CHAPTER VI

TRANSMITTAL OF SENSITIVE DOCUMENTS TO CONGRESS

Members of Congress, Members of Congressional Committees, and their staffs often request copies of classified, Safeguards Information and unclassified documents, referred to below as "sensitive" documents. The procedures set forth in this section are established to ensure that these Congressional requests are treated uniformly and responded to promptly.

GUIDELINES AND PROCEDURES

Specific guidelines and procedures governing the handling of incoming requests (both oral and written), the coordination of responses, and the transmittal of documents are set forth below:

1. Sensitive documents are documents within the agency's possession that have not been disclosed to the public and that may be withheld from public disclosure under the Freedom of Information Act (FOIA) or Privacy Act.

2. The Office of Congressional Affairs (OCA) is the proper office to handle requests from Members of Congress or Congressional committees and their staffs for sensitive documents. In the event such requests are received elsewhere in NRC, they should be referred to OCA for handling. OCA is to assure that all such requests are accorded uniform treatment and responded to promptly within the guidelines established by the Commission.

3. Sensitive documents will normally be provided only upon written request. When sensitive documents are requested orally by a Member of Congress or a Congressional staff person, OCA should inform the requestor that the document or documents requested contain sensitive information and ask that a written request be made to the Commission. In matters where time is of the essence, the written request of a Member of Congress or Congressional staff person may be dispensed with as long as the request is memorialized by OCA. Copies of all memoranda prepared by OCA which memorialize such requests are circulated to

the Commission by OCA. The Commission's general practice is to provide sensitive documents requested by Members of its Congressional oversight committees. It will also provide sensitive documents to other Members of Congress when the documents address matters pertaining to his or her State or District. In other circumstances, OCA should advise the Member that the NRC prefers that such requests be made through the full Committee or Subcommittee Chairman or ranking minority Member of an NRC oversight committee.

4. Documents relating to ongoing security activities, adjudications, pending enforcement actions, or ongoing investigations are particularly sensitive, and the Commission's preference is that these documents not be provided to Congress until after the agency has decided the matter at issue. When documents within these categories are requested, OCA will discuss the sensitivity of the document with the requester and ask to defer the request until after the agency has made its decision on the matter at issue. If the requester refuses to withdraw or defer his or her request, then OCA, after consultation with the Commission, will provide these documents to Congress pursuant to the procedures set forth below.

5. Unless otherwise directed by the Commission, sensitive documents are to be transmitted by the Director, OCA, under a cover letter that identifies their sensitive nature and requests that the documents be held in confidence with access limited to Members and committee staff. The cover letter should clearly identify the documents supplied. Where not previously established, the exact wording of the cover letter should be coordinated with the Office of the General Counsel (OGC). Each page of each sensitive document provided shall be marked "Not for Public Disclosure."

6. As with all other correspondence with Congressional Committees and Subcommittees, copies of the transmittal letter should be routinely provided to the Committee Chairman or Ranking Minority Member. If requested, the documents supplied as enclosures to the transmittal letter should be provided. Copies of all letters transmitting sensitive documents to Congress are circulated to the Commission by OCA.

7. All letters going to Congress transmitting Safeguards Information should have in the body of the letter the following:

> Enclosure(s) XX contains Safeguards Information and must be handled and stored in accordance with 10 CFR 73.21 as noted and described in the cover sheet. Therefore, I request that access to this (these)

enclosure(s) be limited to you and those of your staff who have a need-to-know. In addition, pursuant to Section 149 of the Atomic Energy Act of 1954, as amended, and 10 CFR 73.59, access to Enclosure(s) XX must be restricted to those members of your staff who have undergone fingerprinting for a prior U.S. government criminal history check.

8. Responses to requests for investigative records compiled for law enforcement purposes should be coordinated with the Executive Director for Operations (EDO), the Office of the General Counsel (OGC), and/or the Office of the Inspector General (OIG), depending upon the nature of the records requested.

9. Responses to requests for the following types of sensitive documents should be coordinated, as appropriate, with the EDO, CFO, and OGC:

   a. classified documents (National Security Information and Restricted Data);

   b. documents containing Proprietary Information;

   c. agency files containing personnel or medical information, the public disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

   d. documents containing Safeguards Information;

   e. draft documents containing inspection and enforcement findings, either in their entirety or excerpts from them;

   f. staff drafts, predecisional memoranda, and letters containing advice, recommendations, or opinions prepared in or by an office reporting to the Commission, EDO, or CFO, on matters pending agency review and decision; and

   g. documents containing confidential commercial information relating to the awarding of grants, contracts, or other agency procurement actions, disclosure of which may jeopardize the agency's competitive position.

10. Responses to requests for documents containing classified or Safeguards Information should also be coordinated with the Office of Nuclear Security and Incident Response. Established procedures for handling and storing classified or Safeguards Information should be followed and delivery made only to Congressional staff persons with the appropriate clearance and need to know.

11. Classified documents originated by another agency will not be transmitted, and the requester will be advised to contact the originating agency directly, pursuant to Executive Order 13526. The possible release of NRC documents containing classified information originated by another agency will be coordinated with the originating agency. In addition, Sensitive Unclassified Non-Safeguards Information (SUNSI) documents (e.g. Homeland Security Information or other sensitive security related information) received from another Federal agency will not be transmitted.
12. Requests for lists of SECY papers and other administrative records relating to the deliberative, decision-making process of the Commission should be coordinated with the Office of the Secretary (SECY).

13. Responses to requests for sensitive documents used in the deliberative, consultative, or predecisional activities of the Commission itself must be reviewed by the Commission. These documents include the following items:

    a. transcripts, electronic recordings, or meeting summaries of Commission meetings closed pursuant to the Government in the Sunshine Act (e.g., pending adjudications and enforcement actions, pending investigations, litigative strategy and frank discussion of individuals where release would invoke privacy issues);

    b. interoffice communications between and among Commissioners and their personal staff containing predecisional advice, recommendations, or opinions;

    c. documents containing predecisional staff advice, recommendations or opinions prepared by a member of a Commissioner's personal staff or a special consultant to a Commissioner; and

    d. documents containing predecisional staff advice, recommendations, or opinions of an office reporting directly to the Chairman, Office of Congressional Affairs (OCA), and Office of Public Affairs (OPA), or to the Commission (OGC, SECY, OCAA, OIP, and the EDO). (These documents specifically include those subject to the attorney-client privilege and documents prepared by legal counsel which reveal the theory of a case or litigative strategy. They also include investigative reports prepared by OI pending Commission action).

14. In coordinating with Commissioner offices, OCA should first collect the requested documents in coordination with SECY and the relevant Commission-level offices.

Once the documents have been compiled and a cover letter drafted, a listing of the documents and the draft cover letter, and a proposed date for transmittal should be provided to each Commissioner for his or her review. Unless otherwise advised by the Commission, the Director, OCA, may transmit the requested documents to the requesting party on the date proposed.[1]

15. In some cases, where the nature of the documents is highly sensitive, the Commission may wish to consider alternatives to direct transmittal. For example, the Commission may wish to suggest retaining the documents on the premises and making them available to Congressional staff for their review. It is the responsibility of the Director, OCA, and of the EDO, CFO, or the relevant Office Director to call the attention of the Commission to especially sensitive documents which in their judgment may require special handling.

16. In cases where non-public documents requested by a Congressional source are also being requested under a FOIA request, they should be transmitted to the requesting Congressional committee under a cover letter signed by the Director, OCA, explaining that the documents are subject to a pending FOIA request and requesting that they be maintained in confidence pending a FOIA determination. In cases where there is no FOIA request pending, the cover letter should simply state that the document or documents are not publicly available and ask that they not be disclosed to the public.

17. The originating office shall promptly advise OCA of any subsequent determination authorizing the public release of documents sent to Congress under sensitive handling procedures. OCA should then inform Congressional committees that have been given these documents of such a determination.

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[1] Appendix 13 contains a checklist for use by relevant offices which, in coordination with OCA/OGC and SECY, are gathering Commission documents pursuant to Congressional document requests.