



**Department of Energy**  
Washington, DC 20585

January 24, 2005

Steven Aftergood  
Federation of American Scientists  
1717 K Street, NW, Suite 209  
Washington, DC 20004-1304  
F2003-00578

Dear Mr. Aftergood:

This is in final response to the request for information that you sent to the Department of Energy (DOE) under the Freedom of Information Act (FOIA), 5 U.S.C. 552. You asked a copy of the revised, releasable version of the report entitled "Highly Enriched Uranium: Striking a Balance" (HEU report).

This has completed the review of a document responsive to your request and determined that the document is exempt from disclosure under Exemption 2 and Exemption 5 of the FOIA, 5 U.S.C. 552(b)(2) and (b)(5), respectively.

The responsive document is a draft HEU report requested by Joseph S. Mahaley, the former Director of the Office of Security, which is now within the Office of Security and Safety Performance Assurance.

Exemption 2 protects information "related solely to internal rules and practices of an agency." As interpreted by the courts, this exemption encompasses two categories of information that may be protected from disclosure. One of the categories is information of "more substantial internal matters, the disclosure of which would risk circumvention of a legal requirement." Information of this nature is referred to as "High 2" information.

The responsive document is internal because it does not purport to regulate activities among members of the public. Moreover, it does not set standards to be followed by agency personnel in deciding whether to take actions that affect members of the public.

The responsive document is a draft report that culminates a study on the history of the highly enriched uranium inventory in the United States from 1945 to 1996. While the information contained in the report is not classified, it is sensitive. The report describes the history in detail and includes maps and charts that reveal locations and quantities of fissile material. Disclosure of the information would permit terrorists to assess the nation's vulnerability and target locations to damage the nation's critical infrastructure. Thus, the requested information has current law enforcement significance and its disclosure would be harmful to the nation's security.

The draft document also is protected from disclosure by Exemption 5 of the FOIA. This exemption protects "inter-agency or intra-agency memorandums or letters that would not



be available by law to a party... in litigation with the agency." Exemption 5 incorporates the deliberative process privilege, which protects advice, recommendations, and opinions that are part of the process by which agency and executive branch decisions and policies are made.

The document consists of pre-decisional and deliberative process material. The document has never been issued and each page is marked "Official Use Only – Draft." The cover page states that it "Contains Deliberative Process Information."

The document reflects the tentative views of the author(s) and reflects draft sections and chapters for consideration by agency officials. The draft document does not represent a final agency position on the matter discussed in the report. It was subject to further review by DOE officials. Thus, the preliminary opinions reflected in the document are by their very nature pre-decisional.

The responsive document was reviewed to determine if any portion could be provided after redaction of any exempt material. Any parts that might be considered for redaction, however, are "high 2" information. Its disclosure could reveal possible locations and quantities of fissile material that could be targeted for destruction by terrorists and others who wish to harm us.

To the extent permitted by law, the DOE, pursuant to Title 10, Code of Federal Regulations (CFR), Section 1004.1, will make available records that it is authorized to withhold under the FOIA, when it determines that such disclosure is in the public interest. We have determined that the disclosure of the material withheld under Exemption 2 and Exemption 5 would not be in the accordance with 10 CFR 1004.1.

The information withheld under Exemption 2 pertains to internal matters of a substantial nature, the disclosure of which would risk circumvention of our laws designed to protect this nation's critical infrastructure. Discretionary disclosure of the information could cause harm to the very interests protected by that exemption. Thus, disclosure will not serve the public interest.

In applying 10 CFR 1004.1 to material subject to Exemption 5, we balanced the public interest in disclosure against the adverse effect on the quality of agency decisions if frank, written discussion of matters discussed in the report were inhibited by the knowledge that the content of such discussion might be made public. We concluded that the public interest in disclosure did not outweigh the adverse impact of disclosure. Protecting the integrity of governmental deliberations ensures the free flow of frank and candid advice and recommendations to the decision maker and thereby the quality of final decisions is enhanced.

This satisfies the standard set forth by the Attorney General on October 12, 2001. That standard states that where release of requested material could adversely impact any particular process of agency or government deliberation; could adversely impact other institutional, commercial, or personal privacy interests that might be implicated by

disclosure; or could present an unwarranted risk of adverse impact on the ability of other agencies to protect other important records, the agency is justified in not releasing that material on a discretionary basis.

Pursuant to 10 CFR 1004.7(b)(2), Marshall O. Combs, Director, Office of Security, Office of Security and Safety Performance Assurance, is responsible for the denial of information from the Office of Security and Safety Performance Assurance.

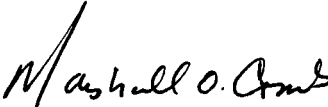
You may challenge the determinations to withhold information from responsive documents by submitting a written appeal to the Director, Office of Hearings and Appeals, at the U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585-0615. You should submit the appeal within 30 calendar days of receipt of this determination and include a copy of this letter.

The written appeal, including the envelope, must clearly indicate that a FOIA appeal is being made. The appeal must contain all the elements required by 10 CFR 1004.8. Judicial review will thereafter be available (1) in the District of Columbia; (2) in the district where you reside; (3) in the district where you have your principal place of business; or (4) in the district where the DOE records are located.

If you have any questions about the processing of the request, please contact Mrs. Robyn Johnston in the Office of Security and Safety Performance Assurance, SP-1, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, D.C. 20585. You also may contact her on (202) 586-5385. You should refer to the above referenced number in any communication about this matter.

I appreciate the opportunity to assist you with this matter.

Sincerely,

A handwritten signature in black ink that reads "Marshall O. Combs". The signature is written in a cursive style with a large initial 'M'.

Marshall O. Combs  
Director, Office of Security  
Office of Security and Safety  
Performance Assurance