



Department of Energy
Savannah River Operations Office
P.O. Box A
Aiken, South Carolina 29802

SEP 16 2019

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Tom Clements
Savannah River Site Watch
1112 Florence Street
Columbia, SC 29201

Dear Mr. Clements:

SUBJECT: Freedom of Information Act (FOIA) Request Savannah River Operations Office
SRO-2019-01341-F

This letter constitutes our final response to your August 30, 2019 FOIA request for copies of (1) Any modification to the original Work for Others (WFO) agreement between DOE/Savannah River Nuclear Solutions and Jülicher Entsorgungsgesellschaft für Nuklearanlagen (JEN) - located at the Forschungszentrum Jülich (FZJ) in Germany - and the Savannah River Site, Savannah River Nuclear Solutions, and/or the Savannah River National Laboratory after March of calendar year 2018 or at any point in calendar year 2019. Modification Number 5 to the Work for Others agreement terminated on August 30, 2019, so this request covers any "modification" subsequent to Modification Number 5. The requested modification(s) may be called Modification Number 6 (and higher); (2) Any documentation on import of irradiated or unirradiated graphite fuel "pebbles" from Germany to SRS. (At the time of this filing, it is believed that JEN obtained initial permission to export 33 fuel pebbles, but final permission had not been obtained from Bundesamt für Wirtschaft und Ausfuhrkontrolle (BAFA) - the Office of Economics and Export Control.); and (3) Any reports from any SRS entity has provided to Germany under the most recent modified Work for Others agreement.

Modification Number 6 is still in draft form and cannot be released under Exemption 5, deliberative process. It is estimated that this document will be in its final form in a few weeks when you can submit another request for this document. There are no other documents responsive to your request.

Exemption 5 allows an agency to withhold "inter-agency or intra-agency memorandums or letters which would not be available by law to a party... in litigation with the agency." 5 U.S.C. § 552(b)(5); see *Nat'l Labor Relations Bd. v. Sears Roebuck & Co.*, 421 U.S. 132, 149 (1975). Exemption 5 therefore incorporates the privileges that protect materials from discovery in litigation, including the deliberative process, attorney work-product, attorney-client, and commercial information privileges. We are withholding Modification 6 in full under Exemption 5 because it qualifies to be withheld under the deliberative process privilege.

The deliberative process privilege protects the decision-making process of government agencies and encourages the "frank exchange of ideas on legal or policy matters" by ensuring agencies are not "forced to operate in a fish bowl." *Mead Data Cent., Inc. v. United States Dep't of the Air Force*, 566 F.2d 242, 256 (D.C. Cir. 1977) (internal citations omitted). A number of policy purposes have been attributed to the deliberative process privilege. Among the most important are to: (1) "assure that subordinates . . . will feel free to provide the decisionmaker with their uninhibited opinions and recommendations"; (2) "protect against premature disclosure of proposed

policies”; and (3) “protect against confusing the issues and misleading the public.” *Coastal States Gas Corp. v. United States Dep’t of Energy*, 617 F.2d 854, 866 (D.C. Cir. 1980).

The deliberative process privilege protects materials that are both predecisional and deliberative. The privilege covers records that “reflect the give-and-take of the consultative process” and may include “recommendations, draft documents, proposals, suggestions, and other subjective documents which reflect the personal opinions of the writer rather than the policy of the agency.


The deliberative process privilege routinely protects certain types of information, including “recommendations, draft documents, proposals, suggestions, and other subjective documents which reflect the personal opinions of the writer rather than the policy of the agency.” *Id.* Further, the deliberative process privilege permits the Government “[t]o the extent the predecisional materials, even if ‘factual’ in form, reflect an agency’s preliminary positions or ruminations about how to exercise discretion on some policy matter, they are protected under Exemption 5.” See *Petroleum Info. Corp. v. Dep’t of Interior*, 976 F.2d 1429, 1435 (D.C. Cir. 1992). Finally, the deliberative process privilege also assures employees will provide decision makers with their “uninhibited opinions” without fear that later disclosure may bring criticism.

If you wish to challenge the adequacy of the search or the information withheld, you must submit a written appeal within 90 calendar days after receipt of this letter denying in part and granting in part the requested information. Written appeals should be submitted to the Director, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW, L’Enfant Plaza Building, Washington, DC 20585, under 10 CFR § 1004.8, which sets forth the required elements of such appeals. Thereafter, judicial review will be available within the district in which a requester resides, has a principal place of business, in the place in which the records are situated, or in the District of Columbia. You may also submit your appeal by e-mail to OHA.filings@hq.doe.gov, including the phrase “FOIA Appeal” in the subject line.

You may contact me, DOE Savannah River Operations Office’s (SR’s) FOIA Public Liaison, at (803) 952-7618 or by mail at PO Box A, Aiken, SC, 29802 for any further assistance or to discuss any aspect of your request. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, email at ogis@nara.gov; telephone at (202) 741-5770; toll free at 1-877-684-6448; or facsimile at (202) 741-5769.

As Chief Counsel, DOE-SR, I am the authorizing and denying official for the documents responsive to your request. If you have any questions, please contact Ms. Jennifer Farmer at (803) 952-7813 or jennifer.farmer@srs.gov.

Sincerely,



Lucy M. Knowles
Authorizing Official

OCC: LMK:anv