

October 29, 2001

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MEMORANDUM TO: Chairman Meserve
Commissioner Dicus
Commissioner Diaz
Commissioner McGaffigan
Commissioner Merrifield

FROM: William D. Travers */RA by Carl Paperiello Acting For/*
Executive Director for Operations

SUBJECT: GUIDANCE TO THE STAFF ON RELEASE OF INFORMATION TO THE
PUBLIC

As requested, attached for your review is a copy of a draft network announcement and criteria for the staff to use in making discretionary releases of information to the public. The guidance is to be used in the interim, until a long-term, permanent policy is developed.

SECY, please track.

Attachment: As stated

cc: SECY
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OPA
CFO

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NETWORK ANNOUNCEMENT

RELEASE OF INFORMATION TO THE PUBLIC

Since the events of September 11, we have had to re-examine our policies on the dissemination of information we routinely provide to the public. In the interim, the following criteria have been developed to assist the staff in making discretionary releases of certain documents to the public, which includes posting them to the web and to the PARS public library in ADAMS. Documents that are not released should, for now, be treated as "Official Use Only."

This guidance is of necessity general, and reflects a conservative approach to screening documents with the intention of ensuring that we do not release information that can be misused by those with malevolent intentions toward NRC-regulated activities and facilities. The criteria may be adjusted in the future based on our experience using them. To the extent you are unsure about whether a particular document should be made publicly available, contact your senior office management.

As you know, the external web page has been shut down and we are re-building it incrementally as we make decisions on the kinds of material that can be posted. Since the web is easily accessible, we should be conservative about posting on the web material that gives significant details about licensed facilities. The criteria provide some guidance in this regard. We are aware that external organizations have material on their web sites that may be considered sensitive under the criteria, and will be dealing with this on a case-by-case basis. Although some information may no longer appear on our web site, we will continue to satisfy our legal obligations to make certain information publicly available.

NUREGs under development should also be evaluated against the criteria on a case-by-case basis by individual offices. Public release of NUREGs which contain sensitive information should be postponed, but the staff should ensure that the information is available to agency reviewers and decision makers as needed.

Public meetings should continue to be conducted as part of the agency's business. However, in the near term, we believe it would be prudent for staff to seek alternatives to holding public meetings at licensee sites. If site meetings are held, limit addresses on the web to city and state. If discussions at the meeting will cover material that is sensitive using the following criteria, notify your office management. Each office will make the final decision on whether or not to hold the particular meeting, whether it should be open to the public, and what type of material should be discussed. Offices need to take into consideration the fact that public meeting handouts and minutes are normally made publicly available.

Freedom of Information Act (FOIA) material is subject to specific laws and statutes. You should continue to handle and process all FOIA requests in the same manner as before, but we suggest that you separately identify documents that fall within the following criteria. If you are uncertain of the application of the FOIA exemptions from disclosure, obtain guidance on the release or withholding of such documents from the FOIA branch or OGC. The Attorney

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General recently issued a new policy indicating that the Department of Justice will defend agency decisions to withhold records that rest on a sound factual and legal footing.

**CRITERIA TO BE USED WHEN DECIDING TO MAKE A DISCRETIONARY RELEASE OF
INFORMATION TO THE PUBLIC**

In addition to withholding information properly determined to be exempt from disclosure, such as classified, proprietary, privacy or safeguards information, you should consider **not** releasing a document if it contains:

1. A consolidation or collection of plant-specific information that might be used to exploit site-specific features including equipment and specific facility locations. Examples would include Final Safety Analysis Reports (FSARs), Plant Information Books, Emergency Plans, Individual Plant Examination for External Event (IPEEE) material, risk-informed inspection notebooks, and other risk and facility vulnerability information.
2. Specific locations of the facility site. For information that is posted to the web, limit these descriptions to city and state. Geospatial coordinates should not be made public through any means. As a practical matter, addresses on licensee correspondence can still be made public via ADAMS. Staff should seek alternatives to holding public meetings at licensee sites and avoid posting precise site addresses on the public meeting web site.
3. Physical vulnerabilities or weaknesses, or potential weaknesses of nuclear facilities that could be useful to terrorists, such as site specific security measures, access controls, or personnel clearance procedures.
4. Construction details of specific facilities, such as wall thicknesses or specific barrier dimensions, detailed diagrams, schematics, or cutaways of specific plant designs. Where appropriate, general descriptions instead of exact numbers (i.e. "several feet, several inches, layers of concrete") should be used for general public information.
5. Information which could be useful to defeat or breach any barriers at nuclear facilities.
6. Details regarding quantities of radioactive material present or authorized.

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December 5, 2001

MEMORANDUM FOR: Chairman Meserve
Commissioner Dicus
Commissioner Diaz
Commissioner McGaffigan
Commissioner Merrifield

FROM: William D. Travers /RA/
Executive Director for Operations

SUBJECT: UPDATE ON STAFF ACTIONS REGARDING RELEASE
OF INFORMATION TO THE PUBLIC

On October 29, we provided you with draft guidance for the staff on release of information to the public. The guidance was developed primarily to assist NRC staff in screening documents to prevent easy access to information that could be misused by those with malevolent intentions toward NRC-regulated facilities and activities. The criteria were to be used in the interim until a more definitive policy on this issue could be developed. The criteria recognized that the agency had broader discretion in determining whether to post documents on the web site and noted that the staff might face more difficult questions about the basis for withholding a document in response to requests filed under the Freedom of Information Act (FOIA).

Since then, during the normal course of agency business, the staff has been involved in licensing activities which require time-sensitive decisions on making information available to the public. Using the draft criteria sent to the Commission, the staff has developed more specific criteria which are set out at the end of this memorandum, to assist in its review and redaction of specific documents. The purpose of this memorandum is to update the Commission on some of the activities the staff is engaged in which have prompted this time-sensitive review and to transmit the more specific criteria and rationale for your information.

Impact on NRC:

NRR will be spending additional time and effort reviewing and redacting sensitive information in NRC-generated documents such as Safety Evaluation Reports, Environmental Impact Statements (EIS), and related correspondence, for example, in connection with license renewal activities. NMSS is reviewing the Private Fuel Storage Final EIS and revisions to the Safety Evaluation Report. Types of sensitive information in these documents include detailed site layouts, maps, design information and plant vulnerabilities included in severe accident analyses.

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Staff may also need to devote considerable effort to review and redact incoming documents that have not been previously redacted by the licensee. For example, the NRR staff is currently reviewing the St. Lucie application for license renewal, received on November 30, for sensitive information under these criteria. The staff plans to make a redacted version publicly available but use the non-redacted version in its licensing review. The review schedule will be met, but twice the number of staff are performing the review. In NMSS, the staff may also need to screen licensee-generated ISFSI site-specific applications, which could add as much as two months to the review schedule. Although the staff is proceeding to screen licensee-generated documents under the criteria, the Commission should note that withholding these documents, if faced with a FOIA request, is at best problematic, because the FOIA Exemption 2, which would be used as the basis to protect agency-generated documents from disclosure, may not provide a valid basis for withholding *externally-created* documents from disclosure.¹ (The same problem could arise in the context of requests for information in specific proceedings.) Because the agency, generally, does not have an obligation to make the incoming document immediately available to the public, the staff, through the screening process, can exercise some limited control over dissemination of the licensee-submitted documents, though at an appreciable burden on staff resources and schedules.

Impacts on Hearings:

Hearing schedules may be delayed or extended due to the processing of requests for information which is normally available to members of the public or other organizations which may be interested in participating in NRC proceedings. Some delay is likely to result due to the effort needed to facilitate appropriate provision of sensitive material to the parties in a hearing (e.g., to establish terms for possible non-disclosure agreements, and to process and transmit information protected under such an agreement). In addition, where withholding from general public release is sought, disputes are likely to arise over the legitimacy of non-disclosure.

Impact on licensees:

Licensee-generated documents may also be affected by these review activities. The staff has spent considerable effort with licensees coordinating the review and handling of their license renewal applications and related documents and correspondence. Licensees are establishing new practices for withholding potentially sensitive information (which is not classified, safeguards or commercial, proprietary information) to be responsive to security advisories and have discussed options such as providing two versions of documents to the NRC - a redacted version for public release and a non-redacted version for staff review.

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¹ It is worth reiterating that the type of information being redacted is not safeguards information, classified information or proprietary information for which some other exemption under FOIA would be applicable.

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In the absence of legislative or regulatory changes, the agency may be challenged for withholding such information identified by licensees since that information is not currently covered by specific exemptions for withholding such records from public availability. However, OGC believes that there is a reasonable basis to take a more expansive view of section 147 safeguards information that would include some such information and, if the Commission desires, this approach could be implemented in the near term.

Resource Impact:

It is difficult to estimate the staff resources that would be affected by the review and redaction effort agencywide. However, assuming NRR receives and generates license renewal-related documents on an ongoing basis, and assuming NMSS continues to receive and generate similar licensing documents, staff estimates approximately 40-60 extra hours per week would be spent on these activities collectively.

Additional factors for staff consideration:

The staff is using the following criteria in reviewing the aforementioned documents. These criteria provide more specific bases for redacting certain information that the staff believes could provide significant assistance to support an act of terrorism. Furthermore, these criteria are considered on a case-by-case basis in combination with other factors, such as whether the information is widely available to the public from other sources and whether, apart from FOIA, the information is required to be disclosed (e.g., by regulation). The criteria have been developed with a view toward establishing a basis under FOIA to defend decisions to withhold NRC-generated documents from public disclosure. The key below identifies the following justifications for removal:

- T - The information identifies a target for sabotage or attack
- V - The information provides a vulnerability to sabotage or attack
- M - The information provides a method for sabotage or attack

Specific Criteria/Rationale for Redacting Information

1. Specific site location - longitude/latitude, detailed maps of protected areas (T)
2. Facility Descriptions (T, V)
 - For materials facilities this would include Special Nuclear Material or spent nuclear fuel amounts - inventories, throughput data, maps, specific locations, diagrams
 - Structures, systems and components design criteria - materials, structural, thermal, shielding
 - Confinement/containment, criticality
 - Significant amounts of other hazardous materials/chemicals

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For reactor facilities this would include detailed drawings or descriptions of the facility site and buildings, including the specific location of components.

3. For some materials licensees, liquid and solid waste confinement and management (T, V)
4. Accident analyses that could support the selection of key components to initiate and prevent mitigation of an event (T, V, M)
These might include:
Accidents routinely described in licensing bases documents
Severe accident information
5. For some materials or waste licensees, transportation information (T, also timing for attack)
Detailed access point locations (specific routes around facility)
Traffic Patterns
Accident risk and associated impacts
6. Identified uncorrected weaknesses and vulnerabilities at a facility (V)
7. References supporting or including information being redacted to the extent that the reference sets out the same information being redacted or deleted.

The staff intends to continue these efforts until a permanent process can be formally established.

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