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 CHIEF COUNSEL AND STAFF DIRECTOR

United States Senate
 COMMITTEE ON
 GOVERNMENTAL AFFAIRS
 SUBCOMMITTEE ON ENERGY, NUCLEAR
 PROLIFERATION AND GOVERNMENT PROCESSES
 WASHINGTON, D.C. 20510

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May 18, 1982

Mr. William Casey
 Director
 Central Intelligence Agency
 Washington, D.C. 20505

Dear Mr. Casey:

On March 23, we asked the Nuclear Regulatory Commission to provide the document numbers, and where possible copies, of the information that caused the NRC to inform the Congress of its concerns about IAEA safeguards.

On May 3, we received the enclosed response from the NRC. We are now asking you to provide copies of the relevant documents on IAEA safeguards for the Subcommittee's use. Our continuing oversight of the Nuclear Non-Proliferation Act of 1978 and our jurisdiction over U.S. nuclear export policy makes the adequacy of IAEA safeguards a subject of great concern. The detailed information contained in these documents would be most useful in our efforts to improve the international safeguards system.

Sincerely,

Charles H. Percy

John Glenn



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

May 3, 1982

The Honorable Charles H. Percy, Chairman
Subcommittee on Energy, Nuclear Proliferation
and Government Processes
Committee on Governmental Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This is in response to your March 23 letter requesting access to those documents which caused the NRC to issue its letter of November 27, 1981 to Congress. We have confined our response to relevant classified information since that appears to be the focus of your letter. This information falls generally into two categories.

The first category is information from sensitive intelligence sources which is controlled by the originating agency and thus is not releasable, even on a classified basis, by the NRC without the consent of the originator. In connection with an earlier, similar request from Congressman Ottinger, Chairman of the Subcommittee on Energy Conservation and Power, Committee on Energy and Commerce, we were advised by the Central Intelligence Agency (CIA) that any list of document numbers of CIA-originated material, including intelligence reports in NRC's possession, would fall in this category. The CIA confirmed this to the NRC in the enclosed statements, which also cite the basis for CIA's position. The Agency did note, however, that it would cooperate fully with Congress and permit any disclosures to be made that are consistent with the Director's responsibility set forth in 50 U.S. Code, Section 403(d) and that any inquiries for CIA-originated information should be referred to the CIA for direct response. In this connection, we have identified for the CIA the documents in which we believe you are interested.

I am also enclosing a copy of a legal analysis, dated March 17, 1982, prepared by our Office of the General Counsel. This analysis sets forth the legal basis for our decision to defer to the CIA on this matter.

The second category of information consists primarily of classified information obtained from other sources and agencies. Much of this information is reflected in (1) the NRC staff's analyses of the second and third attachments to our classified letter of November 13, 1981 to Congress on international safeguards matters, a copy of which was provided to you at that time; and (2) the Commission's additional classified statement regarding safeguards aspects of the Tokai Mura subsequent arrangement before the Subcommittee on International Economic Policy and Trade of the House Committee on Foreign Affairs on October 29, 1981. In this class of information, the principal

The Honorable Charles H. Percy

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reference documents we have identified are (1) the IAEA's Safeguards Implementation Reports of 1977, 1978, 1979 and 1980, which are obtained from the Executive Branch and which the State Department is willing to make available to you; (2) the report in the first attachment to our letter of November 13, 1981; (3) an NRC staff-sponsored study "Implications of IAEA Technical Objectives", Battelle Pacific Northwest Laboratories, May 1981; and (4) the Commission's additional classified statement before the Subcommittee on International Policy and Trade, of the House Committee on Foreign Affairs, October 29, 1981, which contains information concerning safeguards aspects of the Tokai Mura subsequent arrangement. We can provide you with copies of items (3) and (4) if they are not already available. While a large number of other classified documents in this category related to safeguards matters are in our possession, they serve chiefly to round out the picture of international safeguards efficacy obtained from the documents mentioned above and are of limited relevance to the concerns expressed in our November 27, 1981 letter to Congress.

Please let me know if we can be of any further assistance.

Sincerely,



Nunzio J. Palladino

Enclosures:

1. CIA letter dtd 3/17/82 to WJDircks
2. CIA letter dtd 4/19/82 to WJDircks
3. General Counsel memorandum dtd 3/17/82

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WASHINGTON, D.C. 20505

Office of General Counsel

17 March 1982

Mr. William J. Dirks
Executive Director for Operations
Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Mr. Dirks:

This Office has been informed that the House Committee on Energy and Commerce Subcommittee on Energy Conservation and Power has requested access to certain CIA originated information which is in the NRC's possession. All of this information is classified. We wish to remind you that Section IV.D of Directive No. 1 of the Information Security Oversight Office implementing Executive Order 12065 (43 Fed. Reg. 46280, October 5, 1978) provides that "...classified information originating in one agency may not be disseminated outside any other agency to which it has been made available without the consent of the originating agency." Accordingly, as this Agency has not authorized any release of the information in your possession, we request that you so advise the Committee.

You may also assure the Committee that this Agency will, of course, cooperate fully with the Congress and permit any disclosures to be made that are consistent with the Director's responsibility as set forth in 50 U.S.C. Section 403(d) to protect intelligence sources and methods.

Sincerely,



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CENTRAL INTELLIGENCE AGENCY

WASHINGTON, D.C. 20505

Office of General Counsel

19 April 1982

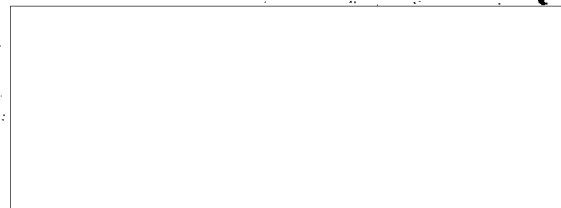
Mr. William J. Dircks
Executive Director for Operations
Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Mr. Dircks:

This is to confirm my earlier response to the Nuclear Regulatory Commission's April 15, 1982 oral request. Any list of document numbers of CIA-originated materials, including intelligence reports, in the NRC's possession would be classified, and therefore, fall within the scope of my March 17, 1982 letter to you. Accordingly, we ask that you refer any inquiries for CIA-originated information to this Agency for direct response.

As noted in my March 17, 1982 letter, the CIA will, of course, cooperate fully with the Congress and permit any disclosures to be made that are consistent with the Director's responsibility as set forth in 50 U.S.C. Section 403(d) to protect intelligence sources and methods. In fact, toward the end of March this Agency received requests from both the House and Senate for much of the same information that you have indicated was requested by Chairman Ottinger, and we are preparing a comprehensive response to those inquiries at this time.

Sincerely,



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NUCLEAR REGULATORY COMMISSION

WASHINGTON, D. C. 20555

March 17, 1982

MEMORANDUM FOR: Chairman Palladino

FROM: *EB* Leonard Bickwit, Jr., General Counsel

SUBJECT: TRANSMITTAL OF CLASSIFIED INFORMATION TO
CONGRESSIONAL OVERSIGHT COMMITTEES

You have requested my opinion whether, in light of Section 303 of the Atomic Energy Act, the Commission may on its own authority transmit classified intelligence information to one of its Congressional oversight committees over the objection of the agency (in this case the Central Intelligence Agency) which originated the information. For the reasons discussed below, I conclude that it may not and that a committee request for such information must be referred to the originating agency.

The Commission's general statutory authority and obligation to transmit information to its Congressional oversight committees is set forth in section 303 of the Atomic Energy Act. This authority and obligation extends to information and documents relating to the Commission's functions that are within the Commission's control. However, I do not believe that the authority or obligation extends to information or documents which are within the Commission's possession but beyond its legal power to transmit.

I understand that the information sought in this case is classified under Executive Order 12065. Executive Order 12065 provides in section 5-202(d) that the Director of the Information Security Oversight Office shall develop and promulgate, subject to the approval of the National Security Council, directives for the implementation of the Order which shall be binding on all Federal agencies. The Information Security Oversight Office's implementing Directive No. 1 on national security information, which was approved by the National Security Council for publication and issuance on September 29, 1978, provides in section IV.D, as follows:

Dissemination/Except as otherwise provided by section 102 of the National Security Act of 1947, 61 Stat. 495, 50 U.S.C. 403 (1970 and Supp. V 1975), classified information originating in one agency may not be disseminated outside any other agency to which it has been made available without the consent of the originating agency (4-403).

I also understand that the information sought in this case originated within the Central Intelligence Agency, and was provided by that agency to the Commission on the understanding that the above quoted provisions of the Directive would fully apply. Finally, it is my understanding that the Central Intelligence Agency has refused to give the Commission the requisite permission to transmit the information to the committee.

The courts have recognized that the Constitution grants authority to the President to adopt restrictions on the disclosure of information when its release would damage the national security or foreign policy interests of the United States. See Snepp v. United States, 444 U.S. 507, 509 note 3 and 511-512 (1980); United States v. Nixon, 418 U.S. 683, 710-711 (1974); U.S. v. Reynolds, 345 U.S. 1, 10 (1953); C. & S. Air Lines v. Waterman S.S. Corp., 333 U.S. 103, 111 (1948). Considerable additional research would be required to determine the exact dimensions of the Constitutionally-based privilege against disclosure. However, I believe that the case law provides authority for the President, and Executive Branch agencies acting under authority delegated by the President, to restrict or condition the transfer of classified information from an Executive Branch agency to the Commission so that the originating agency retains control over the dissemination of the information. Moreover, the authority of the originating agency in this case to impose restrictions on the Commission's further dissemination of the reports is bolstered by statute. The National Security Act of 1947 provides an authority and mandate to the Central Intelligence Agency to protect intelligence sources and methods from unauthorized disclosure and to provide for the appropriate dissemination of such information within the Government. 50 U.S.C. § 403(d) (3). I conclude therefore that the restrictions placed on the Commission by the above-cited portions of Executive Order 12065 and the implementing Directive deprive the Commission of legal authority under Section 303 of the Atomic Energy Act to disseminate the information in question outside of the Commission unless consent to do so is obtained from the originating agency.

I understand that in this case the Central Intelligence Agency has indicated a willingness to discuss the relevant information it has with the subcommittee requesting it and suggests that the subcommittee contact the Agency in that regard. Since it does not appear that all avenues that could lead to providing

information to Congress have been fully explored, my office has not conducted the additional legal research that would be necessary to determine the precise dimensions of any privilege which the Executive Branch may have to withhold information from Congress.

cc: Commissioner Gilinsky
Commissioner Bradford
Commissioner Ahearne
Commissioner Roberts
OPE
SECY
OCA