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Open Source America's Operating System

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

December 22, 2009

Office of the General Counsel
United States Patent and Trademark Office
Madison Building East, Room 10B20
600 Dulany Street
Alexandria, VA 22314

RE: Appeal of FOIA Request No. F-10-00031

Dear Sirs:

I am appealing your decision to not release 60 pages of responsive documents on my FOIA Request No. F-10-00031. Your determination cites as a reason "they are copies of the proposals voluntarily submitted to the USPTO in response to its Request for Information wherein the confidentiality of these submissions was assured."

The Request for Information, "USPTO Data Dissemination Solution RFI # SS-PAPT-100008" (Rev B) (September 4, 2009), states: "Proprietary information submitted in response to this RFI will be protected from unauthorized disclosure as required by the Federal Acquisition Regulation (FAR). All proprietary markings should be clearly delineated. The respondent shall identify where data is restricted by proprietary or other rights and mark it accordingly."

It appears from your response to my FOIA that the U.S. Patent and Trademark Office may have simply done a blanket denial of all RFI responses, and that you instead should have redacted the portions "clearly delineated" and released the rest. At the very least, I would have expected a list of respondents.

As further grounds for appeal, I remind you of the President's clear and repeated guidance that agencies should all adopt a "presumption of openness." (See the [President's Memorandum](#), as well as the [Attorney General's Guidance](#) and the recent [Open Government Directive](#).)

I urge you to reconsider your determination of my FOIA Request. "To create more informed and effective policies, the Federal Government should promote opportunities for the public to participate throughout the decision-making process." (Open Government Directive, Clause 3a). The public cannot participate in this crucial RFI process you are undertaking if we have no idea the options you are considering.

Sincerely yours,

Carl Malamud
President & CEO
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