

Amendment:

Delete all references to Government in the Sunshine Act exemption 9(B), 5 U.S.C. § 552b(c)(9)(B), and 10 C.F.R. § 1704.4(h).

Justification:

It is inappropriate to invoke Exemption (9)(B) of the Government in the Sunshine Act (5 U.S.C. § 552b(c)(9)(B)). This exemption is redundant to Exemption (3) prior to the Board's decision on a Recommendation, and it is not applicable once the Board has decided. Including it as an exemption might advance the erroneous interpretation that the information could be withheld from the public even after the Board had acted in order not to frustrate DOE's action, but the "proposed agency action" listed in (9)(B) is the Board's action, not DOE's response to it.

AFFIRMATION OF BOARD VOTING RECORD

**SUBJECT: Amendment by Acting Chairman Hamilton to YELLOW FOLDER
Doc#2018-300-028 RFBA by OGC to Close Meeting and Issue FRN**

Doc Control#2018-300-028A

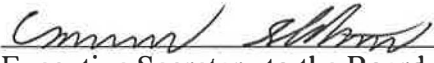
The Board, with Board Member(s) Bruce Hamilton *approving*, Board Member(s) Jessie H. Roberson, Daniel J. Santos, Joyce L. Connery *disapproving*, Board Member(s) none *abstaining*, and Board Member(s) none *not participating*, has voted to disapprove the above document on February 20, 2018.

The votes were recorded as:

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIPATING*	COMMENT	DATE
Bruce Hamilton	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	02/16/18
Jessie H. Roberson	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	02/16/18
Daniel J. Santos	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	02/20/18
Joyce L. Connery	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	02/16/18

*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.


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: Bruce Hamilton

**SUBJECT: Amendment by Acting Chairman Hamilton to YELLOW FOLDER
Doc#2018-300-028 RFBA by OGC to Close Meeting and Issue FRN**

Doc Control#2018-300-028A

Approved X Disapproved Abstain

Recusal – Not Participating

COMMENTS: Below X Attached None

This Amendment proposes to delete all references to the Government in the Sunshine Act Exemption 9(B), 5 U.S.C. § 552b(c)(9)(B), and 10 C.F.R. § 1704.4(h), in the subject RFBA.

Note that Exemptions (3) and (9)(B) parallel 10 C.F.R. § 1704.4(c) and (h).

It is inappropriate to invoke Exemption (9)(B) of the Government in the Sunshine Act. Exemption 9(B) is redundant to Exemption (3) prior to the Board's decision on a Recommendation, and it is not applicable once the Board has decided. Including it as an exemption might advance the erroneous interpretation that the information could be withheld from the public even after the Board had acted in order not to frustrate DOE's action, but the "proposed agency action" listed in (9)(B) is the Board's action, not DOE's response to it.

I therefore approve.


Bruce Hamilton

16 FEB 2018
Date

DEFENSE NUCLEAR FACILITIES SAFETY BOARD
NOTATIONAL VOTE RESPONSE SHEET

FROM: Jessie H. Roberson

SUBJECT: Amendment by Acting Chairman Hamilton to YELLOW FOLDER
Doc#2018-300-028 RFBA by OGC to Close Meeting and Issue FRN

Doc Control#2018-300-028A

Approved _____

Disapproved

Abstain _____

Recusal – Not Participating _____

COMMENTS:

Below _____

Attached _____

None



Jessie H. Roberson

Date

DEFENSE NUCLEAR FACILITIES SAFETY BOARD
NOTATIONAL VOTE RESPONSE SHEET

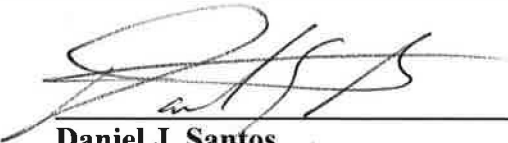
FROM: Daniel J. Santos

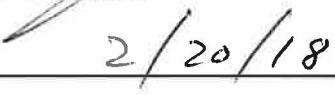
SUBJECT: Amendment by Acting Chairman Hamilton to YELLOW FOLDER
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Doc Control#2018-300-028A

Approved _____ **Disapproved** X **Abstain** _____
Recusal – Not Participating _____

COMMENTS: **Below** _____ **Attached** _____ **None** X



Daniel J. Santos


Date

DEFENSE NUCLEAR FACILITIES SAFETY BOARD
NOTATIONAL VOTE RESPONSE SHEET

FROM: Joyce L. Connery

SUBJECT: Amendment by Acting Chairman Hamilton to YELLOW FOLDER
Doc#2018-300-028 RFBA by OGC to Close Meeting and Issue FRN

Doc Control#2018-300-028A

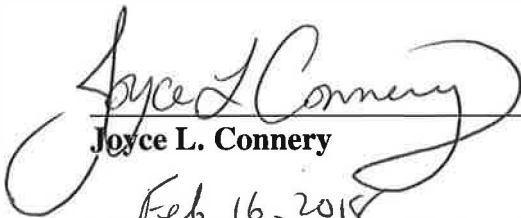
Approved _____ Disapproved X Abstain _____

Recusal – Not Participating _____

COMMENTS: Below X Attached _____ None _____

This issue has come up numerous times in the past and there is a record of my view.

The General Counsel provided the appropriate exemptions under the law necessary to preserve the Board's privileges with the maximum flexibility. The Board would have the opportunity to vote on whether or not to invoke exemption 9b upon either a public request for the transcript under the Sunshine Act or upon its own decision to invoke or waive its privileges to release the transcript.



Joyce L. Connery
Feb 16, 2018

Date