



FREEDOM OF INFORMATION REQUEST AND REQUEST FOR EXPEDITED PROCESSING

March 2, 2015

Freedom of Information Officer
NNSA Service Center
Office of Public Affairs
P.O. Box 5400
Albuquerque, NM 87185-5400

Via e-mail to FOIOfficer@nnsa.doe.gov, foiofficer@doeal.gov

Dear FOIA Officer,

This is a request under the Freedom of Information Act (FOIA), 5 U.S.C. Section 552, as amended. The Oak Ridge Environmental Peace Alliance (OREPA) and Nuclear Watch of New Mexico (NWNM) request the following:

Any and all Supplement Analyses of the 2011 Final Site-Wide Environmental Impact Statement for the Y-12 National Security Complex in Oak Ridge, Tennessee. These Supplement Analyses are the basis upon which the National Nuclear Security Administration (NNSA) makes any decisions concerning the need for further agency action to meet the requirements of the National Environmental Policy Act.

In the event that NNSA has not prepared any Supplement Analyses for the 2011 Final Site-Wide Environmental Impact Statement for the Y-12 National Security Complex, we request any and all NNSA documents explaining the decision(s) to not prepare Supplement Analyses.

We also request expedited processing of our request.

The Department of Energy's (DOE)'s FOIA web page states:

You can get expedited processing if you show a "compelling need." A compelling need is established when one of the following two criteria are met: (1) by establishing that your failure to obtain the records quickly could reasonably be expected to pose an imminent threat to the life or physical safety of an individual, or (2) if you are primarily engaged in disseminating information and can demonstrate an urgency to inform the public concerning actual or alleged Federal Government activities exists.

You must certify the reasons for expedited processing by articulating with specific examples of either criterion, which both must be true and correct.

The first criterion for expedited processing does not apply. With respect to the second criterion, first we note that FOIA requires government agencies to respond within 20 working days. DOE violation of that legal requirement is the rule, not the exception. We would be more than satisfied if DOE simply met the legal requirement instead of having to resort to requesting expedited processing. In fact, we expect that even "expedited processing" will fail to comply with the letter of the law requiring agency response within 20 working days, which is an indictment of DOE's FOIA performance.

As to the specific merits of expedited processing in this particular case, we note that the Obama Administration released its proposed federal budget on February 2, which included \$430 million for the Uranium Processing Facility in FY 2016, a 28.4% increase above the current FY 2015 level of \$355 million. We further note a widely reported half-billion dollar UPF design mistake for which one has been held publicly accountable, and reported plans to move forward with a preferred alternative significantly different from what the NNSA formally approved in its 2011 Record of Decision.

The congressional authorization and appropriations processes are beginning imminently, which will directly impact the UPF. OREPA and Nuclear Watch NM are nonprofit organizations "primarily engaged in disseminating information." We believe there is urgency in informing both Congress and the public of the status of UPF's compliance or not with the National Environmental Policy Act given reported substantial changes to the preferred alternative and new environmental information. Determination of UPF's NEPA status could also help guard against further waste of taxpayers' money. For these reasons, which we believe are true and correct, we request expedited processing of our FOIA request.

If and when our FOIA request is honored, any redactions or use of FOIA exemptions must be applied individually to the text in question, with the number of the claimed exemption used for each.

As a reminder, President Obama's Freedom of Information Act Memorandum For The Heads Of Executive Departments And Agencies states, "All agencies should adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA, and to usher in a new era of open Government. The presumption of disclosure should be applied to all decisions involving FOIA." (http://www.whitehouse.gov/the_press_office/FreedomofInformationAct/)

We request an unlocked electronic format (e.g. PDF or Word) of these documents, as provided for by 5 U.S.C. § 552, (a)(3), which states:

(B) In making any record available to a person under this paragraph, an agency shall provide the record in any form or format requested by the person if the record is readily reproducible by the agency in that form or format. Each agency shall make reasonable efforts to maintain its records in forms or formats that are reproducible for purposes of this section.

(C) In responding under this paragraph to a request for records, an agency shall make reasonable efforts to search for the records in electronic form or format, except when such efforts would significantly interfere with the operation of the agency's automated information system.

In the event that an electronic version(s) is not available, we then request paper copy(ies) of this document(s). However, we consider that event unlikely since a document will almost always first be created electronically to begin with.

If you regard this information as exempt from required disclosure under the Act, NWNM and OREPA request that you exercise your discretion to disclose them nevertheless. If the document(s) includes classified or otherwise restricted information and the volume of this material makes a lengthy declassification review necessary, NWNM and OREPA request the prompt release of all elements of the document portions marked 'Unclassified,' 'For Official Use Only,' or 'Declassified.' Additionally, NWNM and OREPA request that the remaining classified portions undergo a careful review for the purpose of declassification, in whole or in part, and that you release to NWNM and OREPA all reasonably segregated portions of the classified record, except those portions which would actually damage national security.

NWNM and OREPA further request that you disclose these materials as they become available to you without waiting until all the documents have been assembled.

As you know, an agency cannot rely simply on the markings of a document to deny its release. In order for a document to be withheld under Exemption 1 of FOIA, it must be reviewed and found to be properly classified pursuant to both procedural and substantive criteria found in the governing Executive Order, E.O. 12356. See Conf. Rep., H.R. Rep. No. 1380 (Freedom of Information Act Amendments), 93rd Cong., 2d Sess. 6 (1974); see also Lesar v. Department of Justice, 636 F. 2d 472, 483 (D.C. Cir. 1980); Allen v. CIA, 636 F. 2d 1287, 1291 (D.C. Cir. 1980). This requires an actual, substantive review of the materials and their classification markings. E.O. 12356, Section 3.4, Mandatory Review for Declassification.

Should you elect to invoke an exemption to the FOIA, NWNM and OREPA will require in your full or partial denial letter sufficient information to appeal the denial. In accordance with the minimum requirements for administrative due process, this information should include:

1. Basic factual material, including the originator, date, length, and addresses of the withheld items.

2. Explanations and justifications for denial, including the identification of the procedural category of E.O. 12356 under which the withheld document or portions of the document was found to be subject to classification, at what level the entire document was ultimately classified and the nature and variety of the document's portion-marking and, most importantly, explanations of how each exemption fits the withheld material.

NWNM and OREPA are non-profit, tax-exempt, public policy research and information environmental organizations. NWNM and OREPA make information available to thousands of citizens by means of its numerous and varied publications, educational programs, and public-interest litigation. The information disclosed pursuant to the request will be made directly available to the public and others engaged in policy analysis and research, including historians, area specialists, and journalists.

In the recent past, the Department of Energy has, as a matter of course, sent a letter asking for clarification of the following:

1. Whether the subject of the requested record(s) concerns "the operations or activities of the government;"
2. Whether the disclosure is "likely to contribute" to an understanding of government operations or activities;
3. The contribution to an understanding by the general public of the subject likely to result from disclosure, taking into account one's ability and intent to disseminate the information to the public in a form that can further understanding of the subject matter;
4. Whether the disclosure is likely to contribute "significantly" to public understanding of government operations or activities;
5. Whether the requester has a commercial interest that would be furthered by the requested disclosure; and if so
6. The primary interest in disclosure: Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in the disclosure, that disclosure is "primarily in the commercial interest of the requester."

In order to save time and help expedite our request, NWNM and OREPA herein respond to the above questions in sequential order. This will also help your office clarify any questions you may have regarding OREPA and NWNM's eligibility for FOIA fee waivers or reductions under 10 CFR 1004.9(a)(8). Furthermore, it should assist your office in speedy compliance and consideration of this FOIA request, as required by 5 U.S.C. Section 552, as amended.

OREPA and NWNM's answers are as follows:

1) All information requested in this FOIA is for information directly related to federal Department of Energy (DOE) activities. Therefore, our request indisputably concerns "the operations or activities of the government." Further, documents generated by DOE management contractors are "owned" by the federal government and therefore fall under this request (e.g., see LANL management contract #W-7405-ENG-36/Mod M440/M507, §1.067 and NM CIVIL NO. 97-1412 DJS/WWD "Los Alamos Study Group vs. Dept. of Energy"). Additionally, the fact that a requested document may have been generated by a contractor, rather than by the federal government itself, does not excuse any delay to the fulfillment of our request.

2) DOE activities are of concern to many citizens, yet it is an area where public information is often lacking or inadequate. This FOIA request will enable the public and their advocates to better understand DOE activities.

3) NWNM and OREPA are in an excellent position to aid the public in its understanding of government activities, particularly with respect to DOE facilities in New Mexico and Tennessee. Our most effective means of information dissemination is through our web sites (www.nukewatch.org and www.orepa.org) that receive 1,000,000+ visits a year. In order to better inform the public, NWNM and OREPA post fact sheets analyzing federal and state policies on its web site. We also publish and distribute newsletters to the public. Additionally, we often work closely with regional and national journalists so that they can inform the public through their publications. The information received under this FOIA will be reviewed and presented to the public through any or all of these means.

4) The requested material in this FOIA is likely to contribute "significantly" to public understanding of government operations or activities because it will provide NWNM and OREPA with important information that will help clarify DOE activities. In turn, NWNM and OREPA will convey the information to the public so that the general citizenry can be better informed.

5) NWNM and OREPA have no commercial interest in this FOIA request. NWNM operates under the fiscal agency of the Southwest Research and Information Center, Albuquerque, NM, a 501(c)3 non-profit organization. NWNM or OREPA cannot in any way make a profit from its activities, whether from this FOIA request, or any other endeavor.

6) The response to question 5 satisfies question 6.

As per 10 CFR 1004.4 (e), NWNM and OREPA assure our willingness to pay fees, unless a waiver is granted. Beyond the required first 100 pages of duplication and the first two hours of search time without charge (10 CFR 1004.9 (a)(6), NWNM and OREPA are prepared to pay normal search and copying fees up to \$50.00. If fees exceed \$50.00, please advise. However, the FOIA provides that you may waive fees "if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." (5 U.S.C. Section 552(a)(4)(A)(iii) and 10 CFR 1004.9(a)(8)) This request clearly meets these requirements. Therefore, we request that you waive all fees in connection with this request. We further ask, in the event that fees are not waived, that you inform us of the specific basis for such a decision.

We appreciate your help in obtaining this information. Should you need further information concerning NWNM, OREPA, or this request, we would appreciate your immediate attempts to contact us in order to expedite this request. We expect a definitive determination of NNSA's intent to release the Response within 20 working days, as 5 U.S.C. Section 552, (a)(6)(A) stipulates:

Each agency... shall - - (i) determine within twenty days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of any such request whether to comply with such request and shall immediately notify the person making such request of such determination and the reasons therefore, and of the right of such person to appeal to the head of the agency any adverse determination.

In your determination, we also expect a stated date when this document will be released to us, or, alternatively, any reason for denial.

Sincerely,

Ralph Hutchison, Coordinator OREPA

Jay Coghlan, Executive Director NWNM

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