

FOIA Resource

From: Aponte, Simone (CMG-Oakland) <simone.aponte@ktvu.com>
Sent: Tuesday, August 19, 2014 7:37 PM
To: FOIA Resource
Subject: FOIA APPEAL: KTVU request for NRC Records

FOI/PA REQUEST
Case No.: 2014-0034A
Date Rec'd: 8/20/14
Specialist: Graff
Related Case: 2014-0378

Nina E. Argent
Acting FOIA Officer
Office of Information Services
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Re: Freedom of Information Act Appeal

Dear Ms. Argent:

I am writing to respectfully submit an appeal under the Freedom of Information Act.

On August, 8, 2014, I requested documents under the Freedom of Information Act. My request was assigned the following identification number: FOIA/PA-2014-00378, under the responsibility of Mark Graff. On August 15, 2014, I received a response to my request and would like to appeal its denial.

The letter I received stated that NRC was denying my FOIA request based on Exemption 5, which exempts inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency.

However, the documents that were withheld must be disclosed either entirely or in part under the FOIA for two reasons:

1. The withheld documents "must fall within the ambit of a privilege against discovery under judicial standards that would govern litigation against the agency that holds it." (*Dep't of Interior v. Klamath Water Users Protective Assn.*, 532 U.S. 1 (2001)). However, the documents withheld from this FOIA request are not subject to denial based on the rule of discovery privilege. NRC has not provided an explanation claiming that the withheld documents are protected from discovery for any active litigation or pre-litigation judicial proceedings. If this is not the case, and NRC is in fact involved in any active litigation or pre-litigation in which the withheld documents are likely to be subject to discovery privilege, I request that NRC please release the Title, Case Number, and Court in which the judicial proceedings are being heard. Otherwise, please released the withheld records as required.
2. The FOIA Exemption 5 does not cover purely factual portions of any pre-decisional documents. If any internal NRC memorandum contains advisory recommendations (and the NRC has yet to make a final decision on those recommendations), the documents should be released with only the portions related to active decision-making processes redacted. If a decision on the advisory recommendations of Dr. Michael Peck has already been made, the entire "post-decision" document is not subject to exemption under FOIA. Please confirm whether a decision is still pending or not, and release the records entirely or in part as required.

Please confirm your receipt of this appeal letter. You can reach me directly at the number below if you have any further questions or concerns regarding my request.

Thank you for your consideration of this appeal.

Sincerely,

Simone Aponte
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