

**REQUEST FOR BOARD ACTION BY A BOARD MEMBER**

Requester: Sullivan July 11, 2017

Brief description of Requested Action: Direct the General Manager to update the public website by posting new transcripts of the Board’s closed meetings held 6/3/2015, 7/29/2015, and 12/1/2015. The new versions are to have the redactions removed from the sections highlighted in the attachments to the General Counsel’s email time stamped 1:54PM on July 6, 2017.

Justification

The Board closed these meetings under Exemption 3 only. The highlighted transcript sections all involve Board discussions of Los Alamos emergency preparedness and response in the context of a potential Board recommendation. The Board recently concluded that no recommendation was warranted. The Government in the Sunshine Act requires the agency to promptly disclose those transcripts or portions of transcripts not covered by an exemption. Additionally, the Board’s regulations informs the public that upon determining a change in circumstances, the Board will make available to the public transcripts previously withheld.

Attachments (init) none.

Summarize any time sensitive considerations: the statute requires disclosure ‘promptly’.

Requestor signature \_\_\_\_\_ on file \_\_\_\_\_ July 11, 2017

Executive secretary \_\_\_\_\_ on file \_\_\_\_\_ July 11, 2017

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	APRVD	DISAPRVD	ABSTAIN	NOT PARTICPATING	COMMENT	DATE
Sean Sullivan	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Bruce Hamilton	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Jessie H. Roberson	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Daniel J. Santos	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Joyce L. Connery	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Final Disposition Summary						

Executive Secretary signature \_\_\_\_\_ [Click here to enter a date.](#)

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**AFFIRMATION OF BOARD VOTING RECORD**

**SUBJECT: RFBA by Chairman Sullivan to Direct the General Manager to update the public website**

**Doc Control#2017-300-096**

The Board, with Board Member(s) Sean Sullivan, Bruce Hamilton *approving*, Board Member(s) Jessie H. Roberson, Daniel J. Santos, Joyce L. Connery *disapproving*, Board Member(s) none *abstaining*, and Board Member(s) none *not participating*, have voted to disapprove the above document on July 13, 2017.

The votes were recorded as:

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIPATING*	COMMENT	DATE
Sean Sullivan	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	07/13/17
Bruce Hamilton	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	07/13/17
Jessie H. Roberson	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	07/13/17
Daniel J. Santos	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	07/13/17
Joyce L. Connery	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	07/13/17

\*Reason for Not Participating:

This Record contains a summary of voting on this matter together with the individual vote sheets, views and comments of the Board Members.

  
Assistant Executive Secretary to the Board

Attachments:

1. Voting Summary
2. Board Member Vote Sheets

cc: Board Members  
OGC  
OGM Records Officer  
OTD

**DEFENSE NUCLEAR FACILITIES SAFETY BOARD**

**NOTATIONAL VOTE RESPONSE SHEET**

**FROM:** Sean Sullivan

**SUBJECT:** RFBA by Chairman Sullivan to Direct the General Manager to update the public website

**Doc Control#2017-300-096**

Approved  X  Disapproved \_\_\_\_\_ Abstain \_\_\_\_\_

Recusal – Not Participating \_\_\_\_\_

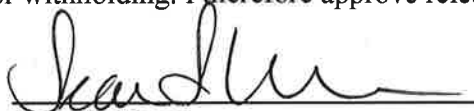
**COMMENTS:** Below  X  Attached \_\_\_\_\_ None \_\_\_\_\_

The request directs the publishing of those portions of three closed meeting transcripts wherein the Board deliberated on making a recommendation to the Secretary of Energy regarding deficiencies in emergency preparedness and response at the Los Alamos National Laboratory. The Board recently voted 4-1 against issuing a final recommendation. Having done so, the Board is compelled to release the related closed meeting transcripts.

The Government in the Sunshine Act (5 U.S.C. § 552b) provides, “The agency shall make promptly available to the public, in a place easily accessible to the public, the transcript ... except for such item or items of such discussion or testimony as the agency determines to contain information which may be withheld.” The act provides ten exemptions permitting information to be withheld. The Board initially withheld these transcripts under exemption three: matters specifically exempted from disclosure by statute. As explained in the Board’s regulations, exemption three applies to “deliberations regarding recommendations which, under 42 U.S.C. 2286d(b) and (h)(3), may not be made publicly available until after they have been received by the Secretary of Energy or the President.” (10 C.F.R. Part 1704.4) By the plain language of 42 U.S.C. 2286d(b) and (h)(3), the restriction on release of information is limited to cases where there exists an expectation of a final recommendation. Where, as here, the Board affirmatively decides that there shall be no final recommendation, the restriction on the release of information does not apply and, thus, neither does the Sunshine Act exemption.

The Board’s regulations further provide, “If at some later time the Board determines that there is no further justification for withholding a portion of a transcript, electronic recording, or minutes or other item of information from the public which has previously been withheld, such portion or information *shall be made publicly available.*” (10 C.F.R. Part 1704.9, emphasis added)

There is no valid exemption, thus no justification for withholding. I therefore approve release.

  
Sean Sullivan

7/13/17  
Date

**DEFENSE NUCLEAR FACILITIES SAFETY BOARD**  
**NOTATIONAL VOTE RESPONSE SHEET**

**FROM:** Bruce Hamilton

**SUBJECT:** RFBA by Chairman Sullivan to Direct the General Manager to update the  
public website

Doc Control#2017-300-096

Approved  Disapproved  Abstain

Recusal - Not Participating

COMMENTS: Below  Attached  None

  
Bruce Hamilton

13 JULY 2017  
Date

**DEFENSE NUCLEAR FACILITIES SAFETY BOARD**  
**NOTATIONAL VOTE RESPONSE SHEET**

**FROM:** Jessie H. Roberson

**SUBJECT:** RFBA by Chairman Sullivan to Direct the General Manager to update the  
public website

**Doc Control#2017-300-096**

Approved \_\_\_\_\_

Disapproved

Abstain \_\_\_\_\_

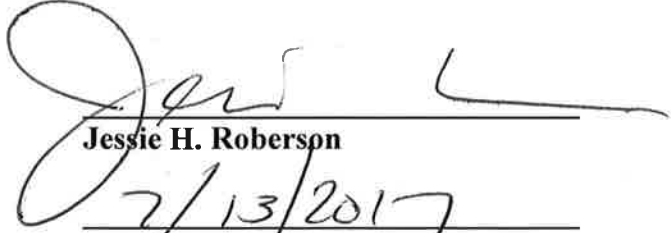
Recusal – Not Participating \_\_\_\_\_

**COMMENTS:**

Below \_\_\_\_\_

Attached \_\_\_\_\_

None

  
\_\_\_\_\_  
Jessie H. Roberson  
7/13/2017  
\_\_\_\_\_  
Date

**DEFENSE NUCLEAR FACILITIES SAFETY BOARD**  
**NOTATIONAL VOTE RESPONSE SHEET**

**FROM: Daniel J. Santos**

**SUBJECT: RFBA by Chairman Sullivan to Direct the General Manager to update the  
public website**

**Doc Control#2017-300-096**

**Approved** \_\_\_\_\_ **Disapproved**  X  **Abstain** \_\_\_\_\_

**Recusal – Not Participating** \_\_\_\_\_

**COMMENTS: Below** \_\_\_\_\_ **Attached** \_\_\_\_\_ **None**  X



**Daniel J. Santos**

**Date**

7/13/17

**DEFENSE NUCLEAR FACILITIES SAFETY BOARD**  
**NOTATIONAL VOTE RESPONSE SHEET**

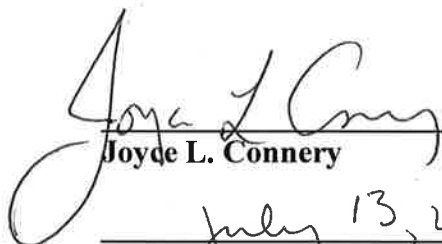
**FROM:** Joyce L. Connery

**SUBJECT:** RFBA by Chairman Sullivan to Direct the General Manager to update the public website

**Doc Control #2017-300-096**

**Approved** \_\_\_\_\_ **Disapproved**  \_\_\_\_\_ **Abstain** \_\_\_\_\_  
**Recusal – Not Participating** \_\_\_\_\_

**COMMENTS:** **Below** \_\_\_\_\_ **Attached** \_\_\_\_\_ **None**  \_\_\_\_\_

  
\_\_\_\_\_  
Joyce L. Connery  
Date July 13, 2017