



## Department of Energy

Washington, DC 20585

September 30, 2021

Steven Aftergood  
Federation of American Scientists  
1112 16<sup>th</sup> Street, N.W.  
Suite 400  
Washington, DC 20036

Via email: [saftergood@fas.org](mailto:saftergood@fas.org)

Re: HQ-2021-00274-F

Dear Mr. Aftergood:

This is a final response to the request for information you sent to the Department of Energy (DOE) under the Freedom of Information Act (FOIA), 5 U.S.C. § 552. You requested:

A copy of all written declassification decision memoranda or "declassification determinations" that have been issued since March 2018 to declassify information under the Atomic Energy Act.

Your request was assigned to DOE's Office of Environment, Health, Safety & Security (AU) to conduct a search of its files for responsive documents. AU started its search on January 25, 2021, which is the cut-off date for responsive documents. AU has completed its search and identified seven (7) documents responsive to your request. These documents are being provided to you as described in the accompanying index.

Upon review, DOE has determined that certain information contained within the documents should be withheld pursuant to Exemptions 3 and 7(E) of the FOIA, 5 U.S.C. § 552 (b)(3) and (b)(7)(E).

Exemption 3 protects from disclosure information "specifically exempted from disclosure by statute (other than section 552(b) of this title), if that statute (A)(i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or (ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld[.]" 5 U.S.C. § 552(b)(3). The Atomic Energy Act of 1954 (AEA), 42 U.S.C. § 2011, is one such statute that falls within the coverage of Exemption 3. Sections 141-146 of this Act (42 U.S.C. 2161-2166) and/or section 148 of this Act (42 U.S.C. 2168) prohibits the disclosure of information concerning atomic energy defense programs that is classified as either Restricted Data (RD) or Formerly Restricted Data and/or determined to be Unclassified Controlled Nuclear Information (UNCI) pursuant to the AEA, as amended.



The portions deleted from the subject document pursuant to Exemption 3 contain information about weapon design that has been that has been classified as RD and/or nuclear materials that has been safeguarded as UCNI. Disclosure of the exempt data could jeopardize the common defense and the security of the nation and/or have a significant adverse effect on the health and safety of the public.

Exemption 7 protects from disclosure “records or information compiled for law enforcement purposes” that fall within the purview of one or more of six enumerated categories. To qualify under Exemption 7, the information must have been compiled, either originally or at some later date, for a law enforcement purpose, which includes crime prevention and security measures, even if that is only one of the many purposes for compilation.

Exemption 7(E) provides that, “records or information compiled for law enforcement purposes” may be withheld from disclosure, but only to the extent that the production of such documents “would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.”

The information withheld under Exemption 7(E) consists of information that would provide insight into the relative sensitivity of still-classified information or would materially assist efforts to compile sensitive information through the association of declassified information and/or publicly released information. The release of this information could impair the Department's ability to enforce the laws regarding classification and is therefore exempt from disclosure. Because the redacted portions of the enclosed document contains information about DOE’s investigative techniques that could be used by an individual to obtain classified or sensitive information on DOE networks without authorization or details of personnel security techniques, we are withholding this information pursuant to Exemption 7(E).

This satisfies the standard set forth at 5 U.S.C. § 552(a)(8)(A) that agencies shall withhold information under FOIA “only if (I) the agency reasonably foresees that disclosure would harm an interest protected by an exemption...; or (II) disclosure is prohibited by law...” 5 U.S.C. § 552(a)(8)(A) also provides that whenever full disclosure of a record is not possible, agencies shall “consider whether partial disclosure of information is possible...and (II) take reasonable steps necessary to segregate and release nonexempt information.” Therefore, we have determined that, in certain instances, a partial disclosure is proper.

Pursuant to 10 C.F.R. 1004.6(d), Dr. Andrew P. Weston-Dawkes, Director, Office of Classification, Office of Environment, Health, Safety and Security, is the official responsible for the denial of the DOE classified information.

Pursuant to 10 C.F.R. §1004.1, DOE will make available records it is authorized to withhold under the FOIA whenever it determines that such disclosure is in the public

interest. With respect to the information withheld from disclosure pursuant to Exemption 3, DOE has no further discretion under the FOIA or DOE regulations to release information currently and properly classified as Restricted Data under the AEA.

Pursuant to 10 C.F.R. § 1004.7(b)(2), I am the individual responsible for the determination to withhold the information under Exemption 7(E) described above. The FOIA requires that “any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt.” 5 U.S.C. § 552(b). As a result, a redacted version of the documents is being released to you in accordance with 10 C.F.R. § 1004.7(b)(3).

This decision, as well as the adequacy of the search, may be appealed within 90 calendar days from your receipt of this letter pursuant to 10 C.F.R. § 1004.8. Appeals should be addressed to Director, Office of Hearings and Appeals, HG-1, L’Enfant Plaza, U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585-1615. The written appeal, including the envelope, must clearly indicate that a FOIA appeal is being made. You may also submit your appeal by e-mail to [OHA.filings@hq.doe.gov](mailto:OHA.filings@hq.doe.gov), including the phrase “Freedom of Information Appeal” in the subject line (this is the preferred method by the Office of Hearings and Appeals). The appeal must contain all the elements required by 10 C.F.R. § 1004.8, including a copy of the determination letter. Thereafter, judicial review will be available to you in the Federal District Court either (1) in the district where you reside, (2) where you have your principal place of business, (3) where DOE’s records are situated, or (4) in the District of Columbia.

You may contact DOE’s FOIA Public Liaison, Alexander Morris, FOIA Officer, Office of Public Information, at 202-586-5955, or by mail at MA-46/Forrestal Building 1000 Independence Avenue, S.W., Washington, D.C., 20585, for any further assistance and 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, e-mail 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.

The FOIA provides for the assessment of fees for the processing of requests. See 5 U.S.C. § 552(a)(4)(A)(i); see also 10 C.F.R. § 1004.9(a). In our January 12, 2021 letter you were notified that you were categorized under the DOE regulation that implements the FOIA at Title 10, Code of Federal Regulations (CFR), Section 1004.9(b)(2), as an “educational” requester. Requesters in this category are charged fees for duplication only and are provided 100 pages at no cost. DOE’s processing costs did not exceed \$15.00, the minimum amount at which DOE assesses fees. Therefore, no fees will be charged for processing your request.

This is the final response that you will receive from this office regarding your request. You may contact me or Clayton Day of my staff with any questions about the processing of your request or this letter at:

MA-46/Forrestal Building  
1000 Independence Avenue, S.W.  
Washington, D.C. 20585  
(202) 586-5955.

I appreciate the opportunity to assist you with this matter.

Sincerely,

Alexander C. Morris  
FOIA Officer  
Office of Public Information

Enclosures

## INDEX

Request #: HQ-2021-00274-F

**Final response to the request from Mr. Steven Aftergood for:**

**A copy of all written declassification decision memoranda or "declassification determinations" that have been issued since March 2018 to declassify information under the Atomic Energy Act.**

DOE's Office of Environment, Health, Safety & Security (AU) completed its search and located seven (7) documents responsive to your request.

- One (1) document *is being released, in part, pursuant to Exemption 3.*
- Two (2) documents *are being released, in part, pursuant to Exemption 7(E).*
- Four (4) documents *are being released in their entirety.*