



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

March 22, 2022

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Mr. Tom Clements  
Director, 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-2022-00522-F

This letter constitutes our final response to your 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 February 26, 2021. Modification Number 7 to the Work for Others agreement terminated on or around February 26, 2022, so this request covers any "modification" or new agreement subsequent to Modification Number 8. The requested modification(s) may be called Modification Number 9 (or higher); (2) Any attachments to Modification 9 (or higher) requested above; (3) Any documentation in the hands of DOE, SRS, SRNL or SRNS from 2020 or 2021 on plans to import irradiated or unirradiated graphite fuel "pebbles" - perhaps the 33 unirradiated pebbles mentioned above - from Germany to SRS, for research purposes and any documents indicating that the importation may have taken place; and (4) Any documents, including reports and memos, from any SRS entity that were provided to Germany in 2020 or 2021 under the Work for Others agreement, Modification Number 8.” The enclosed documents are responsive to your request. Additional documents are responsive to your request but are being withheld in their entirety as explained below.

The document titled, “SRNL HTGR Technology Maturation Activities” is being withheld in its entirety under Exemption 5, predecisional. This document is in draft form and is the subject of negotiations.

The document titled, “SRNL HTGR Technology Maturation Cost Estimate” is being withheld in its entirety under Exemption 4, commercial or financial information. The document contains cost estimates and rates which are protected under this privilege. It is also withheld under Exemption 5, predecisional. This document is in draft form and is the subject of negotiations.

Exemption 4 of the FOIA protects “trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential.” 5 U.S.C. § 552(b)(4). This exemption is intended to protect the interests of both the Government and submitters of information. Exemption 4 affords protection to submitters who provide trade secrets, or commercial or financial information to the Government by safeguarding them from the competitive disadvantages that could result from disclosure. The exemption covers two broad categories of information in Federal agency records: 1) trade secrets, and 2) information that is (a) commercial or financial and (b) obtained from a person, and (c) privileged and confidential.

The information withheld under Exemption 4 includes sensitive commercial or financial information that is maintained in confidence by the submitters and that which is “so customarily kept private, or at least, closely held by the person imparting it.” *Food Marketing Institute v. Argus*

*Leader Media*, 139 S.Ct. 2356, at 2363. Disclosure of the information withheld under Exemption 4 would cause substantial harm to the competitive position of the person from whom the information was obtained because it has the potential to limit the ability to claim intellectual property on the methods contained within the document. Additionally, cost estimates and rates are included in the documents, which may also cause substantial harm to the competitive position if released. Therefore, this information is confidential for the purposes of Exemption 4 and we have withheld it.

Exemption 5 of the FOIA protects from mandatory disclosure “inter-agency or intra-agency memoranda or letters that would not be available by law to a party other than an agency in litigation with the agency....” 5 U.S.C. § 552(b)(5). Exemption 5 incorporates the deliberative process privilege which protects recommendations, advice, and opinions that are part of the process by which agency decisions and policies are formulated. The information withheld under Exemption 5 consists of pre-decisional information.

The withheld portions of the documents being withheld as deliberative include exchanges between government employees and government representatives and reflect the representatives’ impressions or opinions regarding decisions not yet made. The DOE may consider these preliminary views as part of the process that will lead to the agency’s final policy decision about these matters. The withheld information does not represent a final agency position, and its release would compromise the deliberative process by which the government makes its decisions. Thus, the information is being withheld under Exemption 5 of the FOIA as pre-decisional material that is part of the agency’s deliberative process.

With respect to the discretionary disclosure of deliberative information, the quality of agency decisions would be adversely affected if frank, written discussion of policy matters were inhibited by the knowledge that the content of such discussion might be made public. For this reason, DOE has determined that discretionary disclosure of the deliberative material is not in the public interest because foreseeable harm could result from such disclosure.

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](mailto: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](mailto:ogis@nara.gov); telephone at (202) 741-5770; toll free at 1-877-684-6448; or facsimile at (202) 741-5769.

Mr. Clements

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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](mailto:jennifer.farmer@srs.gov).

Sincerely,

OCC: LMK:anv

Lucy M. Knowles  
Authorizing Official