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Open Source America's Operating System

"It's Not Just A Good Idea—It's The Law!"

November 7, 2009

Mr. John B. Owens, II, Chief Information Officer
U.S. Patent and Trademark Office
P.O. Box 1450 – Mail Stop 6
600 Dulany Street, MDE, 7th Floor
Alexandria, Virginia 22313-1450

RE: FOIA Request

Dear Mr. Owens:

This is a request under the Freedom of Information Act, 5 U.S.C. § 552 for any submissions received by your office in response to your Solicitation for USPTO's Data Dissemination Solution. [SS-PAPT-09-10008]

You have previously indicated that "Information submitted as part of the RFI is for market research and planning purposes of the USPTO only. The office does not intend to make the submissions public." [Amendment 1] You further indicated "No, we do not intend to release the responses. Responses to the RFI are considered market research and may include proprietary information." [Amendment 3]

Refusal to disclose this information seems to run directly counter to the provisions of the FOIA. Indeed, this policy seems to directly contradict President Obama's Memorandum on the Freedom of Information Act of January 21, 2009: "In cases of doubt, openness prevails ... All agencies should adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA, and to usher in a new era of open Government." [DCPD-200900009]

Request for News Media Fee Status

Public.Resource.Org asks that we not be charged search or review fees for this request because we qualify as a "representative of the news media" pursuant to the FOIA and 37 C.F.R. § 102.11(6) and we are not seeking records for commercial use.

Public.Resource.Org, Inc. is a 501(c)(3) public charity chartered to create public works projects on the Internet with a particular focus on making government information more broadly available without fee to any and all users. Public.Resource.Org has been certified as a "news media" requester for the purposes of obtaining and publishing high-resolution video from the United States Congress Recording Studio and we are engaged in a Joint Venture with the National Technical Information Service ("NTIS") under Agreement No. NTIS-1832 to assist in more broadly disseminating materials from NTIS onto the Internet. Documents from this current FOIA request will be promptly published, joining over 32.4 million pages of U.S. government documents we have made available on the Internet.

Due to our extensive publication activities, Public.Resource.Org is a "representative of the news media" under the FOIA and agency regulations.

Request for a Public Interest Fee Waiver

Public.Resource.Org is entitled to a waiver of duplication fees because disclosure of the requested information is in the public interest within the meaning of 5 U.S.C. § 552(a) (4)(a)(iii) and 37 C.F.R. § 102.11(k). To determine whether a request meets this standard, agencies determine whether “[d]isclosure of the requested information is likely to contribute significantly to public understanding of the operations or activities of the government,” and whether such disclosure “is not primarily in the commercial interest of the requester.” This request clearly satisfies these criteria.

First, this request concerns “the operations or activities of the government.” 37 C.F.R. § 102.11(k)(2)(i). The agency’s dissemination of the patent database produced by the government constitutes government operations or activities.

Second, disclosure of the requested information will “contribute to an understanding of government operations or activities.” 37 C.F.R. § 102.11(k)(2)(ii). Public.Resource.Org has requested information that will publicly reveal the nature and contents of the access to a constitutionally-mandated database.

Third, the disclosure will “contribute significantly” to the public’s knowledge and understanding of the options available to the government in disseminating patent information. 37 C.F.R. § 102.11(k)(2)(iii) (internal quotation marks omitted). Disclosure of the requested information will permit the public to access the requested records for free.

Furthermore, a fee waiver is appropriate here because Public.Resource.Org has no commercial interest in the disclosure of the requested records. 37 C.F.R. § 102.11(k) (3). Public.Resource.Org is a 501(c)(3) nonprofit organizations and will derive no commercial benefit from the information at issue here.

Furthermore, similar requests for disclosure of proposals and contracts with private parties have been granted as in the public interest by the Federal Trade Commission, the Internal Revenue Service, the Consumer Product Safety Commission, the Department of Commerce, the Department of Education, the Food and Drug Administration, the U.S. Army, and the U.S. Air Force.

Agreement to Pay Fees and Request for Response

Should you determine that we are not entitled to News Media or Public Interest status, we agree to pay fees up to \$200 for this request.

Thank you for your consideration of this request. If you have any questions or concerns, please do not hesitate to contact me at (707) 827-7290. As the FOIA provides, I will anticipate a determination on this request from your office within 20 working days after the close of the November 16 RFI submission deadline.

Respectfully yours,

Carl Malamud
President & CEO
Public.Resource.Org