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Advanced Test Reactor (ATR) Declared UCNI Utilization Facility

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Background

- **Keep Yellowstone Nuclear Free (KYNF), an environmental group from Jackson, Wyoming, submitted various FOIA requests in 2005 asking for numerous safety and security documents related to ATR, including the ATR Safety Analysis and Hazards Assessment Document.**
- **Some of the documents were released in full, some documents were redacted, and some were withheld entirely. DOE relied on FOIA Exemptions 2 (high 2) and 7(F) to withhold the information.**
- **High 2 was asserted because the documents were predominantly internal and their disclosure would risk circumvention of Federal statutes and regulations. Exemption 7(F) was invoked because the documents were compiled for purposes of fulfilling DOE's law enforcement responsibility to ensure the safety and security of the ATR from all threats.**

Background (con't)

- **KYNF appealed the decision to withhold these materials with the DOE Office of Hearings and Appeals. Decisions of the DOE were largely upheld.**
- **KYNF filed a law suit in U.S. District Court in Wyoming. The court rejected both exemptions, in two separate court rulings.**

Court Ruling 9/25/07

- **Exemption 2 of FOIA did not apply**
 - Documents are not sufficiently related to the agency internal personnel practices .
 - To accept the argument that ATR operational personnel to follow on operating the reactor within the safety basis “would be to endorse the all encompassing sweep of an exemption like Exemption 2”.
- **Exemption 7 (F)**
 - DOE has law enforcement authority, however, to accept Exemption 7 would “depart from the well established and fundamental precepts that FOIA favors disclosure and that FOIA exemptions are to be construed narrowly” .
- **Court ordered an *in camera, ex parte* production of the documents and interviewed DOE experts on the bases for the redactions, indicating an intent to make a final determination on Exemption 7.**

Court Ruling 9/14/09

- **Reaffirmed its previous holding that the withheld documents are not exempt from disclosure under exemption 7(F), and ordered DOE to produce the remaining documents.**
 - **DOE was ordered to provide the documents to the plaintiff, but they could be redacted to exclude the exact locations of certain documents, as long as such redaction “would not meaningfully interfere with plaintiff’s independent review and analysis” (this is a standard unsupported by FOIA or other law).**

Subsequent Actions

- DOE was very concerned about the extraordinary national security interest in the ATR. In order to protect the information at issue, DOE undertook a careful review, and determined that the information should be treated as UCNI, even though it had not been regarded as such since 1992.
- If the information fell within the legal definition of UCNI, it would be exempt from release under FOIA Exemption 3 (statutory exemption).

UCNI Decision

- Pursuant to 10 CFR Part 1017, information at issue is UCNI because it is Government information concerning atomic energy defense programs and pertaining to the design of a utilization facility - the ATR.
- The ATR is a Government Research Reactor performing experiments for the Navy, therefore declared an UCNI Utilization Facility.
- Using GG-5 guidance, DOE-ID requested approval from HQ to designate certain ATR information as UCNI.
- Working with HS-90, a new topic was developed to designate certain ATR information as UCNI.

Sensitive Information Not Released

- **Portions of Chapter 15 of the current Upgraded Final Safety Analysis Report**
- **Portions of Chapter 15 of the 1998 Final Safety Analysis Report**
- **Portions of HAD Emergency Management Hazards Assessments Document**
- **Portions of Engineering Design File Frequency Analysis and Damage Assessment from a Loss of Coolant Accident**

The Redacted Information

- **Details of vital Safety Systems locations and functions and emergency procedures to provide a safe shut down of the reactor**
 - **Locations and Operations (Chapter 15) of Systems Structures & Components (SSC)**
 - **Safety Class SSC mitigating public risk at the sight boundary**
 - **Safety Significant SSC mitigating risk to the worker**
 - **Accident Analysis (HAD) identifying consequences of postulated accidents**
 - **Safeguards and operations of engineered barriers from a loss of coolant accident.**

Conclusion

- **DOE submitted a Motion to Alter or Amend the Judgment with the court, asserting Exemption 3 under FOIA for withholding the information of concern.**
- **Plaintiffs offered to settle, and accepted the documents as redacted for UCNI. Court case was dismissed.**
- **DOE could have appealed the adverse rulings, but chose not to do so in this instance.**
- **ATR was designated as an UCNI utilization facility.**