UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

OFFICE OF THE
INSPECTOR GENERAL

September 17, 2010

The Honorable Charles E. Grassley
Ranking Member
U.S. Senate Committee on Finance
135 Hart Senate Office Building
Washington, DC 20510-1501

The Honorable Darrell Issa
Ranking Member
Committee on Oversight and Government Reform
U.S. House of Representatives
2157 Rayburn House Office Building
Washington, DC 20515-6143

Dear Senator Grassley and Representative Issa:

I am writing in response to your August 23, 2010, letter requesting that I undertake an inquiry into the U.S. Nuclear Regulatory Commission's (NRC) Freedom of Information Act (FOIA) office to determine whether and, if so, the extent to which NRC political appointees are made aware of FOIA information requests and have a role in reviewing requests or decisionmaking.

My staff conducted an evaluation of this issue and did not identify any evidence that NRC's FOIA process includes any type of political review[1] by NRC political appointees of FOIA requests or responses. To reach this conclusion, my staff reviewed applicable FOIA guidance; interviewed NRC's political appointees, FOIA caseworkers, and other staff involved with the FOIA process; and reviewed FOIA files. The attached evaluation report contains additional information on the evaluation finding, scope, and methodology.

Thank you for your support for a responsive and open FOIA process. If you have any questions, please contact me at 301-415-5930, or Stephen D. Dingbaum, Assistant Inspector General for Audits, at 301-415-5915

Sincerely,

/Hubert T. Bell

Hubert T. Bell
Inspector General

Enclosure: As stated

[1] For purposes of this evaluation, OIG defined political review as an attempt, by a political appointee to inquire about the background of a FOIA requester and/or delay disclosures deemed too politically sensitive.

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INSPECTOR GENERAL

September 17, 2010

MEMORANDUM TO: R. William Borchardt
Executive Director for Operations

FROM: Stephen D. Dingbaum
Assistant Inspector General for Audits

SUBJECT: MEMORANDUM REPORT: EVALUATION OF NRC'S FOIA PROCESS (OIG-10-A-19)

The Office of the Inspector General (OIG) conducted this evaluation to determine whether and, if so, the extent to which U.S. Nuclear Regulatory Commission (NRC) political appointees are made aware of Freedom of Information Act (FOIA) information requests and have a role in reviewing requests or decisionmaking. The evaluation was initiated in response to an August 23, 2010, letter from Senator Charles Grassley and Representative Darrell Issa to the NRC Inspector General that requested the Inspector General conduct an inquiry with the aforementioned purpose and report back to them with any findings by September 17, 2010.

The letter (attached to this report) from Senator Grassley and Representative Issa cited recent press reports that political appointees at the Department of Homeland Security (DHS) impeded FOIA requests by creating a new layer of political review. According to the letter, DHS political appointees required an opportunity to review requests from lawmakers, journalists, activist groups, and watchdog organizations, and they routinely probed for information about the requesters and delayed disclosures deemed too politically sensitive.

OIG's evaluation found no evidence that NRC's FOIA process includes any type of political review[1] by NRC political appointees of FOIA requests or responses. This report elaborates on our evaluation finding and methodology, and makes no recommendations.

BACKGROUND

The FOIA, enacted in 1966, is a Federal law that is set forth in Title 5, Section 552, of the United States Code, as amended. In enacting the FOIA, Congress established that any person has the right to submit a written request for access to records or information maintained by the Federal Government. In response to such written requests, Federal agencies must disclose the requested records, unless they are explicitly protected from disclosure by any of nine FOIA exemptions.[2] In addition, the right to request access is enforceable in court, and the law provides administrative and judicial remedies for those who are denied access to records requested under the FOIA.

NRC's FOIA program is managed by the FOIA/Privacy Section (referred to in this report as the FOIA section) within the Office of Information Services. There are five FOIA specialists, one program analyst who processes FOIA cases as a secondary function, and the section secretary who is involved in the administrative processing of FOIA requests. Based on 302 requests, and 3 referrals received from other agencies in fiscal year (FY) 2009, the FOIA section processed 777 requests for documentation (RFD) throughout the agency. Based on 320 requests, and 6 consultations received from other agencies, in FY 2010 (as of August 30, 2010), the FOIA section processed 926 RFDs.

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[1] For purposes of this evaluation, OIG defined political review as an attempt, by a political appointee to inquire about the background of a FOIA requester and/or delay disclosures deemed too politically sensitive.

[2] Information may be withheld from public disclosure under the FOIA if it falls into one or more of the following exemption categories: (1) classified national security information, (2) internal matters of a relatively trivial nature and substantial internal matters, (3) information mandated by Federal statute to be withheld from public disclosure, (4) matters involving trade secrets and/or privileged or confidential commercial or financial information, (5) interagency or intra-agency material privileged in the context of civil discovery, (6) personal privacy information, (7) investigatory and other information compiled for law enforcement purposes, (8) matters contained in reports prepared for the use of an agency responsible for the regulation or supervision of financial institutions, and (9) geological and geophysical information and data, including maps, concerning wells.

NRC Management Directive and Handbook 3.1, "Freedom of Information Act," provides guidance on NRC's FOIA policy and implementation of the FOIA process. MD 3.1 was last revised on March 30, 2006. The FOIA section also maintains an internal Web site with FOIA information available to staff.

NRC currently has 10 political appointees: the Chairman, 4 Commissioners, 4 Office of the Chairman staff members, and the Inspector General.[3]

PURPOSE

The evaluation objective was to determine whether and, if so, the extent to which NRC political appointees are made aware of FOIA information requests and have a role in reviewing requests or decisionmaking. This evaluation was conducted in response to an August 2010 congressional request and was not included in OIG's *FY 2010 Annual Plan*.

RESULTS

FOIA Process

The FOIA process begins when the FOIA section (1) receives – via mail, facsimile, or Internet – an incoming FOIA request, (2) assigns it a number, (3) determines which NRC offices need to review their records to identify whether they have information pertinent to the request and sends an RFD to those offices, and (4) FOIA coordinators[4] in those offices provide an estimate of the search, review, and duplication effort required to produce any documents identified as within the scope of the request.

The FOIA section then estimates the associated processing fees (for which the requester is often responsible), reaches agreement with the requester on payment, and assigns the request to the appropriate offices to identify and provide to the FOIA section all relevant documents from their office within an assigned timeframe. To facilitate appropriate disclosure of records, the FOIA caseworkers consult as needed with agency staff in the responding offices and/or the Office of the General Counsel to prepare a response. The response is reviewed and signed by the FOIA section chief, and sent to the requester. Response options include records released in entirety, partial denial of records,

[3] The Chairman, Commissioners, and Inspector General were each appointed by the President and confirmed by the Senate; the remaining four appointees were appointed by the Chairman to serve on his staff.

[4] Each NRC office has a FOIA coordinator and some have alternate FOIA coordinators.

full denial of records, notification that the requested information is already publicly available, or communication that no relevant records were identified. Each week, the FOIA section prepares a Weekly Information Report that lists incoming FOIA requests for distribution to Office of Information Services management and the Office of the Executive Director for Operations. This weekly listing of incoming FOIA requests is also posted on NRC's public Web site. Information on completed FOIA requests is posted on NRC's public Web site and often includes the specific information NRC provided to the requester. Some information on requests and responses is also available in NRC's Agencywide Documents Access and Management System (ADAMS).[5]

When a FOIA request is received from the media, the FOIA section sends a copy to the Office of Public Affairs. This practice is documented in Handbook 3.1. According to an Office of Public Affairs manager who reviews this notification, the purpose of this notification is informational, and the Office of Public Affairs sometimes uses it to alert regional or headquarters public affairs officers that the media may contact them about a particular issue; however, the Office of Public Affairs does not communicate it to any of NRC's political appointees.

NRC Political Appointees and the FOIA Process

According to FOIA section staff and managers, the FOIA section does not notify political appointees of incoming FOIA requests, NRC political appointees do not contact the FOIA section with questions about requests or requesters, and NRC political appointees do not review agency FOIA responses before they are sent out. When a FOIA request is assigned to the Chairman's and/or Commissioners' offices (because records originally generated by the Chairman and/or Commissioners' offices, or records that had previously been submitted to the Commission, fall within the scope of the FOIA request), this is coordinated through the Office of the Secretary (SECY) FOIA coordinator. The SECY FOIA coordinator, in turn, sends a request to the Chairman's and/or Commissioners' legal assistants who coordinate the response process in their respective offices and provide their offices' disclosure recommendations to SECY.

OIG staff interviewed NRC's 10 political appointees concerning their involvement in the FOIA process. Each appointee said they are informed by staff in their

[5] According to a FOIA section manager, documents for the following requests are not made publicly available: (1) requests concerning allegations and investigations (other than third-party requests), (2) OIG records, (3) individuals seeking information about themselves (e.g., personnel file, security investigations), and (4) requests for certain databases that are subject to daily change.

office about FOIA requests assigned to their office for response, but are not informed about FOIAs assigned to other offices for response. The NRC Chairman and the Inspector General said that occasionally they receive FOIA requests addressed to them in the mail; however, both said they refer these to others in their office to ensure the request goes through the proper channels.

All appointees said they are not involved in reviewing other offices' FOIA responses to the FOIA section, or NRC's FOIA response to requesters. Several appointees described varying types of oversight of their respective office's FOIA compilation before it is sent to the FOIA section. Their reasons for conducting such oversight were to ensure the compilation is responsive to the request and and generally to be aware of the materials that are sent.

OIG staff reviewed 75 FOIA files[6] for FOIAs that were completed during FY 2010; none contained any documentation to indicate that political appointees had communicated questions about requests or requesters, or reviewed FOIA responses prior to their transmittal.

AGENCY COMMENTS

OIG provided NRC with a discussion draft version of this report, and on September 16, 2010, NRC's OIG Liaison communicated that the agency was in general agreement with the report finding and would not provide formal comments. The agency provided editorial suggestions, which OIG incorporated, as appropriate, into this final version of the report.

[6] Files selected for review were primarily those with the longest response times.

SCOPE AND METHODOLOGY

Auditors reviewed Management Directive and Handbook 3.1, an NRC FOIA training guide, and FOIA information on NRC's Web site to learn about the agency's FOIA process and help determine whether and what role political appointees have in reviewing FOIA requests or FOIA responses.

Auditors interviewed Office of Information Services managers responsible for the FOIA program and FOIA section staff to determine whether they notify political appointees about incoming FOIAs and whether political employees ever contact them to seek information about FOIA requests or requesters, or review responses to requesters. Auditors interviewed NRC's 10 political appointees to understand their roles in the FOIA process. Auditors interviewed SECY officials to understand SECY's role in coordinating FOIA requests assigned to the Chairman's and/or Commissioners' offices and Office of Public Affairs officials to learn what is done when the FOIA section notifies the Office of Public Affairs about a media FOIA request.

OIG reviewed 75 of 926 RFD files for FY 2010 FOIA requests completed as of August 30, 2010, for any evidence that political appointees inappropriately involved themselves in the FOIA process. This sample of FOIA files were those that took the longest response times and included files from every NRC office that responded to a FOIA during FY 2010. Because 9 of the 10 political appointees work in the Offices of the Chairman and Commissioners, and SECY coordinates FOIA responses for those offices, OIG included 16 SECY FOIA files in its file review. Two OIG FOIA files were also included in the file review.

This evaluation was conducted at NRC headquarters from August 27, 2010, to September 14, 2010. This work was performed by Steven Zane, Deputy Assistant Inspector General for Audits; Judy Gordon, Quality Assurance Manager; and Michael Steinberg, Senior Auditor.

Congress of the United States

Washington, DC 20510

August 23, 2010

Via Electronic Transmission

The Honorable Hubert Bell
Inspector General
Office of the Inspector General
Nuclear Regulatory Commission
Rockville, MD 20852

Dear Inspector General Bell:

According to recent press reports, the Department of Homeland Security (DHS) under Secretary Janet Napolitano has impeded Freedom of Information Act (FOIA) requests by creating a new layer of political review. Specifically, the *Associated Press* reported that DHS political appointees required requests from "lawmakers, journalists, activist groups or watchdog organizations... to go to the political appointees" for review, and they routinely probed "for information about the requesters and delay[ed] disclosures deemed too politically sensitive."[1] In the case of requests from Congress, DHS employees were told to specify the party affiliation of the requester.

This new layer of political review is not only alarming, but a betrayal of President Obama's pledge to increase transparency in government. The President campaigned for office on a promise to "return government to the people by bringing government to the people," and make government "open and transparent so that anyone can see that our business is the people's business."[2] It appears that not everyone in the Administration has taken this pledge to heart. We write to you today to inquire about the full breadth of this practice, and whether the Nuclear Regulatory Commission is also engaged in the political filtering of information requests.

As the Inspector General of the Nuclear Regulatory Commission, we request that you conduct an inquiry into the agency's FOIA office to determine whether, and if so, the extent to which political appointees are made aware of information requests and have a role in request reviews or decision-making. We also request that you provide us an account of your findings by no later than September 17, 2010.

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[1] Ted Bridis, *AP IMPACT: A Political Filter for Info Requests*, ASSOCIATED PRESS, Jul. 21, 2010, available at http://www.washingtonpost.com/wp-dyn/content/article/2010/07/21/AR2010072103534.html.

[2] Senator Barack Obama, Remarks at Manchester, New Hampshire (June 22, 2007).

Thank you for your cooperation and attention to this important matter. If you have any questions, please do not hesitate to contact Christopher Armstrong for the Committee on Finance at (202) 224-4515 or Jonathan Skladany for the Committee on Oversight and Government at (202) 225-5074. All formal correspondence should be sent electronically in PDF format to Brian_Downey@finance-rep.senate.gov or via facsimile to (202) 228-2131.

Sincerely,

Charles E. Grassley
Ranking Member
U.S. Senate Committee on Finance

Darrell Issa
Ranking Member
Committee on Oversight and Government Reform
United States House of Representatives

Electronic Distribution

Edwin M. Hackett, Executive Director, Advisory Committee
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