

November 21, 2006

The Honorable Bart Gordon
Ranking Member, Committee on Science
United States House of Representatives
Washington, D.C. 20515

Dear Congressman Gordon:

I am writing in response to your letter dated October 27, 2006, wherein you requested information on the U.S. Nuclear Regulatory Commission's (NRC's) handling of sensitive unclassified information following the events of September 11, 2001. Specifically, you inquired about the availability of sensitive unclassified information in the Local Public Document Rooms at public libraries near the Nation's commercial nuclear power reactors. In response to your letter, I directed the Executive Director for Operations to review your concerns and respond to me. The enclosed memorandum contains the results of that review. Responses to your questions are also enclosed.

Please contact me should you have any further questions.

Sincerely,

/RA/

Dale E. Klein

Enclosure:
As stated

November 21, 2006

MEMORANDUM TO: Dale E. Klein
Chairman

FROM: Luis A. Reyes */RA William F. Kane Acting For/*
Executive Director for Operations

SUBJECT: REVIEW OF NRC'S HANDLING OF SENSITIVE UNCLASSIFIED
INFORMATION FOLLOWING SEPTEMBER 11, 2001

In accordance with your direction, the NRC staff has reviewed the agency's handling of sensitive unclassified information following September 11, 2001. Specifically, the staff focused its review on the concerns identified in Congressman Bart Gordon's October 27, 2006, letter to you. The following is a summary of the NRC's review and actions taken on this matter.

The NRC has been aware since shortly after September 11 that a limited amount of sensitive information regarding commercial nuclear power plants exists in a variety of public and private collections. The information that remains publicly available was considered "nonsensitive" prior to September 11 and, in accordance with our strategic goal of openness, was released to the public. Today, in light of the need for increased vigilance, the NRC designates some of this information as "sensitive unclassified non-safeguards information" (SUNSI) and, therefore, withholds it from the public. It should be noted that information directly related to the security programs and protection for nuclear power plants is designated as Safeguards Information, is controlled similar to Classified Information, and is not among the records at public libraries or elsewhere in the public arena.

The NRC acknowledges that a limited quantity of documents currently within the former¹ Local Public Document Room (LPDR) collections meets the revised withholding criteria for SUNSI information. However, the NRC believes that the amount of such information is small and that its utility is minimal given the fact that the level of sensitivity is below that of classified or safeguards information and because of its age and post-September 11 security enhancements

¹Prior to the development and implementation of the Agencywide Documents Access and Management System (ADAMS), the NRC maintained (funded and provided documents) licensing and regulatory document collections in more than 80 "Local Public Document Rooms" (LPDRs) in local libraries (who volunteered, and were paid, to house and maintain the document collections) in the vicinity of power reactors and some materials licensees. When the NRC implemented ADAMS in 1999, the Commission decided to discontinue funding the LPDR program beyond FY 1999. See 64 Fed. Reg. 48942 (September 9, 1999). In ending the LPDR program, the NRC offered each of the LPDR libraries the opportunity to keep their LPDR document collections. Most of the libraries accepted the NRC's offer to transfer ownership of the collections and those libraries now own and control the collections of pre-ADAMS documents. 64 Fed. Reg. 48942-44.

and physical modifications to NRC-regulated facilities. Therefore, the NRC decided not to attempt to retrieve or restrict access to the previously released information and instead focused our efforts on more recent and relevant public information available in our electronic record-keeping systems. In the past, the NRC declined to accept the collections from former LPDRs that wished to return them. However, the NRC has changed its position on this matter and in a July 12, 2006 letter to the former LPDRs, we indicated that should a former LPDR, that is not part of the Federal Depository Library Program, request to return its collection to the NRC, we will accept the collection. On the same day, the NRC sent a similar letter to former LPDRs that are part of the Federal Depository Library Program instructing them to follow U.S. Government Printing Office policies if they desired to dispose of their collections.

Following the September 11, 2001, terrorist attacks, the NRC took prompt action to enhance the control of information that potentially could be used by an adversary. The NRC immediately advised nuclear facilities to review their information collections (e.g., web sites) to decide if information determined to be security-related in the wake of September 11, 2001, not previously considered sensitive, was publicly available. The NRC conducted a similar review of our web site and public record-keeping systems. This resulted in the NRC and our licensees removing some information previously publicly available. Subsequently, the NRC issued guidance to our staff and licensees on how to recognize sensitive information as well as methods to protect such information from being used by an adversary. The NRC continues to review documents to ensure that information which could be of interest to terrorists is not contained in the documents we place on our web site or in our publicly accessible record-keeping systems, while striving to provide the public with appropriate material on our regulatory activities and policies.

The staff is aware that the Office of the Inspector General (OIG) has been reviewing the NRC's handling of SUNSI information following September 11, 2001. However, it is our understanding that the review is not complete at this time. Upon receipt of OIG's report on this matter, the NRC will review any recommendations and take appropriate actions.

Responses to the specific questions raised in the Congressman's letter are provided as an enclosure to this memorandum.

Enclosure:
As stated

cc: Commissioner McGaffigan
Commissioner Merrifield
Commissioner Jaczko
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Question 1: Was there a decision made by the [U.S. Nuclear Regulatory Commission] NRC not to remove information from the local public document rooms, and, if so, who made that decision and why?

Answer:

Following the September 2001 terrorist attacks, the NRC took prompt action to enhance the control of information that could potentially be used by an adversary. The information that remains publicly available in Local Public Document Rooms (LPDRs) was considered "nonsensitive" by the NRC prior to September 11 and was released to the public. In light of the need for increased vigilance, the NRC would now designate some of this information as "sensitive unclassified nonsafeguards information (SUNSI)."

The NRC understood that, upon establishing our criteria for designating information as SUNSI, limited quantities of information now considered sensitive would remain in the public realm. On April 4, 2002, the NRC staff informed the Commission, in COMSECY-02-0015 (at p.2), that "because NRC does not control archival collections external to the agency, documents may continue to be made publically available through other sources." (See attached copy of COMSECY-02-0015 dated April 4, 2002, and associated SRM dated May 28, 2002.) The NRC determined that the usefulness of the information that remained publicly available was minimal given its age and subsequent improvements in security programs and measures. In addition, the anticipated cost and effectiveness of efforts to retrieve this small amount of information did

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not support an NRC decision to pursue that course of action.

Question 2: What is the current NRC policy regarding the removal or control of access to sensitive documents from the NRC's local public document rooms?

Answer:

Currently, the NRC's policy is not to remove or restrict access to potentially sensitive documents in the former LPDRs. Since September 11, the NRC has required, and licensees have implemented, substantial security enhancements, including physical modifications to commercial nuclear power plants. Information directly related to these security programs and the protection for nuclear power plants is designated as Safeguards Information, is controlled similar to Classified Information, and is not among the records at public libraries or elsewhere in the public arena. The NRC has determined that the usefulness of the limited quantities of sensitive information available in the LPDRs is minimal given the fact that the level of sensitivity is below that of Classified or Safeguards Information and because of its age, and subsequent improvements in security programs and measures. We continue to work with licensees to ensure that the most recent and relevant information related to the security of nuclear power plants is protected.

Question 3: Has the NRC ever removed documents from its local public document rooms due to security concerns since September 11, 2001? Please provide specific details of any instances of removal that may have occurred and why the NRC believed this was necessary.

Answer:

Other than one isolated incident detailed below, the NRC has not removed, and has no plans to remove on our own initiative, the collections maintained at any of the former LPDRs. The LPDR program was discontinued in September 1999 and ownership of the document collections transferred to the individual libraries. Following the transfer of the collection of NRC documents maintained at the Greenfield Community College library in Greenfield, Massachusetts, which were maintained for the decommissioned Yankee Rowe Nuclear Plant, the NRC regional offices performed a survey of the remaining LPDRs throughout the nation to ascertain the status of their collections. During that survey, a regional staff member removed the collection of documents maintained at the Pottstown Public Library near the Limerick Generating Station in Pennsylvania. The NRC promptly returned the collection to the library because its removal was not in accordance with NRC policy and would restrict public access to legitimate nonsensitive information.

Question 4: Does the NRC have any plans in place to remove sensitive documents removed from ADAMS from the local public document rooms? Please explain how the NRC intends to accomplish this and the scope of documents the NRC believes should be removed – if any.

Answer:

Currently, the NRC has no plans to remove any documents from the former LPDRs on our own initiative. However, on July 12, 2006, the NRC's Deputy Chief Information Officer sent letters to the former LPDRs explaining that if any former LPDR no longer wished to maintain its collection, the NRC would accept an offer to return the collection, provided the former LPDR is not part of the Federal Depository Library Program. Should a former LPDR choose to return its collection, the NRC will assist in making arrangements to properly dispose of the collection.

For former LPDRs that are part of the Federal Depository Library Program, the NRC recognizes that the disposal of documents at these libraries must be in accordance with the U.S.

Government Printing Office (GPO) Information Dissemination Policy Statement 72, "Withdrawal of Federal Information Products from Information Dissemination Collection and Distribution Programs." Therefore, if a Federal Depository Library no longer wishes to maintain its collection, the library would need to dispose of the materials following GPO procedures for withdrawing material from the depository collection, as prescribed in the Instructions to Depository Libraries.

Question 5: If the NRC does not plan to remove sensitive documents currently available in local public document rooms, your evaluation of their sensitivity must have shifted since the time when they were removed from ADAMS. Please explain how that reevaluation occurred and when. Provide any documentation necessary to understand this shift in views. Please explain why the materials have not been returned to ADAMS if this has occurred.

Answer:

Since September 11, the NRC screens its documents prior to making them publicly available to ensure that sensitive information that could potentially aid terrorists or adversaries of the United States is appropriately withheld. The NRC continues to work diligently to balance its commitment of openness with the public with the need to prevent releases of sensitive information.

After September 11, the NRC revised its criteria for balancing its goal of releasing as much information as possible with the need to withhold information that might be useful to terrorists. The NRC developed criteria that resulted in a relatively small amount of information being withheld that was previously released to the public. The NRC recognized that there would be limitations on its ability to remove some information deemed sensitive, using the revised criteria, from the public realm after the information had been in the public domain for decades. The NRC decided to implement the policy change and focus its efforts and resources on keeping out of the public domain recent, relevant and easily accessible information and information available in its electronic record-keeping systems. In determining this policy change, the NRC

Answer:

weighed the benefit of withholding information from public access versus its ability to remove certain documents that had already been in the public domain for decades which were, for all practical purposes, out of NRC's control. As stated previously, the NRC believes that the amount of such information is small and that its utility is limited by its age and post-September 11 security enhancements and physical modifications to NRC-regulated facilities.