



7/11/00/05
**RESPONSE TO FREEDOM OF
INFORMATION ACT (FOIA) / PRIVACY
ACT (PA) REQUEST**

99-076

9

RESPONSE TYPE FINAL PARTIAL

REQUESTER

Mr. Paul Gunter

DATE

APR 14 1999

PART I. -- INFORMATION RELEASED

- No additional agency records subject to the request have been located.
- Requested records are available through another public distribution program. See Comments section.
- APPENDICES **S** Agency records subject to the request that are identified in the listed appendices are already available for public inspection and copying at the NRC Public Document Room.
- APPENDICES **T, U** Agency records subject to the request that are identified in the listed appendices are being made available for public inspection and copying at the NRC Public Document Room.
- Enclosed is information on how you may obtain access to and the charges for copying records located at the NRC Public Document Room, 2120 L Street, NW, Washington, DC.
- APPENDICES **T, U** Agency records subject to the request are enclosed.
- Records subject to the request that contain information originated by or of interest to another Federal agency have been referred to that agency (see comments section) for a disclosure determination and direct response to you.
- We are continuing to process your request.
- See Comments.

PART I.A -- FEES

- AMOUNT * You will be billed by NRC for the amount listed. None. Minimum fee threshold not met.
- \$ You will receive a refund for the amount listed. Fees waived.

* See comment for details

PART I.B -- INFORMATION NOT LOCATED OR WITHHELD FROM DISCLOSURE

- No agency records subject to the request have been located.
- Certain information in the requested records is being withheld from disclosure pursuant to the exemptions described in and for the reasons stated in Part II.
- This determination may be appealed within 30 days by writing to the FOIA/PA Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Clearly state on the envelope and in the letter that it is a "FOIA/PA Appeal."

PART I.C COMMENTS (Use attached Comments continuation page if required)

FOIA/PA

SIGNATURE - FREEDOM OF INFORMATION ACT AND PRIVACY ACT OFFICER

Mary Gem Hall (for)
Russell A. Powell

9904200010 990414
PDR FOIA
GUNTER99-76 PDR

9904200010

RESPONSE TO FREEDOM OF INFORMATION ACT (FOIA) / PRIVACY ACT (PA) REQUEST

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PART II.A -- APPLICABLE EXEMPTIONS

APPENDICES U, V

Records subject to the request that are described in the enclosed Appendices are being withheld in their entirety or in part under the Exemption No. (s) of the PA and/or the FOIA as indicated below (5 U.S.C. 552a and/or 5 U.S.C. 552(b)).

- Exemption 1: The withheld information is properly classified pursuant to Executive Order 12958.
- Exemption 2: The withheld information relates solely to the internal personnel rules and procedures of NRC.
- Exemption 3: The withheld information is specifically exempted from public disclosure by statute indicated.
 - Sections 141-145 of the Atomic Energy Act, which prohibits the disclosure of Restricted Data or Formerly Restricted Data (42 U.S.C. 2161-2165).
 - Section 147 of the Atomic Energy Act, which prohibits the disclosure of Unclassified Safeguards Information (42 U.S.C. 2167).
 - 41 U.S.C., Section 253(b), subsection (m)(1), prohibits the disclosure of contractor proposals in the possession and control of an executive agency to any person under section 552 of Title 5, U.S.C. (the FOIA), except when incorporated into the contract between the agency and the submitter of the proposal.
- Exemption 4: The withheld information is a trade secret or commercial or financial information that is being withheld for the reason(s) indicated.
 - The information is considered to be confidential business (proprietary) information.
 - The information is considered to be proprietary because it concerns a licensee's or applicant's physical protection or material control and accounting program for special nuclear material pursuant to 10 CFR 2.790(d)(1).
 - The information was submitted by a foreign source and received in confidence pursuant to 10 CFR 2.790(d)(2).
- Exemption 5: The withheld information consists of interagency or intraagency records that are not available through discovery during litigation. Applicable privileges:
 - Deliberative process: Disclosure of predecisional information would tend to inhibit the open and frank exchange of ideas essential to the deliberative process. Where records are withheld in their entirety, the facts are inextricably intertwined with the predecisional information. There also are no reasonably segregable factual portions because the release of the facts would permit an indirect inquiry into the predecisional process of the agency.
 - Attorney work-product privilege. (Documents prepared by an attorney in contemplation of litigation)
 - Attorney-client privilege. (Confidential communications between an attorney and his/her client)
- Exemption 6: The withheld information is exempted from public disclosure because its disclosure would result in a clearly unwarranted invasion of personal privacy.
- Exemption 7: The withheld information consists of records compiled for law enforcement purposes and is being withheld for the reason(s) indicated.
 - (A) Disclosure could reasonably be expected to interfere with an enforcement proceeding (e.g., it would reveal the scope, direction, and focus of enforcement efforts, and thus could possibly allow recipients to take action to shield potential wrongdoing or a violation of NRC requirements from investigators).
 - (C) Disclosure would constitute an unwarranted invasion of personal privacy.
 - (D) The information consists of names of individuals and other information the disclosure of which could reasonably be expected to reveal identities of confidential sources.
 - (E) Disclosure would reveal techniques and procedures for law enforcement investigations or prosecutions, or guidelines that could reasonably be expected to risk circumvention of the law.
 - (F) Disclosure could reasonably be expected to endanger the life or physical safety of an individual.
- OTHER (Specify)

PART II.B -- DENYING OFFICIALS

Pursuant to 10 CFR 9.25(g), 9.25(h), and/or 9.65(b) of the U.S. Nuclear Regulatory Commission regulations, it has been determined that the information withheld is exempt from production or disclosure, and that its production or disclosure is contrary to the public interest. The person responsible for the denial are those officials identified below as denying officials and the FOIA/PA Officer for any denials that may be appealed to the Executive Director for Operations (EDO).

DENYING OFFICIAL	TITLE/OFFICE	RECORDS DENIED	APPELLATE OFFICIAL		
			EDO	SECY	IG
James E. Dyer	Regional Administrator, Region III	Appendices U & V	<input checked="" type="checkbox"/>		

Appeal must be made in writing within 30 days of receipt of this response. Appeals should be mailed to the FOIA/Privacy Act Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, for action by the appropriate appellate official(s). You should clearly state on the envelope and letter that it is a "FOIA/PA Appeal."

APPENDIX
RECORDS ALREADY AVAILABLE IN THE PDR

<u>NO.</u>	<u>DATE</u>	<u>ACCESSION NUMBER</u>	<u>DESCRIPTION/(PAGE COUNT)</u>
1.	06/15/94	9406220323	Transmittal letter from W.D. Shafer to Fitzpatrick w/Inspection Rpts. Nos. 50-315/94012, 50-316/94012 (19 pages)
2.	07/06/94	9407130098/ 9407130101	Transmittal letter from J.R. Creed to E.E. Fitzpatrick w/Inspection Rpts. Nos. 50-315/94010, 50-316/94010 (13 pages)
3.	10/24/94	9411010102/ 9411010110	Transmittal letter from E.G. Greenman to E. Kraft w/Inspection Rpts. Nos. 50-254/94017, 50-265/94017 (29 pages)

APPENDIX T
RECORDS BEING RELEASED IN THEIR ENTIRETY

<u>NO.</u>	<u>DATE</u>	<u>DESCRIPTION/(PAGE COUNT)</u>
1.	Undated	AMS Transmittal Sheet re: RIII-96-A-0090 (1 page)
2.	Undated	Identification Sheet re: RIII-96-A-0090 (1 page)
3.	Undated	Allegation Disposition Record re: RIII-96-A-0090 (1 page)
4.	Undated	Alleger Identification Sheet re: RIII-96-A-0118 (1 page)
5.	Undated	Alleger Identification Sheet re: RIII-96-A-0157 (1 page)
6.	Undated	Allegation Summary List re: RIII-96-A-0157 (1 page)
7.	06/20/94	E-mail from D. L. Schrum to J. Belanger, re: Falsification/Firewatch tours, D. C. Cook (1 page)
8.	07/06/94	Memo from J. L. Belanger to D. Funk re: Potential Falsification of Firewatch Tours at D. C. Cook Plant, RIII-96-A-0118 (1 page)
9.	07/06/94	E-mail from D. L. Schrum to J. Delanger, re: Firewatch Falsification - D. C. Cook, RIII-96-A-0118 with attachment (2 pages)
10.	08/02/94	Memo from D. E. Funk Jr. to G. Grant re: Falsification of Firewatch Records at D. C. Cook, RIII-96-A-0118 (1 page)
11.	08/22/94	Allegation Action Plan re: RIII-96-A-0118 with attachments (3 pages)
12.	08/25/94	Memo from G. C. Wright to D. E. Funk Jr. re: Falsification of D. C. Cook Firewatch Records, RIII-96-A-0118 with attached LER 94-00500 and Condition Report 94-0969 (13 pages)
13.	09/13/94	E-mail from R. K. Walton to R. Defayette, re: Allegation of Document Falsification w/attached note to R. DeFayette from P. Hiland, re: Allegation of Document Falsification, RIII-96-A-0157 (2 pages)
14.	09/08/94	Faxed to P. Hiland of memo from E. Smith to T. Harl, re: Investigation of Firewatch Falsification of Records, RIII-96-A-0157 (2 pages)

APPENDIX T
(continued)
RECORDS BEING RELEASED IN THEIR ENTIRETY

<u>NO.</u>	<u>DATE</u>	<u>DESCRIPTION/(PAGE COUNT)</u>
15.	09/26/94	Allegation Action Plan re: RIII-96-A-0157 (3 pages)
16.	09/27/94	Allegation Management System computer sheet re: RIII-96-A-0157 (1 page)
17.	11/03/95	Court Report Invoice w/attached transcript of 10/30/95 Predecisional Enforcement Conference (135 pages)
18.	07/10/96	Memo from D. E. Funk Jr. to W. Hutchinson re: Licensee Documentation D. C. Cook, RIII-96-A-0090 (1 page)
19.	08/30/96	Memo from D. E. Funk Jr. to G. E. Grant re: OI report of interview D. C. Cook: Alleged falsification of firewatch logs, RIII-96-A-0090 (1 page)
20.	08/30/96	E-mail from D. L. Schrum re: D. C. Cook Allegation on Bar Code, RIII-96-A-0090 (1 page)
21.	09/09/96	Allegation Action Plan re: RIII-96-A-0090 (1 page)

APPENDIX U
RECORDS BEING WITHHELD IN PART

<u>NO.</u>	<u>DATE</u>	<u>DESCRIPTION/(PAGE COUNT)/EXEMPTIONS</u>
1.	05/13/96	Condition Report #96-0778, RIII-96-A-0090 (2 pages) EX. 7C
2.	06/24/96	Allegation Action Plan, RIII-96-A-0090 (5 pages) EX. 7C

APPENDIX V
RECORDS BEING WITHHELD IN THEIR ENTIRETY

<u>NO.</u>	<u>DATE</u>	<u>DESCRIPTION/(PAGE COUNT)/EXEMPTIONS</u>
1.	Various	Allegation File RIII-92-A-0139 (16 pages) EX. 7A



Case No: 99-076
Date Recd: 12-22-98
Action Off: Feed
Related Case:

Nuclear Information and Resource Service

1424 16th St. NW, Suite 404, Washington, DC 20038; 202-328-0002; fax: 202-482-2183; e-mail: nirsnet@igc.apc.org web: www.nirs.org

December 21, 1998

Russel Powell, Chief
FOIA-LPDR Branch
Division of Freedom of Information and Publication Services
Office of Administration
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Dear Mr. Powell:

On behalf of Nuclear Information and Resource Service (NIRS), and pursuant to the Freedom of Information Act, 5 U.S.C. 552(b), et. seq., I hereby request that you make available copies of all documents in the U.S. Nuclear Regulatory Commission Office of Investigation's (OI) possession, which describe or discuss:

- 1) [Case Number 1-96-033] falsification of a surveillance test by a fire protection technician at Limerick Unit 1 and "substantiated" by OI on 2/19/97.
- 2) [Case Number 2-9 -008] alleged continuing discrimination against former Stone & Webster ironworker for raising past concerns regarding fire watches at Browns Ferry Unit 1 and "unsubstantiated" by OI on 11/20/96.
- 3) [Case Number 2-96-019] alleged falsification of fire watch journals at Sequoyah 2 and "unsubstantiated" by OI on 01/24/97.
- 4) [Case Number 4-97-003] failure to conduct fire watch rounds and falsification of fire watch logs at River Bend and "substantiated" by OI on 04/11/97.
- 5) [Case Number 4-97-027] falsification of Thermo-Lag material inspection records at Comanche Peak Unit 1 and "unsubstantiated" by OI on 09/18/97.
- 6) [Case Number 1-95-012] potential falsification of fire protection records at Fitzpatrick and deemed "Higher Priority" by OI on 05/30/95.
- 7) [Case Number 2-93-030] alleged demotion of Stone and Webster general foreman for expressing fire protection concern at Browns Ferry Unit 1 and "unsubstantiated" by OI on 12/15/94.
- 8) [Case Number 3-93-001] alleged employment discrimination against an employee for his refusal to falsify records at Thermal Science, Inc., manufacturer of Thermo-Lag fire barriers, where resolution of the OI

49021/0025

investigation is identified as "Other" and no referral was made to the Department of Justice by the OI as dated 03/30/95.

- 9) [Case Number 3-94-059] alleged deliberate falsification of fire watch records at Cook Unit 1 and deemed "Higher Priority" by OI on 01/18/95.
- 10) [Case Number 3-94-060] alleged deliberate falsification of fire watch round records at Quad Cities Unit 1 and deemed "Higher Priority" by OI on 10/25/95.
- 11) [Case Number 4-95-013] alleged deliberate falsification of fire watch records at Arkansas Nuclear One Unit 1 and "substantiated" by OI on 05/25/95.
- 12) [Case Number 3-96-032] falsification of fire watch logs at Cook Unit 1 and determined by a "lack of regulatory requirement" by OI on 09/30/96.
- 13) [Case Number 4-95-004] alleged discrimination and termination for refusal to falsify work steps (fire protection seals) at Arkansas Nuclear One Unit 1 and determined as a "lack of regulatory requirement" by OI on 02/26/96.
- 14) [Case Number 4-95-032] alleged false statements by fire watches to NRC inspectors at Washington Nuclear Unit 2 and deemed "Higher Priority" by OI on 10/05/95.
- 15) [Case Number 4-95-035] alleged deliberate falsification of fire watch records at Waterford Unit 3 and deemed "Higher Priority" by OI on 01/17/96.
- 16) [Case Number 4-95-044] alleged deliberate falsification of fire watch records at Waterford Unit 3 and "substantiated" by OI on 02/08/96.
- 17) [Case Number 4-95-047] alleged discrimination for reporting fire watch concerns to site management at Waterford 3 and "unsubstantiated" by OI on 01/31/96.
- 18) [Case Number 4-95-070] alleged discrimination against fire watch for refusing to violate site security procedures at Waterford Unit 3 and "unsubstantiated" by OI on 04/03/96.

This request covers but is not limited to all draft and final reports, correspondence, memoranda, notes, records of telephone contacts, electronic communications including fax transmissions and Email, or other written records, whether in paper or computer files.

Pursuant to this request, please provide all documents and communications prepared or utilized by, in the possession of, or routed through the NRC related to items 1-18.

For any portion of the request that you deem appropriate to deny, NIRS requests that you describe the information that is denied, identify the exception to the FOIA on which you rely, and explain how that exception applies to the withheld information.

Pursuant to NRC regulations at 10 CFR 9.41, NIRS requests that any searching and copying fees incurred as a result of this search be waived, and provides the following information in response to the eight criteria listed in Section 9.41(b):

1) **Purpose of request:**

The purpose of the request is to gather information on the long-term reliance of compensatory measures, specifically hourly roving fire watch personnel, for inoperable fire barriers currently deployed throughout the nuclear power industry. This information is currently not available in the NRC's Public Document Room.

2) **Extent to which NIRS will extract and analyze the substantive content of the records:**

NIRS is qualified to make use of the requested information. The staff has demonstrated the ability to accurately interpret information and communicate that information in a form comprehensible to the general public. Members of the NIRS staff have published articles in such national journals as The Progressive, Nuclear Times, Newsday and Bulletin of Atomic Scientists. NIRS is quoted as a reliable source of information on nuclear safety issues in newspapers across the country, including the New York Times, The Washington Post, and The San Francisco Chronicle.

NIRS has a working relationship with attorneys, physicists, nuclear engineers, industry fire protection consultants, Congress and other respected professionals who contribute to the full understanding of technical records, investigations and the public health and safety impact.

3) **Nature of the specific activity or research in which the records will be used and NIRS's qualifications to utilize the information for the intended use in such a way that it will contribute to public understanding:**

NIRS seeks the requested information solely to contribute to and help shape the public debate on adequate fire protection at nuclear power stations and the public health and safety. NIRS intends to use the information in order to advance these concerns for the public's understanding, health and safety.

4) **Likely impact on the public's understanding of the subject as compared to the level of understanding of the subject prior to disclosure:**

NIRS seeks to translate the requested information into the layperson's understanding of fire protection issues at nuclear power stations. The added attention will increase the public understanding and further a national debate on fire protection standards.

5) **Size and nature of the public to whose understanding a contribution will be made:**

NIRS has an active subscribing membership of over 1500 throughout the United States. Several thousand additional members periodically receive mailings from NIRS.

NIRS provides resource material to electronic and print media outlets with very broad outreach to a safety conscious audience. Additionally, NIRS has a web site (www.nirsnet.org) which receives on average of 250-300 visitors per day where postings on this issue will be made available.

6) **Means of distribution of the requested information:**

NIRS will use its own newsletter publication The Nuclear Monitor and our media contacts in both the electronic and print media outlets to provide very broad outreach to the safety conscious public. Additionally, NIRS will post information on its web site (www.nirsnet.org) which receives on average of 250-300 visitors per day.

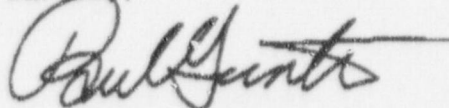
7) **Whether free access to information will be provided:**

NIRS will provide the information without charge to all members of the public. Information prepared from the FOIA request will be posted on the web site for downloading free of charge. NIRS will also provide information to traditional media outlets without charge.

8) **No commercial interest by NIRS or any other party:**

NIRS has no commercial interest in obtaining the requested information. This information is provided to all public requests without charge. The sole interest of NIRS is to promote a policy debate on appropriate and adequate fire protection at nuclear power stations for the sake of public health and safety.

Sincerely,



Paul Gunter, Director
Reactor Watchdog Project
Nuclear Information and Resource Service

Cc:

Congressman Edward Markey
Mr. David Walker, GAO