November 6, 2007

Carlisle Roberts, Jr., General Counsel
South Carolina Department of Health
and Environmental Control
2600 Bull Street
Columbia, South Carolina 29201

Dear Mr. Roberts:

In response to questions being raised concerning the safety of the State's hazardous waste facility located at Barnwell, this Office undertook an examination of certain specific issues within the scope of duties of the Attorney General. These issues concern the legal responsibility and liability of the State with respect to the Barnwell facility, as well the public's right of access to information regarding the operation and safety of the site. This opinion will address the question of whether the public's right of access to available information concerning the facility's operation and safety has been fully protected. It is our opinion that DHEC may not simply defer to Chem-Nuclear's characterization of records as "proprietary," thereby rendering such records non-disclosable under FOIA, but must independently evaluate the applicability of the "trade secrets" exemption and must narrowly construe such exemption to disclose as much information as possible to the public.

Background Information

Beginning in the late 1970s, leaks of radioactive tritium and other radioactive materials (such as Carbon 14) were discovered at Barnwell. These radioactive materials were concentrated in a plume which began to move away from the principal waste storage site toward Mary's Creek. Earlier estimates were that it would take more than four hundred years for the radioactive materials to move off the property. However, these materials moved far faster than these original predictions. Today, the plume extends well beyond the State's property, and is located on property purchased and owned by Chem-Nuclear Systems (a subsidiary of Energy Solutions, Inc.), the facility's licensee.

It is true that groundwater sources are not used for drinking either on the State's property or Chem-Nuclear's property. Nevertheless, the leak and the plume's movement have resulted in the radioactive levels at Mary's Creek measuring 100,000 picocuries per liter or thereabouts for several years – a figure 5 times in excess of the Environmental Protection Agency's standard for safe drinking

water.[1] Moreover, a recently released map showing the locations of monitoring wells on the State's property, as well as on Chem-Nuclear's lands, reveals that many of these wells measure levels of tritium many times in excess of the EPA's safe drinking water standards.

This map, marking the locations of the well monitoring sites, was recently made available to *The State* newspaper pursuant to a Freedom of Information Act request. As a result, news articles in *The State* revealed to the public for the first time the levels of tritium recorded at these sites. The articles produced public concern sufficient that both Chem-Nuclear and DHEC systematically tested all private wells within a half mile of the property and offered to test any private wells within a mile radius. These tests indicated that the level of tritium in the groundwater supplying the private wells is well within "background" levels. ("Background" levels are those levels ordinarily occurring naturally in the area).

Even though the monitoring sites map has now been disclosed to the public, public access to complete information concerning the site's operation remains a concern. The fact that the Barnwell site is a storage facility for nuclear waste makes it especially important that the public be given as much information regarding the site's operation and safety as is possible. There is little doubt that secrecy only compounds the public's fears and enhances its misgivings.

Specifically, it is of concern that public disclosure of information regarding the location of the monitoring sites used to test the extent of the leaks of radioactive materials into the groundwater on the property (both state property and that owned by Chem-Nuclear) occurred only recently. Even though private well tests have now been ordered as a result of the media attention stemming from disclosure of the map, the question remains as to DHEC's legal obligation under FOIA to have disclosed to the public the maximum information possible at the earliest date possible. Previously, both DHEC and Chem-Nuclear had treated the locations of monitoring sites as exempt from disclosure under FOIA. Chem-Nuclear deemed monitoring locations and the measurement of radiation levels at each specific location as "proprietary" in nature and thus nondisclosable pursuant to S.C. Code Ann. Section 30-4-40(a)(1).[2] As we understand its policy, DHEC simply accepted Chem-Nuclear's characterization of information as "proprietary" without question or independent verification thereof. Thus, any FOIA request for such "proprietary" information would be denied and the requestor left to challenge this determination legally. As a result of this policy, the actual locations of the monitoring sites, as depicted on the above-referenced map, were not available to the public until the media threatened legal action.

Instead, what was available to the public were the quarterly reports submitted to DHEC by Chem-Nuclear as part of DHEC's regulatory oversight. These reports show the "raw data" concerning

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[1] A picocurie is one trillionth of a curie. Water directly out of the tap contains about .01 picocuries per liter each of radioactive uranium, radium and radioactive lead. The EPA deems drinking water safe at 20,000 picocuries per liter or less.

[2] The applicable exemption here is for "trade secrets," more fully defined below.

tests conducted at the various monitoring sites. However, this information is in a form highly technical in nature, being only available as sophisticated mathematical terminology, unreadable or uninterpretable by the ordinary person. Moreover, the location of a particular monitoring well cannot be discerned from this raw data. In short, this data is available only in a form not generally understood by the public and does not disclose the location of the wells, thereby, rendering the information essentially useless. Our opinion will thus review the law in this area and will address DHEC's policies and practices with respect to this information.

Law / Analysis

Freedom of Information Act (FOIA)

The FOIA was adopted in its present form by Act No. 593, 1978 Acts and Joint Resolutions. A number of amendments have been made to FOIA over the years. The Act's preamble best expresses both the Legislature's intent in enacting the statute, as well as the public policy underlying it. The preamble to FOIA, set forth in S.C. Code Ann., Section 30-4-15, provides as follows:

> [t]he General Assembly finds that it is vital in a democratic society that public business be performed in an open and public manner so that citizens shall be advised of the performance of public officials and of the decisions that are reached in public activity and in the formulation of public policy. Toward this end, provisions of this chapter must be construed so as to make it possible for citizens, or their representatives, to learn and fully report the activities of their public officials *at a minimum cost* or delay to the persons seeking access to public documents or meetings.

(emphasis added).

On numerous occasions, in construing FOIA, we have emphasized the Legislature's expressed policy of openness in government, as articulated in § 30-4-15. In *Op. S.C. Atty. Gen*., Op. No. 88-31 (April 11, 1988), for example, we summarized the rules of statutory construction which this Office adheres to in interpreting FOIA, as follows:

> [a]s with any statute, the primary objective in construing the provisions of the Freedom of Information Act is to give effect to the legislature's intent. *Bankers Trust of S.C. v. Bruce*, 275 S.C. 35, 267 S.E.2d 424 (1980). South Carolina's Freedom of Information Act was designed to guarantee to the public reasonable access to certain information concerning activities of the government. *Martin v. Ellisor*, 266 S.C. 377, 213 S.E.2d 732 (1975). The Act is a statute remedial in nature and must be liberally construed to carry out the purpose mandated by the General Assembly. S.*C. Dept. of Mental Health v. Hanna*, 270 S.C. 210, 241 S.E.2d 563 (1978). Any exception to the Act's applicability must be narrowly construed. *News & Observer Publishing Co. v. Interim Bd. of Ed. for Wake Co.*, 29 N.C.App 37, 223 S.E.2d 580 (1976). *See also Evening*

> *Post Publishing Co. v. City of North Charleston*, 363 S.C. 452, 611 S.E.2d 496 (2005) [FOIA exemptions are to be narrowly construed to fulfill the purpose of FOIA to guarantee the public reasonable access to certain activities of government]; *Quality Towing, Inc. v. City of Myrtle Beach*, 345 S.C. 156, 547 S.E.2d 862 (2001) ["FOIA is remedial in nature and should be liberally construed to carry out the purpose mandated by the legislature."].

Section 30-4-30 of the South Carolina Code (1991 & Supp. 2005), contained in FOIA, provides in relevant part that

> (a) Any person has a right to inspect or copy any public record of a public body except as otherwise provided by § 30-4-40, in accordance with reasonable rules concerning time and place of access.

As noted above, § 30-4-40(a)(1) exempts

> (1) [t]rade secrets, which are defined as unpatented, secret, commercially valuable plans, appliances, formulas, or processes, which are used for the making, preparing, compounding, treating or processing of articles or materials which are trade commodities obtained from a person and which are generally recognized as confidential and work products, in whole or in part collected or produced for sale or resale, and paid subscriber information. Trade secrets also include, for those public bodies who market services or products in competition with others, feasibility, planning, and market studies, marine terminal service and nontariff agreements, and evaluations and other materials which contain references to potential customers, competitive information, or evaluation.[3]

Apparently, it was reliance upon this exemption which prompted DHEC to accept without question that the location of the aforesaid monitoring sites constituted "proprietary" information. However, we note that Subsection (b) of § 30-4-40 places upon a public body certain duties with respect to information it deems exempt from disclosure pursuant to FOIA. This subsection states that

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[3] In addition, § 13-7-40(I) provides in pertinent part that "[a] report of investigation or inspection or information concerning trade secrets or secret industrial processes obtained under this article must not be disclosed or opened to public inspection except as necessary for the performance of the functions of the department." We addressed this provision in an opinion dated September 11, 1996. Such subsection allows DHEC to disclose even the "trade secrets" protected by this provision where "necessary for the performance of the functions of the department." As there has been no indication that this provision is applicable, we do not here address the applicability of this provision or the possible exercise of DHEC's discretion thereunder.

> [i]f any public record contains material which is not exempt under subsection (a) of this section, the public body shall separate the exempt and nonexempt material and make the nonexempt material available in accordance with the requirements of this chapter.

With respect to this requirement, we have previously advised that "when a request under the Act is received by an agency, each document requested *must be reviewed* in its entirety to *determine* whether any or all of the document is subject to disclosure." *Op. S.C. Atty. Gen.*, October 15, 1986 (emphasis added). Moreover, in another Opinion, dated February 25, 1998, we further noted that the exemptions under FOIA must be applied narrowly, and that an agency which desires to use an exemption has "the burden of showing document-by-document and line-by-line the applicability of the exemption." Furthermore, our Supreme Court, in *Bellamy v. Brown*, 305 S.C. 291, 408 S.E.2d 219, 221 (1991) has found that

> the essential purpose of the FOIA is to protect the public from secret government activity. Sections 30-4-40(a)(2) and 30-4-70(a)(1) provide general exceptions to disclosure by exempting certain matters from disclosure. Bellamy, however, urges protection of her rights as an individual while the FOIA protects a clearly identifiable class, the class protected is the public. Nowhere do §§ 30-4-40 and -70 purport to protect individual rights ....

After discussing the landmark decision relative to the federal Freedom of Information Act – *Chrysler Corp. v. Brown*, 441 U.S. 281 (1979) – the *Bellamy* Court continued:

> [w]e find the [United States] Supreme Court's analysis of the essential purpose of the federal FOIA applicable by analogy to South Carolina's FOIA. The essential purpose of each is the same. The FOIA creates *an affirmative duty on the part of public bodies to disclose information*. The purpose of the Act is to protect the public by providing for the disclosure of information. However, the exemptions do not create a duty not to disclose. The exemptions, at most, simply allow the public agency the discretion to withhold exempted materials from public disclosure. No legislative intent to create a duty of confidentiality can be found in the language of the Act. We hold, therefore, that no special duty of confidentiality is established by the FOIA.

Id. Accordingly, based upon this analysis, we have concluded that "the Freedom of Information Act does not create a promise of confidentiality ...." *Op. S.C. Atty. Gen.*, Op. No. 93-17 (March 18, 1993).

Turning now to the "trade secrets" exemption contained in § 30-4-40(a)(1), we note that our Court of Appeals has addressed this exemption in *Campbell v. Marion County Hospital Dist.*, 354 S.C. 274, 580 S.E.2d 163 (Ct. App. 2003). In *Campbell*, it was argued that "physicians' salaries and prices paid for practices constituted 'trade secrets' because, as a rural county hospital, it needed to keep the information private in order to attract qualified physicians and to compete with wealthier, urban areas." 354 S.C. at 282, 580 S.E.2d at 167. In rejecting the circuit court's determination that salary

information constituted "trade secrets," and was thus barred from disclosure to third parties, the Court of Appeals reasoned as follows:

> [t]he Federal FOIA exempts "trade secrets" from disclosure. It states that the disclosure requirements of the FOIA do not apply to matters that are "trade secrets and commercial or financial information obtained from a person and privileged or confidential." 5 U.S.C. § 552(b)(4) (1996). The phrase "trade secrets" is not defined in the Federal FOIA. However, cases interpreting the section have defined a "trade secret" for the purposes of the FOIA as a " 'secret, commercially valuable plan, formula, process, or device that is used for the making, preparing, compounding, or processing of trade commodities and that can be said to be the end product of either innovation or substantial effort.' " *Center for Auto Safety v. National Hwy. Traffic Safety Admin.*, 244 F.3d 144, 150-51 (D.C.Cir.2001); *Herrick v. Garvey*, 298 F.3d 1184, 1190 (10th Cir.2002).
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> Although the Federal courts have interpreted "trade secrets" to mean something of commercial benefit in preparing commodities for the market, South Carolina courts have never directly addressed the "trade secret" exemption to the FOIA. We must first look at the plain meaning of "trade secrets" in the statute in order to determine whether salaries, compensation and purchase prices of physician practices constitute "trade secrets." Salaries, compensation, and purchase prices of practices do not constitute unpatented, secret, commercially valuable plans or processes used for making, preparing, or processing trade commodities obtained from a third party. *See* S.C.Code Ann. § 30-4-40(a)(1) (1991 & Supp.2002). This information does not qualify as work product collected for sale or resale or paid subscriber information. See § 30-4-40(a)(1).
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> The statute specifically defines "trade secrets" for public bodies, such as the Hospital, that market services. "Trade secrets" include "feasibility, planning, and marketing studies, and evaluations and other materials which contain references to potential customers, competitive information, or evaluation." S.C.Code Ann. § 30-4-40(a)(1) (1991 & Supp.2002). It is evident from reading the entire "trade secret" section that the legislature intended the "trade secret" exemption to protect an organization's studies or preparations in its quest to produce or sell its product or service to "potential customers," not in its internal quest to obtain employees. Compensation and salary information regarding physicians and the purchase price of physician practices indubitably do not meet this unambiguous definition. Concomitantly, the Circuit Court erred in finding the information constituted "trade secrets" that mandated protection.
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> Furthermore, the information Dr. Campbell sought regarding physicians' salaries, compensation, and the purchase price of physician practices was not exempt under other subsections. The legislature specifically noted that FOIA requests for salaries "of fifty thousand dollars or more annually" were not exempt. S.C.Code Ann. §

> 30-4-40(a)(6)(A) (1991 & Supp.2002). The Hospital admitted that most of its physicians made more than $50,000 in compensation. A clear application of the entire exemption statute, as a whole, demonstrates that the information sought by Dr. Campbell was not exempt.
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> We next turn to whether the Circuit Court erred in prohibiting Dr. Campbell from further disclosing the information regarding salaries, compensation and purchase prices of physician practices. The purpose of the FOIA is to keep the public informed and to protect the public from secret government activity. Section 30-4-15 indicates the FOIA should be construed in favor of allowing citizen access to the public body's information. *See* S.C.Code Ann. § 30-4-15 (1991).
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> Information obtained pursuant to the FOIA from a public body is not protected by a restraining order. In fact, the South Carolina Attorney General's 1998 "Public Official's Guide to Compliance with South Carolina's Freedom of Information Act," states the FOIA must be construed "liberally to carry out its intent that citizens obtain public information at the least cost, inconvenience, or delay. Consistent with this mandate, my Office has adopted the following guiding principles in opinions construing the FOIA: When in doubt, disclose...." Liberally construing the statute, it is luculent that information obtained pursuant to the FOIA is for the protection of the public in general, not just the individual seeking the information. There is no provision in the FOIA allowing the disclosure to be subject to a protective order.
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> Moreover, an evidentiary review reveals that a protective order was not necessary. Evidence in the record shows that physicians' salaries, compensation, and the potential purchase price for practices are only three of many considerations a potential employee looks to in deciding where to practice. Therefore, disclosure of that information would not impede a hospital's efforts to hire. Accordingly, we find the Circuit Court erred in prohibiting Dr. Campbell from further disclosing information regarding physicians' salaries, compensation, and purchase prices of physician practices obtained pursuant to the FOIA.
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> In summary, the Circuit Court correctly granted Dr. Campbell access to the information regarding physician compensation and prices for physician practices. The Circuit Court erred in finding this information constituted "trade secrets" and in granting a protective order of the disclosure of the information.

354 S.C. at 285-287, 580 S.E.2d at 168-169. Thus, while courts have recognized that a hazardous waste facility which submits reports to the regulatory agency possesses a property interest in whatever trade secrets there are in the reports submitted, see, *Genl. Chem. Corp. v. Dept. of Environmental Quality Engineers*,, 474 N.E.2d 183 (Mass. 1985), such exemption must not be applied to shield information which must be disclosed to the public.

Moreover, courts elsewhere have emphasized that the agency *itself* must make an independent determination as to whether information constitutes a "trade secret" for purposes of FOIA and may not rely simply upon the affected party's characterization thereof as "proprietary" in nature. The language of the Florida District Court of Appeals, in *Sepro Corp. v. Florida Dept. of Environmental Protection*, 839 So.2d 781 (2003) is instructive in that regard. There, the Court stated:

> [i]nitially, it is clear that a private party cannot render public records exempt from disclosure merely by designating information it furnishes a governmental agency confidential. Neither the desire for nor the expectation of non-disclosure is determinative. See *Shevin v. Byron, Harless, Schaffer, Reid and Assocs., Inc.*, 379 So.2d 633, 635 (Fla. 1980). Sepro concedes the point: "Indisputably, marking a document 'confidential' does not make the information a trade secret.' .... "It is of no consequence that [a party furnishing information] wishes to maintain the privacy of particular materials filed with the department, unless such materials fall within a legislatively created exemption .... [citations omitted].

839 So.2d at 784.

Furthermore, in *Northwest Coalition For Alternatives to Pesticides v. Browner*, 965 F.Supp. 59, 64 (D.D.C. 1997), the District Court awarded attorneys fees and costs against the EPA for withholding information requested under FOIA based upon a manufacturer's assertion that the information constituted "trade secrets." The Court's reasoning, again, is instructive.

> Plaintiffs assert that EPA's position was unreasonable because the EPA did nothing more than "rubber-stamp" the manufacturers' assertion of confidentiality or trade secret protection without any independent consideration of the relevant factors. *See* 40 C.F.R. § 2.208 (EPA regulation setting forth criteria). EPA's response is a plea of necessity: that it cannot embark upon its own investigation in every case and that it must necessarily rely on the information manufacturers supply in support of their assertions of confidentiality.
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> The court finds that EPA's denial of plaintiffs' FOIA request was not reasonable under the circumstances. EPA's own regulations required it to consider, not only the manufacturer's claim that the information was confidential or entitled to protection, but also whether the manufacturer had "taken steps to protect the confidentiality," and whether the "information was not obtainable by other means." 40 C.F.R. § 2.208. EPA was also required to consider whether any information, particularly the identities of the inert ingredients, could be segregated and disclosed from the pesticide formulas which were asserted to the "trade secrets". *EPA chose to rely solely on manufacturers' claims of confidentiality, rather than conduct more extensive questioning of the manufacturers' claims or make its own inquiry. That was essentially a decision not to commit resources to questioning claims of confidentiality but instead to confront*

> *issues as they arise in litigation-and to pay attorneys' fees if EPA loses. Plaintiffs are entitled to recover fees and costs.*

(emphasis added). As was stated in *Thompson v. Impaxx, Inc.*, 113 Cal. App. 4th 1425, 1431, 7 Cal. Reptr.3d 427, 431 (2003), "[l]abeling information as a trade secret or as confidential information does not conclusively establish that the information fits this description."

In an Opinion dated September 11, 1996, we cautioned that the trade secrets exemption may not be used to prevent from disclosure documents where no such proprietary information is actually involved. And, we stated in an opinion of February 25, 1998, the "trade secrets" exemption contained in FOIA, like all others, "must be applied narrowly with all doubts being resolved in favor of disclosure. The public body seeking to use the exemption as applied to a specific situation possesses the burden of showing document-by-document and line-by-line the applicability of that exemption." In the Opinion's words, "[t]he rule of thumb which must be applied ... is plainly: when in doubt, disclose."

Form of Quarterly Reports

An additional issue is raised by the form which the quarterly reports to DHEC from Chem-Nuclear assume. As noted above, these reports are virtually unreadable by almost anyone and, certainly, not by the general public. The reports consist principally of numbers and formulae; nowhere is the location of a particular monitoring site identified; nor are the radiation levels presented in a form where they can be understood by the public. Indeed, even though the measurements are provided in picocuries per liter, there is nothing contained on the form indicating the context of this measurement; neither the EPA drinking water standard (20,000 picocuries per liter) or the Nuclear Regulatory Commission for radiation consumption (50 millirems per year) is mentioned.

Our courts have never addressed the question of whether FOIA requires records to assume a certain standard of intelligibility in order to be "accessible" to the public. However, one decision, *Diamond v. Federal Bureau of Investigation*, 487 F.Supp. 774 (S.D.N.Y. 1980) does comment upon this question in the context of the federal FOIA. In that case, Plaintiff argued that simply disclosing the records requested under FOIA was not enough. The requestor is, in addition, "entitled to know what the released materials mean." 487 F.Supp. at 777. The Court agreed, stating as follows:

> Defendants claim that the Act, at Section 552(a)(3), entitles plaintiff only to receive "records," and then only after requesting them according to administrative procedures; and that the court, under Section 552(a)(4)(B), is empowered only to order the production of such requested records, and then only after plaintiff has exhausted available administrative remedies. Defendants' Memorandum In Opposition to Plaintiff's Motion at 7-10. Apparently, defendants' position is that if plaintiff desires information about the notations in question, he should file a new FOIA request for all documents relating thereto, and that without such a request plaintiff has not exhausted his administrative remedies as to the information now requested. *Ibid*. Plaintiff does not

> contend, however, that he is entitled to the production of additional documents. Rather, he claims that, almost two-and-one-half years after filing his initial FOIA request, as well as several subsequent requests, as to all of which defendants concede he has exhausted all administrative remedies, Donald L. Smith Affidavit, he is entitled to know what the released materials mean. Defendants, on the other hand, conclude that "(o)nce documents have been released to plaintiff, the court lacks jurisdiction under FOIA to order further relief." Defendants' Memorandum In Opposition to Plaintiff's Motion at 10.
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> Defendants' reading of the statute is impermissibly narrow. Although it is true that the statute uses the term "records" in describing what government agencies must make available pursuant to FOIA requests, 5 U.S.C. s 552(a)(3), a literal construction of that term would frustrate the "basic objective" of the Act: "the full . . . release of information." House Report No. 93-876, March 5, 1974, (1974) U.S.Code Cong. & Admin.News, p. 6267 (emphasis added); cf. *Mead Data Control, Inc. v. U. S. Department of Air Force*, 566 F.2d 242, 260 (D.C.Cir. 1977) (non-exempt portions of documents containing material exempt from disclosure must be released because the "focus of the FOIA is information, not documents . . .."). If all the Act requires in every case is that agencies turn over existing records, this objective easily could be subverted by an intransigent agency's use of jargon and abbreviations unintelligible to the uninitiated layman. Such a result cannot be tolerated, in light of Congress' intent that the government freely make non-exempt information available to the public.
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> In construing a statute, a court should look not to a single sentence or word, but to the entire statute and its underlying object and policy. *Philbrook v. Glodgett*, 421 U.S. 707, 713, 95 S.Ct. 1893, 1898, 44 L.Ed.2d 525 (1975). See also *Perry v. Commerce Loan Co.*, 383 U.S. 392, 400, 86 S.Ct. 852, 857, 15 L.Ed.2d 827 (1966); *United States v. Braverman*, 373 U.S. 405, 408, 83 S.Ct. 1370, 1372, 10 L.Ed.2d 444 (1963); *United States v. American Trucking Ass'ns*, 310 U.S. 534, 542-44, 60 S.Ct. 1059, 1063-64, 84 L.Ed. 1345 (1940). This is so even if the language of the statute permits a contrary interpretation. *Haberman v. Finch*, 418 F.2d 664, 666 (2d Cir. 1969). The only construction of the term "records" in Section 552(a)(3) that is consistent with the Act's broad objective of providing the public freely with "information" is that records must mean records in a form that the average member of the public can understand.

478 F.Supp. at 776-777.

Conclusion

It is our opinion that DHEC may not, either by policy or regulation, simply accept the designation by Chem-Nuclear that information is "proprietary" in nature or subject to the "trade secrets" exemption contained in § 30-4-40(a)(1). Any policy or regulation which exempts any and all material

which a third party labels as "proprietary" is patently in conflict with FOIA. See, *Society of Professional Journalists v. Sexton*, 283 S.C. 563, 324 S.E.2d 313 (1984) [DHEC regulation limiting public access to death certificates is invalid under FOIA]. Instead, pursuant to § 30-4-40(b)(1), DHEC must, upon receipt of a request for information pursuant to FOIA, independently evaluate the applicability of any exemptions, including § 30-4-40(a)(1). DHEC must separate any nondisclosable information from that required to be disclosed. The agency must also apply the exemptions, including the "trade secrets" exemption narrowly. All doubt must be resolved in favor of disclosure. Of course, DHEC is free to disclose voluntarily all information which might be subject to any exemption such as § 30-4-40(a)(1). *Bellamy v. Brown, supra*. [FOIA does not "create a duty not to disclose."]

In addition, we note also that courts have concluded that records must be disclosed to the public in a form that is comprehensible by the public. To release information that the public cannot understand or comprehend is little different from denying access to the information altogether. Both the letter and spirit of FOIA require considerably more. The quarterly reports submitted to DHEC by Chem-Nuclear fall into this category. Not only do these reports not identify the location of the monitoring wells, but the reports provide little or no information concerning the levels of radiation measured at a particular monitoring station. Moreover, the public is given no information regarding what are or what are not safe or unsafe levels of tritium or other radioactive materials under NRC standards, EPA drinking water standards or any other standard. Thus, as far as the public is concerned, disclosure of these reports, in this form, is practically useless.

Thus, we recommend that in the future, these reports submitted to DHEC by Chem-Nuclear use additional standards more readily understood by the public, such as the EPA drinking water standard, and possibly others.

By definition, the presence of a nuclear waste storage facility promotes public unease. While access to all available information certainly cannot eliminate these misgivings, it can sometimes mitigate and diminish them. Secrecy only heightens fear. Further, decisions must be made on facts, and issues cannot be properly raised and resolved without them. In our opinion, if the information described above had been more readily accessible to the public and in terms the public could understand, the integrity of the decision-making process concerning this facility over the years would have been greatly enhanced. The more readily comprehensible information the public has, the greater its understanding of governmental decisions. That is why FOIA requires the maximum disclosure of information.

Yours very truly,

Henry McMaster

HM/an