



Department of Energy  
Washington, DC 20585

MEMORANDUM

Date: April 4, 1994  
From: Robert R. Nordhaus  
To: Chief Counsels  
Subject: Disclosure of Contractor Litigation Records and Bills Under the Freedom of Information Act

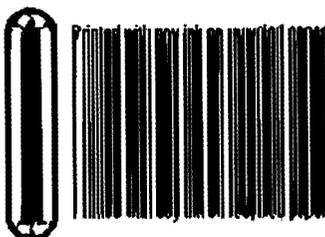
We have analyzed the Department's obligation under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, to disclose publicly litigation records prepared by private counsel to the Department's contractors in connection with ongoing litigation against our contractors. These records include litigation materials, such as draft pleadings, legal memoranda, and case strategy and budget plans, and attorney billing statements.

We have concluded that the Department may legally withhold these materials from public disclosure under Exemption 4 and Exemption 5 of FOIA. Attached is a copy of our Memorandum analyzing these issues. We have shared the Memorandum with the Department of Justice, which has concurred in its conclusions. Accordingly, the Department will now seek from our contractors copies of complete billing statements, as well as other litigation records that the Department needs to manage effectively contractor litigation costs.

Towards this end, I also enclose a draft letter from all Chief Counsels to contractors directing them to forward these litigation records in conjunction with any attempt by the contractor to seek reimbursement for litigation costs and fees pursuant to the Litigation and Claims provision of the contract.

Thank you for your continuing assistance with our attempts to reduce litigation costs and manage contractor litigation more effectively.

Enclosures



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