



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

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,

Dale E. Klein

Enclosure:
As stated




UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

November 21, 2006

MEMORANDUM TO: Dale E. Klein
Chairman

FROM: Luis A. Reyes 
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
Commissioner Lyons
SECY
OGC
OCA
OIS

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

Enclosure

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

Question 5: (Continued)

- 2 -

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.



UNITED STATES NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

4/18/02
COMSECY-02-0015

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April 4, 2002

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

FROM: William D. Travers
Executive Director for Operations *William D. Travers*

SUBJECT: WITHHOLDING SENSITIVE HOMELAND SECURITY
INFORMATION FROM THE PUBLIC

This memorandum responds to the Staff Requirements Memorandum - COMSECY-01-0030, dated January 25, 2002, which requested the staff to revise the criteria for withholding information from the public and submit it for Commission approval.

Background

Since the events of September 11, the staff has re-examined existing policies on the dissemination of information routinely provided to the public. Once the agency decided to shutdown its web site in October of 2001, the staff began formulating a process for the review of information previously made publicly available that may be considered sensitive from the standpoint of potential terrorist activity.

The staff developed proposed interim criteria for use in deciding what information should not be released to the public and submitted it to the Commission on October 29, 2001. The Commission subsequently provided general comments and discussion and requested the staff to submit revised guidance and criteria, which are contained in this memorandum. We believe the attached guidance and criteria is consistent with Commission direction in the SRM.

We also believe that the guidance and criteria contained in this memorandum comport with the draft definition that the Office of Homeland Security has developed for Sensitive Homeland Security Information (SHSI). We will ensure this information remains consistent with any final OHS definition.

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Attachment 1

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General Discussion:

The guidance and criteria have been developed to assist the staff in making decisions on when to withhold certain documents from the public, which includes not posting them to the NRC web site or making them available in the ADAMS public library.

The guidance and criteria propose a practical approach to screening documents with the intent of ensuring that the staff does not release information that can be misused against NRC-regulated activities and facilities. The criteria may be adjusted in the future based on our experience gained in using them. To the extent uncertainties exist about whether a particular document should be made publicly available, senior office management will make the final decision.

Information will be withheld only if its release could provide a clear and significant benefit to an adversary in a potential attack and the information must be that which is generated by the NRC, our licensees, or our contractors. Information of a general nature or of marginal relevance will not be withheld.

Guidance on Availability of Documents

In accordance with Commission direction in the SRM, guidance and criteria will be issued to the staff which contain the following instructions on availability of documents:

- Information that is currently widely available to the public via ADAMS as of the issuance date of this guidance should not be systematically reviewed against the criteria;
- However, documents that were on the NRC external web page, the public library of ADAMS, or in the public document room, but were withdrawn in response to 9/11 events, will be reviewed against the criteria before being released again; and
- All new documents generated after the issuance date of this memorandum will be reviewed against the criteria.

Because documents in the PDR are widely available through other sources (GPO, NTIS, local libraries, etc.), we do not intend to have the PDR staff review requests for archived documents. If the technical staff identifies individual documents that contain sensitive information, the PDR staff will no longer make them available. This may require removing a document in its entirety, such as an archived FSAR that is stored on microfiche, even though only several pages are considered sensitive. Licensees who submit more current updates to FSARs on CD-ROM can more easily separate sensitive material from that which is non-sensitive. Additionally, because NRC does not control archival collections external to the agency, documents may continue to be made publicly available through other sources.

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Any decision by the staff to withhold information will be guided by balancing the costs and benefits of withholding. If the outcome of balancing of the costs and benefits of withholding the information is uncertain, the information will be released.

Staff will consider providing alternate means for the release of relevant information on important public subjects in a fashion that would not provide significant assistance to a terrorist, i.e. by redacting details or rewriting important documents to eliminate sensitive information.

The web site will be rebuilt by applying the attached criteria to posted information. We are aware that external organizations have material on their web sites that may be considered sensitive under the criteria. When such information is brought to our attention, we have been contacting the owners of these sites requesting that they voluntarily remove such information. We will continue to satisfy our legal obligations to make certain information publicly available.

Records captured by Freedom of Information Act (FOIA) requests are subject to specific laws and statutes. We will continue to handle and process all FOIA requests in the same manner as before, but will separately identify documents that fall within the attached criteria. In October, 2001, the Attorney General 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.

Certain categories of information have been restored to the public domain because they attracted a large amount of public interest. These include: performance indicators and inspection findings, OSRE findings that have been corrected, the plant status report (minus "reasons and comments" column), and specific locations of licensed facilities.

Review Process:

Program offices will be responsible for assigning certain staff to act as points of contact for the identification of SHSI. The staff will be issued more specific guidance and training materials concerning the identification, control, and protection of SHSI. Pending the development of revised Management Directives and office-level guidance documents, the staff will continue to use the approaches set forth in this memorandum.

The review process for SHSI will be incorporated into existing procedures for document management and control that are similar to those already existing for proprietary and other types of protected information.

Agency and office-level procedures will contain a process for final disposition where differences of opinion exist among the staff regarding release of information.

We will work with licensees to enable them to identify and mark their documents that meet the criteria for SHSI so that their information can be appropriately controlled and protected when received by NRC staff. The criteria will be shared with Agreement States for their information and appropriate use.

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Recommendation:

We recommend the Commission approve the guidance and criteria contained in this memorandum. We plan to issue information contained in this memorandum to the staff once Commission approval is received. When the final definition for Sensitive Homeland Security Information is issued by the Office of Homeland Security, our guidance and criteria may need to be revised.

The major program offices will work with OCIO and others to integrate the identification and control of SHSI into the routine activities performed by the agency.

**CRITERIA TO BE USED WHEN DECIDING WHETHER TO WITHHOLD
INFORMATION FROM THE PUBLIC**

- Information currently widely available to the public via ADAMS as of the issuance date of this guidance should not be systematically reviewed against these criteria. If a document is found to contain sensitive information, it should be carefully reviewed against these criteria while considering the cost of its removal from the public domain.
- However, documents that were on the NRC external web page, the public library of ADAMS, or in the public document room, but were withdrawn in response to 9/11 events, should be reviewed against these criteria before being released again.
- Similarly, all new documents generated after the issuance date of this guidance should be reviewed against these criteria.

The NRC staff should continue to withhold information such as proprietary, privacy, safeguards or classified information consistent with established guidance and procedures. In addition, staff should limit public release of information if it contains one or more elements from the following criteria:

1. Plant-specific information, generated by NRC, our licensees, or our contractors, that would clearly aid in planning an assault on a facility. An example might be drawings depicting the location of certain safety equipment within plant buildings. Examples may include portions of Final Safety Analysis Reports (FSARs), Individual Plant Examination (IPE) material, and other risk and facility vulnerability information.
2. Physical vulnerabilities or weaknesses of nuclear facilities which would clearly be useful to terrorists, such as site-specific security measures, access controls, or personnel security clearance procedures.
3. Construction details of specific facilities, such as wall thicknesses or specific barrier dimensions, detailed diagrams, schematics, or cutaways of specific plant designs where

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such information would be of clear and significant benefit to a terrorist in a potential attack. Where appropriate, general descriptions instead of exact numbers (i.e. "several feet, several inches, layers of concrete") should be used for general public information.

4. Information which clearly would be useful to defeat or breach key barriers at nuclear facilities.
5. Information in any type of document (e.g. plant status report, press release) that provides the current status or configuration of systems and equipment that could be used to determine facility vulnerabilities if used by an adversary. This does not include general conditions such as 100 percent power or shutdown.

SECY please track.

cc: SECY
OGC
OCA
OPA
CFO
OIG

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May 28, 2002

MEMORANDUM TO: William D. Travers
Executive Director for Operations

Karen D. Cyr
General Counsel

FROM: Annette L. Vietti-Cook, Secretary /RA by Andrew L. Bates
Acting For/

SUBJECT: STAFF REQUIREMENTS - COMSECY-02-0015 -
WITHHOLDING SENSITIVE HOMELAND SECURITY
INFORMATION FROM THE PUBLIC

The Commission has approved the proposed criteria for withholding certain sensitive homeland security information from the public, subject to the following comments.

1. The staff should review our processes and procedures for implementing Section 147 of the Atomic Energy Act for controlling safeguards information to ensure that information falling into this category is clearly defined and then is carefully protected. OGC should work to refine and expand the existing criteria to protect information under Section 147 of the Atomic Energy Act as safeguards information.
2. After applying these criteria to those documents withdrawn from the NRC external web page, the public library of ADAMS, and in the public document room (second bullet in COMSECY-02-0015), the staff should perform a limited audit of the public library of ADAMS to provide reasonable assurance that information deemed sensitive is not publicly available in ADAMS. The staff can perform this review by selecting a few sensitive words or phrases from those documents withheld in searching the public library of ADAMS.
3. The staff will need to re-evaluate this guidance and these criteria as the Office of Homeland Security continues to further clarify the definition of "Sensitive Homeland Security Information." This guidance and these criteria should continue to be viewed as part of a work-in-progress.
4. OGC should remain fully involved in the process to provide insight and consistency regarding use of the phrases and terminology such as "clearly would", "could be expected to", "could reasonably be foreseen to cause significant harm", and "clear and significant" as these terms bear on the release of information.
5. Upon the completion of item 1 above, the staff should work with our licensees to explain how this new homeland security classification differs from the safeguards classification

TOTAL P.17

contained within our regulations.

cc: Chairman Meserve
Commissioner Dicus
Commissioner Diaz
Commissioner McGaffigan
Commissioner Merrifield
OGC
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PDR