

GOVERNMENT ACCOUNTABILITY PROJECT

Institute for Policy Studies

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April 20, 1982

Director
Office of Administration
Nuclear Regulatory Commission
Washington, D.C. 20555

FREEDOM OF INFORMATION
ACT REQUEST

FOIA-82-206

Rec'd 4-22-82

To Whom It May Concern:

Pursuant to the Freedom of Information Act ("FOIA"), 5 USC §552, we request the investigative file, including all drafts, memoranda, statements, affidavits, computer printouts, notes, telephone logs, diaries, or any other information connected with NRC IE Report No. 50-358/81-13. The documents may be at Region III Nuclear Regulatory Commission ("NRC") Headquarters, the NRC Office of Inspector and Auditor ("OIA") headquarters, or retained in the personal or office files of IE and OIA investigators who worked on the Zimmer case.

Although the Zimmer investigation is ongoing, Report No. 80-358/81-13 is for all intents and purposes a finished agency product which should be open for public inspection, notwithstanding exemption #5 of the FOIA. A document that is pre-decisional at the time of preparation may lose exempt status if "adopted formally or informally, as the agency position on an issue or is used by the agency in its dealings with the public." Coastal States v. Dept. of Energy 617 F. 2d. 854,866 (D.C. Cir. 1980). Report No. 80-358/81-13 was used by the NRC as a basis for imposition of a \$200,000 civil penalty against Cincinnati Gas & Electric ("CG&E"), as well as for the Agency's decision to delegate to CG&E the responsibility of conducting an in-house reinspection entitled "The Quality Confirmation Program." If the NRC can use the report to make this final agency policy commitment in its dealings with the public and the utility, then clearly the report must be post-decisional in nature.

On March 18, 1982, Mr. Bert Davis, Region III Deputy Director, told me that priorities have yet to be established for Part II of the investigation. As a result, it is unfair to characterize the ongoing investigation as a mere continuation of work on the previous issues.

In order to comply with the provisions of the Privacy Act, we would consent to deleting the names of any parties whose names are mentioned in the appeals and whose right to privacy would be threatened through public disclosure.

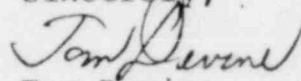
We are requesting this information as part of a monitoring project on the adequacy of the Commission's efforts to protect public safety at nuclear power plants. As a result, we request that fees be waived because "furnishing the information can be considered as primarily benefitting the general public." 5USC § 552 (a)(4)(A).

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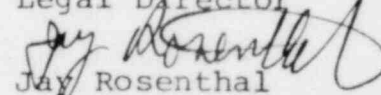
For any documents or portions of documents that you deny due to a specific exemption, please provide any index itemizing and describing documents or portions of documents withheld. The index should provide a detailed justification of your grounds for claiming such exemption, explaining why each exemption is relevant to the document or portion withheld. This index is required under Vaughn v. Rosen (I), 484 F.2d 820 (D.C.Cir. 1973), cert. denied, 415 U.S. 977 (1974).

We look forward to your reply within ten working days.

Sincerely,



Tom Devine
Legal Director



Jay Rosenthal
Staff Associate

TD/jr