



June 30, 2023

Director, Office of Hearings and Appeals
Department of Energy
1000 Independence Avenue, SW
L'Enfant Plaza Building
Washington, DC 20585

Appeal of FOIA SRO-2023-00646-F, On the Matter of the Now-Terminated Plan on the Import to SRS of Highly Radioactive German Spent Fuel for Processing and Disposal

To Whom it Concerns:

This letter constitutes a formal appeal of the DOE response to my Freedom of Information Act (FOIA) Request Savannah River Operations Office SRO-2023-00646-F. I am filing this appeal per 10 CFR § 1004.8.

The FOIA request SRO-2023-00646-F was filed by myself on behalf of the non-profit organization Savannah River Site Watch (SRS Watch) on March 1, 2023. DOE's Savannah River Operations Office acknowledged receipt of the request in writing, via email, on the same day.

The FOIA request sought documents pertinent to cooperation between the Savannah River Site and the German government-owned company Jülicher Entsorgungsgesellschaft für Nuklearanlagen (JEN) pertaining to the import to SRS of irradiated graphite spent fuel and R&D related to the removal of uranium from that fuel, with disposal of resultant radioactive waste at SRS and/or in the US. Over the last decade, I have filed many FOIA requests related to this project.

Part of my original FOIA request (which is attached), as acknowledged by the Savannah River Operations Office, included a request for this item:

“(4) Any communication, including letters and emails, between SRNL, SRS or DOE and JEN or other German entities on the status of the cooperation, including on terminating or reviving the WFO or other cooperation.”



I am filing this appeal as the response was incomplete as only one responsive document was provided and nothing was stated in the final FOIA cover letter to me confirming that a search for other responsive documents had been conducted. In any event, apart from the one JEN document that was provided (and mentioned below), no DOE documents were provided. I have no indication if any other documents were located. If such documents were searched for and located I was not made aware of that and was not provided an explanation as to why they were not provided per allowed FOIA exemptions.

The final response to me on June 14, 2023 did include a single printed email, dated October 12, 2022, from key officials at the German company Jülicher Entsorgungsgesellschaft für Nuklearanlagen to Angela Watmore, whose email identifies her as being with DOE's Office of Environmental Management, and William Bates, apparently with the Savannah River National Laboratory.

The top of the printed email was blacked out, with no citation of the relevant FOIA exemption that was applied to this redaction. DOE's FOIA website states: "When information is withheld from disclosure, the DOE's written response ordinarily identifies what records have been withheld and specifies the FOIA exemption that permits the withholding." Contrary to this, no exemption was given as to blacking out the header at the top of the 3-page email. In reviewing the 9 FOIA exemptions, I cannot determine that any of them might apply in this case.

Other than the email mentioned above, no other "communication, including letters and emails" from JEN to SRNL, SRS or DOE was provided. Such communication certainly does not fall under law-enforcement exceptions allowed by FOIA regulations.

I also was not provided copies of any audio or video communication. This fact is of note as the mentioned JEN email mentions a "recent video call with Denis Niedrée." This "video call" appears to have been between DOE and Mr. Niedrée, who seems to be a JEN employee.

The FOIA response to me did not include any copies of "communication, including letters and emails" from SRNL, SRS or DOE to JEN. The FOIA response letter did not mention any such communication was being withheld, rather nothing was provided and no explanation was given as to why no communication was mentioned. I intended for such communication to be provided as it pertained to the termination of SRS-JEN cooperation as it developed and was finalized in 2022 and until the date of my 2023 FOIA request. Given lack of any mention of other "communication" documents one could assume, correctly or not, that nothing between JEN and SRS/SRNL/DOE during the 2022-2023 time frame was put in any form of written communication.

I cite DOE's FOIA guidance: "When information is withheld from disclosure, the DOE's written response ordinarily identifies what records have been withheld and specifies the FOIA exemption that permits the withholding." To reiterate, beyond the single JEN email that has been mentioned, the June 12, 2023 FOIA response letter to me did not address my request for communication from SRNL, SRS and/or DOE to JEN. As the named entities were working in a

cooperative manner and have been demonstrated to communicate by email, I cannot assume that no communication exists from SRNL, SRS or DOE to JEN. The FOIA response to me does not address the complete absence of responsive communication from SRNL, SRS or DOE to and from JEN, nor does the FOIA response say that any responsive documents were withheld. FOIA regulation 10 C.F.R. § 1004.4(d) states: "If responsive documents cannot be located, the requester must be told whether the requested record is known to have been disposed of or never to have existed." As required by this section, I was not told that no responsive "communication" documents were located or never existed. If documents were not located during a comprehensive search, DOE did not meet the standard presented in 10 C.F.R. § 1004.4(d).

While I believe that there may be additional "communication" records responsive to my request and wonder if a reasonable search was conducted for them, I am appealing as I was not informed if other records existed and were being withheld.

As no information were presented in the "final response" letter to SRS Watch of June 12, 2023 about a search for responsive documents that were withheld, I can only assume that the response is not actually final.

To be clear - as there may well have been discussion about terminating the agreement between SRS and JEN prior to the October 12, 2022 email and prior to the termination of the Work for Others agreement on February 28, 2023, I am clarifying that communication documents in 2022 and 2023 may be responsive to my request. (I was provided a pdf copy of what appears to be a draft Work for Others agreement, identified in the draft as "Modification No. 10, which could have gone into effect if JEN had not terminated the project.

In summary, I request that the Office of Hearings and Appeals do the following:

1. Direct the Savannah River Operations Office and/or Savannah River National Laboratory and/or DOE to provide a full copy of the October 12, 2022 email from JEN, without the top of page one blacked out/redacted. If the page is blacked out per an allowed FOIA exemption that must be explained.
2. Direct SROO/SRNL to make sure that a "comprehensive search" for communication in 2022 and 2023 - about project termination and about any new Work for Others agreement - between SRNL/SRS and JEN is conducted, that I am informed that such search took place and that responsive documents are provided and/or that I be informed about why responsive documents are being withheld per FOIA exemptions.

Please get in touch if you have questions about this appeal.

Sincerely,

A handwritten signature in black ink that reads "Tom Clements". The signature is written in a cursive style with a long horizontal stroke at the end.

Tom Clements
Director, Savannah River Site Watch
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Columbia, SC 29201
tel. 803-834-3084
tomclementssc@gmail.com

Three Documents are Attached:

1. Initial FOIA request by SRS Watch, March 1, 2023;
2. DOE FOIA response letter to SRO-2023-00646-F, dated June 13, 2023;
3. Redacted email of October 12, 2022 from the German company JEN.