



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-173761

November 30, 1976

Robert Tabor Booms, Esq.
719 University Building
910 Sixteenth Street
Denver, Colorado 80202

Dear Mr. Booms:

This is in response to your letter asking for further consideration of your client's request for a copy of the General Accounting Office's report entitled "Shortcomings in the Systems Used to Control and Protect Highly Dangerous Nuclear Materials--Energy Research and Development Administration," submitted July 23, 1976, to the U.S. House of Representatives Committee on Small Business, Subcommittee on Energy and Environment and to the Joint Committee on Atomic Energy. The request of your client, Coloradans for Safe Power, was partially denied in a letter by Richard R. Pierson, Associate General Counsel.

After considering your request, I must concur in Mr. Pierson's decision that the parts of the report in question that have not already been submitted to your client are exempt from disclosure under the General Accounting Office's regulations concerning information requests. Interspersed throughout the report in question, and an integral part thereof, are data classified by the Energy Research and Development Administration within their authority as "Secret" and "Restricted Data." As such, the data fall within Executive Order 11652, as amended, 3 C.F.R. p. 339 (1974), which superseded Executive Order 10501, and must be kept secret in the interest of the national defense and the conduct of foreign policy. Under 4 C.F.R. §81.6(a)(1) of the General Accounting Office's regulations, records falling within this category are exempt from public disclosure.

In addition, Executive Order 11652 directs that classified information can only be declassified by the originating agency, except in certain situations not relevant here. Since the General Accounting Office is not the originating agency, it lacks the authority to declassify the data in question.

You also requested that we provide support for the statement in Mr. Pierson's letter that the General Accounting Office is not subject to the Freedom of Information Act (Act), 5 U.S.C. §552. The Act provides that each agency shall make certain information available to the public.

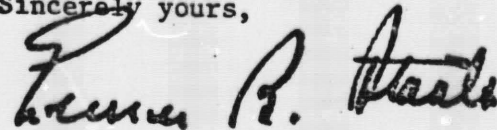
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5 U.S.C. §552. However, the General Accounting Office is not included within the definition of "agency" in 5 U.S.C. §551.

Incidentally, even if the General Accounting Office were subject to the Act, the report in question would still be exempt from disclosure. Executive Order 11652 states that the "official information or material, referred to as classified information or material in this order, is expressly exempted from public disclosure by Section 552(b)(1) of title 5, United States Code. Wrongful disclosure of such information or material is recognized in the Federal Criminal Code as providing a basis for prosecution."

Sincerely yours,

A handwritten signature in cursive script, appearing to read "James R. Starks".

Comptroller General
of the United States