



Natural Resources
Defense Council

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Washington, DC 20005
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July 16, 1990

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John H. Carter
Freedom of Information Officer
U.S. Department of Energy
1000 Independence Ave., S.W., MA-203.41
Washington, D.C. 20585

Dear Mr. Carter:

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

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

All documents prepared, reviewed or monitored, between 1945 and 1955, for or by:

(a) the Radiological Warfare Study Group established in February 1948 by the Armed Forces Special Weapons Project and

(b) the Joint AEC/National Military Establishment Panel on Radiological Warfare, which first met on May 23, 1948.

As you know, an agency cannot rely simply on the markings of a document to deny its release. In order that a document 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, 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. US 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.

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Should you elect to invoke an exemption to the FOIA, I 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.

The Natural Resources Defense Council, Inc, is a national non-profit, tax-exempt public policy research and environmental organization. NRDC makes information available to thousands of citizens by means of its numerous and varied publications, educational programs, seminars, and public-interest litigation. The information disclosed pursuant to this request will be made directly available to the public and others engaged in policy analysis and research, including historians, area specialists, and journalists.

NRDC is prepared to pay normal search fees and copying fees. However, the FOIA provides that you may waive fees if it "is the public interest because furnishing the information can be considered as primarily benefiting the public" 5 U.S.C. Section 552(a)(4)(A). Furthermore, 10 CFR 1004.9(a)(1)(i) states that fee waivers are most likely to be warranted when the records requested are for "a representative of a bona fide public interest group" and that there is "current public interest in the subject matter to which the document pertains," and that the furnishing of the information can be considered "of benefit primarily to the public as opposed to the requester." This request clearly meets these requirements. Therefore, I request that you waive all fees in connection with this request. I further ask, in the event that fees are not waived, that you inform me of the specific basis for such a decision. I further request that you notify me if you expect fees to exceed \$30.00.

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I appreciate your help in obtaining this information. Should you need further information concerning NRDC or this request, I would appreciate your contacting me by phone at (202) 783-7800 in order to speed consideration of this matter. I look forward to hearing from you within ten working days, as the law stipulates.

Sincerely,

A handwritten signature in cursive script that reads "Thomas B. Cochran". The signature is written in dark ink and is positioned above the typed name.

Thomas B. Cochran
Senior Staff Scientist

TBC:mvw