



UNITED STATES ACCESS BOARD

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April 20, 2015

Mr. Carl Malamud
President and CEO
Public.Resource.org
1005 Gravenstein Highway North
Sebastopol, CA 95472

Re: FOIA Request for ASME A117.1-2000

Dear Mr. Malamud:

I am responding to your Freedom of Information Act (FOIA) dated April 1, 2015, in which you request a copy of ASME A17.1-2000, Safety Code for Elevators and Escalators (inclusive of ASME A17.1a-2002 and ASME A17.1b-2003 Addendums). These standards are incorporated by reference in the Access Board's ADA/ABA Accessibility Guidelines at 36 CFR pt.1191, app. B, § 105.2.2 (2014).

The FOIA imposes two primary information disclosure obligations on covered federal agencies. First, subsections (a)(1) and (a)(2) require the "automatic" disclosure of certain types of agency information independent on any "FOIA request." *See* 5 U.S.C. § 552(a)(1) - (a)(2) (2014). Second, subsection (a)(3) generally requires disclosure of reasonably described, non-exempt records upon request provided that such records have not already been made available by the agency under the automatic disclosure provisions (*i.e.*, subsections (a)(1) or (a)(2)). *Id.* at § 552(a)(3).

Subsection (a)(1) of the FOIA is of particular relevance here. Under subsection (a)(1), agencies are expressly required to publish in the Federal Register certain information, including descriptions of agency organization and rules of procedure, substantive rules, and statements of general policy. *See* 5 U.S.C. § 552(a)(1)(A)-(E). The basic purpose of these publication requirements—which were carried over from preexisting requirements in the Administrative Procedure Act—is "to enable the public 'readily to gain access to the information necessary to deal effectively and upon equal footing with the Federal agencies.'" Attorney General's Memorandum on the Public Information Section of the Administrative Procedure Act 4 (June 1967) (quoting S. Rep. No. 1219, 88th Cong. 2d Sess. 3 (1964)). Technical standards, in turn, that are "reasonably available to the class of persons affected thereby . . . [are] deemed published in the Federal Register when incorporated by reference therein with the approval of the Director of the

Federal Register.” 5 U.S.C. § 552(a)(1). Materials encompassed by subsection (a)(1) are, therefore, “automatically” disclosed and made available for public inspection without a FOIA request. *See Jordan v. United States Dept. of Justice*, 591 F.2d 753, 756 (D.C. Cir. 1978) (en banc).

Turning to the technical standard you have requested—ASME A17.1-2000 (including ASME A17.1a-2002 and ASME A17.1b-2003 Addendums), this standard has already been disclosed within the meaning of § 552(a)(1) by virtue of its publication in the Code of Federal Register. ASME A17.1-2000 was duly incorporated by reference in § 105.2.2 upon the approval of the Director of the Office of the Federal Register (“OFR Director”). Moreover, consistent with both OFR’s regulations implementing § 552(a)(1) and the Board’s own FOIA regulations, the Access Board has ensured the reasonable availability of this standard by making it available for inspection at the offices of the Access Board and OFR respectively, and by providing information about how it may be obtained from the standards developing organization, the American Society of Mechanical Engineers. *See* 1 C.F.R. §§ 51.3(a)(3), 51.9(b); *see also* 36 C.F.R. § 1120.5 (Access Board rule identifying information published in the Federal Register pursuant to § 552(a)(1)); 36 C.F.R. pt. 1191, app. B, § 105.2.2 (providing information on how to obtain copies of referenced standards from ASME).

Accordingly, because the Access Board has already made ASME A17.1-2000 (including ASME A17.1a-2002 and ASME A17.1b-2003 Addendums) available under § 552(a)(1), it is not subject to request under § 552(a)(3). *See* U.S. Dep’t of Justice v. Tax Analysts, 492 U.S. 136, 152-53 (1989); Schwarz v. U.S. Patent & Trademark Office, No. 95-5349, 1996 U.S. App. LEXIS 4609 (D.C. Cir. Feb. 22, 1996). While ASME A17.1-2000 is not set out in its entirety in the CFR text, there is enough information set out in the regulatory text so that affected parties may obtain or inspect these standards in order to comply with the regulation.

While the Access Board will thus not be providing a copy of ASME A17.1-2000 and its incorporated addendums in response to your FOIA request, this standard is nonetheless available for inspection at our office during normal business hours. Should you wish to inspect this standard, please contact me at the number listed to arrange an appointment. Although many of our library holdings are in the public domain, please be advised that some technical standards incorporated by reference are subject to copyright protection. You are responsible for obtaining any necessary permission for use, copying, and publication from copyright holders and for any other applicable provisions of

the Copyright Act (codified in scattered sections of Title 17 of the United States Code).

In addition, as required by § 552(a)(1), ASME A17.1-2000 is also available for inspection through the Office of the Federal Register. Detailed instructions are available on the OFR website concerning how to request an appointment and where materials are housed. These instructions can be found at <http://www.archives.gov/federal-register/cfr/ibr-locations.html#find>.

Since ASME A17.1-2000 (including ASME A17.1a-2002 and ASME A17.1b-2003 Addendums) has been deemed published in the Federal Register under § 552(a)(1), is publicly available for inspection or purchase, and has been made available to you for examination in our office (or the Office of the Federal Register) as described above, this letter constitutes a denial of your FOIA request under § 552(a)(3). Under the Access Board's FOIA regulations, you may appeal this initial determination within 30 calendar days of receiving this letter. Appeals must be in writing and should be sent to the following mailing address:

FOIA Officer
Office of the General Counsel
US Access Board
1331 F Street, NW, Suite 1000
Washington, DC 20004

You may also submit an appeal by electronic mail to foia@access-board.gov. Please use "freedom of information act appeal" as the subject line of your e-mail.

Sincerely,



Lisa Fairhall
Deputy General Counsel



PUBLIC.RESOURCE.ORG ~ A Nonprofit Corporation

Public Works for a Better Government

April 1, 2015

VIA EMAIL AND FIRST CLASS MAIL

FOIA Requester Service Center
U.S. Access Board
1331 F Street NW, Suite 1000
Washington, DC 20004
E-mail: foia@access-board.gov

RE: Freedom of Information Act Request

Dear FOIA Officer:

On behalf of Public.Resource.Org, and pursuant to the Freedom of Information Act, **5 U.S.C. § 552**, I request a copy of *ASME A17.1-2000, Safety Code for Elevators and Escalators, including ASME A17.1a-2002 and ASME A17.1b-2003 Addendums*, which is incorporated by reference in **36 CFR 1191, Appendix B, § 105.2.2** and used in **36 CFR 1191, Appendix B, § 407.1 et. seq.**

Please provide the record in electronic form if possible.

If it is your position that *ASME A17.1-2000* (or portions thereof) is exempt from disclosure, please state the basis of the denial of each portion of the record withheld. In addition, please provide the nonexempt portions of the record.

Public.Resource.Org requests that all fees in connection with this FOIA request be waived in accordance with **5 U.S.C. § 552(a)(4)(A)(iii)**, because it does not seek the records for a commercial purpose and disclosure “is in the public interest because it is likely to contribute significantly to public understanding of the operations and activities of the government.” Because it was incorporated by reference into the Code of Federal Regulations, the requested record is part of the agency’s governing law. Accordingly, it is the essence of the “operations and activities of the government.” However, because it is not published in the Federal Register, the public does not have the same access to it that it has to other parts of the agency’s regulations. Disclosure of the record will allow the public to gain knowledge about what is included in the agency’s binding law.

Public.Resource.Org does not have a commercial interest in the requested record. Public.Resource.Org is a 501(c)(3) public charity chartered to make government information more broadly available without fee to any and all users. Public.Resource.Org has demonstrated an ability to disseminate information about

the government and its activities to the public. It is one of the largest distribution sites for public information related to the U.S. government, including over 14,000 hours of video from Congressional hearings posted at the request of the Speaker of the House, over 8 million Form 990 reports filed with the Internal Revenue Service, over 6,000 U.S. government videos posted in cooperation with the Archivist of the United States, and the historical opinions of the U.S. Court of Appeals. As the President of Public.Resource.Org, I am frequently quoted in major media publications such as **the New York Times, Business Week, the New Republic, and the Washington Post**. I also testify before Congress on issues of public access to government information and am a frequent public speaker on the subject.

Accordingly, we request that you waive all fees for locating and duplicating the requested record. If, however, a waiver is not granted, and if the fees to be assessed in connection with this request exceed \$200, please obtain my approval before any such costs are incurred.

We will expect a response within 20 working days as provided by law. If you have any questions regarding this request, please contact me at (707) 827-7290.

Thank you very much for your attention to this matter.

Sincerely,



Digitally signed by Carl
Malamud
DN: cn=Carl Malamud,
o=Public.Resource.Org
, ou,
email=carl@media.org,
c=US
Date: 2015.04.01
06:30:44 -07'00'

Carl Malamud
President & CEO
Public.Resource.Org

cc: David Halperin
Of Counsel
Public.Resource.Org