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**NR
DC**
Natural Resources
Defense Council
October 7, 1997

GayLa D. Sessoms, Director
FOIA/Privacy Act Division
Office of the Executive Secretariat
U.S. Department of Energy
HR-78
1000 Independence Ave., SW
Washington, DC 20585

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F1999-01490

Re: Freedom of Information Request

Dear Ms. Sessoms:

This is a request under the Freedom of Information Act ("FOIA"), 5 U.S.C. Section 552.

I hereby request, on behalf of the Natural Resources Defense Council (NRDC), the following:

Chronologies of Nuclear Weapons Tests and Peaceful Nuclear Explosions in the USSR, 1949-1990, September 1997, published by the DOE Office of Energy Intelligence.

If you regard this document as exempt from required disclosure under FOIA, we request that you disclose it nevertheless, as such disclosure would serve the public interest of educating citizens. See 10 C.F.R. § 1004.1 (authorizing disclosure of documents exempt from FOIA disclosure where such disclosure is in the public interest). If the requested document includes classified or restricted information and the volume of the material makes a lengthy declassification review necessary, we request the prompt release of all portions of the document marked Unclassified, For Official Use Only, or Declassified. In addition, we 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 us all reasonably segregable portions of the classified record, except those portions that could reasonably damage national security.

As you know, an agency cannot rely simply on the markings of a document to deny its release. For a document to be withheld under Exemption 1 of FOIA, it must be reviewed and found to be in fact properly classified pursuant to both procedural and substantive criteria found in the governing executive order. 5 U.S.C. § 552(b)(1)(B). See also *Lesar v. U.S. Dep't of Justice*, 636 F.2d 472, 483 (D.C. Cir. 1980); *Southam News v. INS*, 674 F. Supp. 881, 884 (D.D.C. 1987). This requires an actual, substantive review of the materials and their classification markings.

Should you decide to invoke a FOIA exemption, please include in your full or partial denial letter sufficient information for us to appeal the denial. To comport with legal requirements this information must include, *inter alia*:

1. Basic factual material about each withheld item, including the originator, date, length, general subject matter, and location of each item.

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2. Explanations and justifications for denial, including the identification of the category within the governing executive order or statutory provision under which the withheld document (or portion thereof) 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.

NRDC is a national, non-profit, tax-exempt, public-policy research and environmental organization. We make information available to thousands of citizens by means of our numerous and varied publications, educational programs, seminars, media initiatives, and public interest litigation. The information disclosed pursuant to this request will be made available to the public and others engaged in policy analysis and research, including historians, area specialists, and journalists.

FOIA permits the waiver of search and copy fees where the release of information is in the public interest. 5 U.S.C. § 552(a)(4)(A)(iii). See also 10 C.F.R. § 1004.9(a)(8). Release of the documents requested here would contribute significantly to public understanding of these matters. Moreover, NRDC has no commercial interest in obtaining this information; we instead intend to make the information available to the public through the methods specified above. For these reasons we qualify for a fee waiver, and we ask that you waive all fees in connection with this request.

We appreciate your help in obtaining this information. As provided in FOIA, we will expect a reply within ten working days. If you need further information about this request or NRDC, please contact me by phone at (202) 289-6868 in order to speed consideration of this matter.

Sincerely,



Robert S. Norris
Senior Research Analyst