



**Department of Energy**  
Savannah River Operations Office  
P.O. Box A  
Aiken, South Carolina 29802

MAY 07 2015

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Mr. Tom Clements  
SRS Watch  
1112 Florence Street  
Columbia, SC 29201

Dear Mr. Clements:

SUBJECT: Freedom of Information Act (FOIA) Requests, Savannah River Operations Office  
SRO-2015-01163-F

This is our final response to your April 4, 2015 FOIA request. You asked for documents relating to the two German commercial reactors.

1. Any legal analyses prepared by any DOE Department, including the Office of General Counsel at the Savannah River Site concerning the legality of Germany's export of graphite spent fuel to the U.S. for reprocessing and storage. Such analyses would likely include a review of both German and European Union laws and regulations concerning export to a non-EU country of spent fuel for reprocessing and storage;
2. Any legal analyses prepared by any DOE department, including the Office of General Counsel at the Savannah River Site of any "Work for Other" agreements entered into between DOE and any Germany entity concerning research into the reprocessing at the Savannah River Site and export to the Savannah River Site of German graphite spent fuel; and
3. Any attachments or supporting documents to any legal analyses requested above

The DOE-SR Office of Chief Counsel and Nuclear Materials Program Division conducted a search for documents responsive to your FOIA request and found no responsive documents.

The FOIA requires that a search be reasonable, not exhaustive. "[T]he standard of reasonableness which we apply to agency search procedures does not require absolute exhaustion of files; instead, it requires a search reasonably calculated to uncover the sought materials." See Miller v. Department of State, 779 F.2d 1378, 1384-85 (8th Cir. 1985); accord, Weisberg v. Department of Justice, 745 F.2d 1476, 1485 (D.C. Cir. 1984). Furthermore, the FOIA regulation states that an agency is not required to create records in order to respond to requests or questions.

Mr. Tom Clements

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The U.S. Department of Energy Savannah River Operations Office (DOE-SR) neither owns nor possesses the documents responsive to your request. Specifically, DOE's contract with SRNS, DE-AC09-08SR22470, Clause I.39(b)(3) and I.39(b)(4), provide:

The following records are considered the property of the Contractor and are not Government documents:

"records relating to any procurement action by the contractor, except for records that under 48 CFR 970.5232-3 (Accounts, Records, and Inspection) are described as the property of the Government;" and

"legal records, including legal opinions, litigation files, and documents covered by the attorney-client and attorney work product privilege."

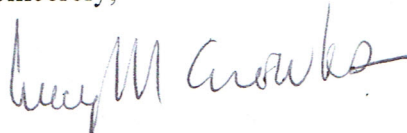
The records you have requested are procurement and legal related records of SRNS and do not fall under any of the exceptions listed above.

Documents are agency records for FOIA purposes if they (1) were created or obtained by an agency and (2) are under agency control at the time of the FOIA request. See United States Dep't of Justice v. Tax Analysts, 492 U.S. at 145. The documents responsive to your request are not in our possession or control.

If you wish to appeal this decision, a written appeal must be submitted within 30 calendar days after receipt of this letter. Written appeals must be submitted to the Director, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW, L'Enfant Plaza, Washington, DC, 20585, pursuant to 10 CFR 1004.8, which sets forth the required elements of such appeals. Thereafter, judicial review will be available in the district in which the requester resides or has a principal place of business, or in the district in which the records are situated, or in the District of Columbia.

As Chief Counsel, DOE-SR, I am the authorizing official for documents responsive to your request. If you have any questions, please contact Ms. Pauline Conner at (803) 952-8134.

Sincerely,



Lucy M. Knowles  
Authorizing Official