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Watchdogs File Second FOIA Request for Los Alamos and Sandia Labs Evaluations, Demand Expedited Release to E-FOIA Reading Room

Santa Fe, NM - Nuclear Watch New Mexico has filed a second request under the Freedom of Information Act (FOIA) for the National Nuclear Security Administration's FY 2015 Performance Evaluation Reports for the Los Alamos and Sandia National Laboratories. Nuclear Watch filed its first request on December 22, 2015, which has still not been fulfilled despite the law's statutory requirement that FOIA requests be honored within 20 working days. Because of that, Nuclear Watch is demanding expedited processing and posting of these reports to an electronic FOIA reading room, as required by the 1996 E-FOIA amendments.

In 2009 the National Nuclear Security Administration (NNSA) began to withhold Performance Evaluation Reports without explanation. Accordingly, Nuclear Watch filed a FOIA request for the FY 2009 Los Alamos Lab Performance Evaluation Report that NNSA denied. Nuclear Watch appealed that decision to the Department of Energy's Office of Hearings and Appeals, which upheld the denial on the basis that the reports contained proprietary information, contrary to the openness and transparency of previous years.

Since that time, the NNSA's nuclear weapons complex has been rocked by constant cost overruns, security scandals, illegal lobbying and the closure of the multi-billion dollar Waste Isolation Pilot Plant after a faulty radioactive waste drum from LANL ruptured and contaminated workers. It is Nuclear Watch's belief that American taxpayers deserve to know how their money is being spent on substandard performance by nuclear weapons contractors such as Bechtel, the University of California and Lockheed Martin.

In January 2012 Nuclear Watch filed a FOIA request for the FY 2011 Performance Evaluation Reports of all eight NNSA sites, which the agency again denied. However, rather than fruitlessly appealing to the DOE Office of Hearings and Appeals, the organization filed a lawsuit on March 28, 2012, and began to receive the PERs six days later. Since then the NNSA has publicly released its FY 2012, 2013 and 2014 PERs without having to be compelled by FOIA requests or citizen lawsuits.

However, the National Nuclear Security Administration has not released its FY 2015 Performance Evaluation Reports, which we know have been completed at least for the Los Alamos Lab. On December 17, 2015, LANL Director Charlie McMillan reported to his employees that the Los Alamos National Security, LLC management and operations contract would be put out to bid because of substandard performance as documented by the Performance Evaluation Report.

These reports have been of keen media interest. After its FOIA request was not honored the Albuquerque Journal recently editorialized:

Money to run the labs comes from U.S. taxpayers, who deserve to know how it is being spent and if contractors are doing their jobs in a timely and efficient manner. Past shoddy attention to detail by NNSA contractors and lackadaisical oversight by the U.S. Department of Energy are some of the reasons why the evaluations are critical to protecting national security. The potential search for new contractors makes the evaluations especially critical. They should be made public post haste.

Similarly a respected journalist with the Knoxville News Sentinel reported that his FOIA request was left unfulfilled, and noted that, "The performance reports contain valuable information on how the NNSA contractors are carrying out their missions involving billions of taxpayer dollars annually." In addition, at least two other nonprofit watchdog organizations, the Oak Ridge Environmental and Peace Alliance and SRS Watch, have FOIAed for NNSA's Performance Evaluation Reports without success.

These multiple requests by different entities are particularly important because according to the Department of Justice the 1996 E-FOIA amendments

create a new category of records that will be required to receive "reading room" treatment -- a category consisting of any records processed and disclosed in response to a FOIA request that "the agency determines have become or are likely to become the subject of subsequent requests for substantially the same records... Second, the amendments will require agencies to use electronic information technology to enhance the availability of their reading room records... To meet this new requirement through on-line access, agencies should have Internet or World Wide Web sites prepared to serve this "electronic reading room" function.

Jay Coghlan, Nuclear Watch New Mexico director, commented, "It is unconscionable that the National Nuclear Security Administration withholds information from the American taxpayer on how fat contractors who constantly bust budgets are paid, especially when these same contractors always have their hands out for yet more taxpayer money for nuclear weapons forever. The question is, what do NNSA and its contractors have to hide? To answer that, Nuclear Watch will not only demand that the Performance Evaluation Report be publicly released, but that from this point on the reports be automatically posted to an electronic FOIA reading room as the law requires. The American taxpayer should not have to fight this battle year after year just to keep greedy nuclear weapons contractors accountable."

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Nuclear Watch New Mexico's second Freedom of Information Act request for the Los Alamos and Sandia Performance Evaluation Reports is available at <http://nukewatch.org/importantdocs/resources/NWNM-FOIA-FY15-PERs-4-6-16.pdf>

The Albuquerque Journal March 24, 2016 editorial "Tardy posting of NNSA evaluations unacceptable" is available at <http://www.abqjournal.com/745237/opinion/tardy-posting-of-nnsa-evaluations-unacceptable.html>

Knoxville News Sentinel reporter Frank Munger's blog post is available at <http://knoxblogs.com/atomiccity/2016/03/14/what-to-think/>

The Department of Justice quote is from FOIA Update, Vol. XVII, No. 4 1996 <https://www.justice.gov/oip/blog/foia-update-congress-enacts-foia-amendments>

NNSA's Performance Evaluation Reports from 2007 to 2014 are available at <http://www.nukewatch.org/PERs-PEPs.html>