr. Koberstein the NRC documents that were referenced in that report. Our response to Mr. Koberstein is in ADAMS as [ML12188A241](#).

There are some at the NRC who would point out that Mr. Koberstein could have appealed our meager record release to him. However, there is a Catch 22. When we provided Mr. Koberstein the one meager document he knew about and closed his response, how was he to know that there were literally hundreds of documents we were still withholding from him? How can the public appeal the denial of release of records when they do not even know those records exist? We had a legal obligation under the Freedom of Information Act to release to Mr. Koberstein *all documents that pertain to the issue of potential flooding of nuclear plants following upstream dam failures* and we failed to meet that obligation when we closed FOIA 2012-0106 by merely providing him one document.

On January 27, 2012 Mr. Koberstein made the following request under FOIA 2012-0128 ([ML12030A105](#)):

*"All correspondence between Duke Energy and the US NRC regarding Jocassee Dam from August 15, 2008 to the present..."*

After waiting 312 days, we provided Mr. Koberstein 8 documents on December 4, 2012. Our 2012-12-04 partial response to Mr. Koberstein's 2012-01-27 request is in ADAMS as [ML12363A094](#). The 69 official agency records listed above clearly fall under Mr. Koberstein's 2012-01-27 request, but after waiting 483 days we have still not provided them to him.

On September 18, 2012 Jim Riccio of Greenpeace made the following request under FOIA 2012-0325 ([ML12263A087](#)):

*"any and all documentation regarding Duke Energy's Oconee reactors and their vulnerability due to potential failure of the Jocassee dam."*

The 69 official agency records requested under FOIA 2013-0213 clearly fall under Mr. Riccio's 2012-09-18 FOIA request yet after waiting 252 days we still have not provided any of them to him.

In a March 19, 2009 [memorandum](#), the Attorney General stated the following regarding Open Government:

*Open government requires agencies to work proactively and respond to requests promptly. The President's memorandum instructs agencies to "use modern technology to inform citizens what is known and done by their Government." Accordingly, agencies should readily and systematically post information online in advance of any public request. Providing more information online reduces the need for individualized requests and may help reduce existing backlogs. When information not previously disclosed is requested, agencies should make it a priority to respond in a timely manner. Timely disclosure of information is an essential component of transparency. Long delays should not be viewed as an inevitable and insurmountable consequence of high demand.*

The 69 official agency records requested under FOIA 2013-0213 regard a serious safety concern at an NRC licensed commercial nuclear reactor site and thereby clearly fall under the President's definition of information the public needs in order to be informed of "*what is known and done by their Government*". And the Attorney General clearly had documents such as these 69 official agency records in mind when he stated "*agencies should readily and systematically post information online in advance of any public request.*"

I see no reason why the NRC cannot release the 69 official agency records in the 30 working days allotted by the Freedom of Information Act. This is an appeal of your de-facto decision to withhold the requested records from me.

Please do not send any correspondence to my home address. I make it back to (b)(6) infrequently. Please send all correspondence to me via this email address. If you need to provide me a hard copy of a document, please call or text me at (b)(6) and I will come by the FOIA desk to pick it up.

Thank you,  
Lawrence S. Criscione, PE  
(b)(6)