



UNITED STATES ACCESS BOARD

1331 F Street, NW
Suite 1000
Washington, DC
20004-1111

Voice
202 272-0080

TTY
202 272-0082

Fax
202 272-0081

Web
www.access-board.gov

June 10, 2015

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

Re: FOIA Appeal - Request for ASME A117.1-2000

Dear Mr. Malamud:

I am writing in response to your letter appealing the denial of your request for ASME A17.1-2000 (including ASME A17.1a-2002 and ASME A17.1b-2003 Addendums) under the Freedom of Information Act (FOIA) by the Deputy General Counsel of the United States Access Board's (Access Board), Lisa Fairhall. We received your appeal on May 14, 2015.

After carefully reviewing your appeal, I find no basis for revising Ms. Fairhall's determination that your requested ASME materials are not subject to production under 5 U.S.C. § 552(a)(3). As noted in her initial decision, the ASME safety code and addendums you requested were duly incorporated by reference in the Access Board's ADA/ABA Accessibility Guidelines (36 C.F.R. pt. 1191, app. B, § 105.2.2) with the formal approval of the Director of the Office of the Federal Register (OFR). As such, these materials have been "made available" within the meaning of 5 U.S.C § 552(a)(1) and, therefore, are not subject to disclosure in response to FOIA requests. *See id.* § 552(a)(3)(A) ("**Except with respect to records made available under paragraphs [552(a)(1) and (2)] . . . each agency, upon request for records . . . shall make the records promptly available to any person.**") (emphasis added).

On appeal, you assert that the requested ASME materials have not been made sufficiently available because these documents may only be obtained by inspection "at the-bricks-and-mortar offices of the Access Board and the Office of the Federal Register," or purchased online through ASME or its affiliated vendors. While such methods of availability may not represent your preferred methods of access or review, they are nonetheless fully consistent with federal law. Subsection 552(a)(1) expressly contemplates federal agencies incorporating materials by reference in the Federal Register (and Code of Federal Regulations, which is a special edition of the Federal Register) with approval of the OFR Director so long as such materials are "reasonably available" to the class of affected persons. OFR's implementing

regulations over the relevant period, in turn, have conditioned approval on a finding that, among other things, the standard or other material proposed for incorporation is reasonably available. *See, e.g.*, 1 C.F.R. §§ 51.3, 51.7 (2002 & 2015). The OFR Director approved the Access Board's incorporation by reference of ASME A17.1-2000 in § 105.2.2 of the ADA/ABA Accessibility Guidelines, thereby necessarily finding that the agency's provision for availability of this standard through inspection (at the offices of either the Access Board or OFR) or purchase (through ASME) was reasonable and satisfied the statutory requirements in subsection 552(a)(1) of the FOIA.

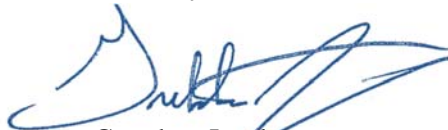
Accordingly, I affirm Ms. Fairhall's initial decision denying your FOIA request filed under 5 U.S.C. § 552(a)(3). By law, you may seek judicial review of this determination in federal court. *See* 5 U.S.C. § 552(a)(4)(B). Such a suit may be filed in the United States District Court in the district where you reside, where your principle place of business is located, the District of Columbia, or where the documents are located (also in the District of Columbia).

It also bears noting that the 2007 FOIA amendments created the Office of Government Information Services (OGIS), which offers mediation services to resolve disputes between FOIA requesters and federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. You may contact OGIS as follows:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road - OGIS
College Park, MD 20740-6001
E-mail: ogis@nara.gov
Telephone: 202-741-5770
Fax: 202-741-5769

Web: <https://ogis.archives.gov>
Toll-free: 1-877-684-6448

Sincerely,



Gretchen Jacobs
General Counsel