



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

June 26, 2015

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

Response by e-mail addressed to: carl@media.org

Re: FOIA Case Number 2015-24

The Administrative Conference of the United States (ACUS) received your Freedom of Information Act (FOIA) request via electronic mail on June 9, 2015, for our agency's records concerning "all communications between ACUS and Standards Development Organizations (SDOs) including ANSI (ansi.org), ASTM (astm.org), ASME (asme.org), ASHRAE (ashrae.org), International Code Council (iccsafe.org), NFPA (nfpa.org), and Underwriters Laboratories (ul.com) concerning availability to the public of standards that have been incorporated by reference into federal or state law, or availability to the public during the public comment period prior to incorporation by reference into federal or state law." In a second email message from you on June 11 and a subsequent telephone conversation with you, you indicated a willingness to narrow your request at this time to all such communications to and from ACUS Attorney-Advisor, Emily Bremer.

As a former Public Member of ACUS, you know that the Conference is a small federal agency, with about 16 permanent staff, that is required by law to study and make recommendations for improving federal government procedures. In 2011, ACUS undertook a study of the legal and policy issues related to federal agency use of incorporation by reference (IBR). The study built upon an earlier ACUS recommendation, No. 78-4, "Federal Agency Interaction with Private Standard-Setting Organizations in Health and Safety Regulations." On December 8, 2011, the ACUS Assembly adopted Recommendation 2011-5, "Incorporation by Reference."

An extensive search was conducted to identify all responsive records. First, ACUS's IT Specialist searched the agency's servers using the parameters of your request—that is, all communications between Emily Bremer and the various SDOs. In order to determine which emails were responsive within those search results, each communication was reviewed independently by three senior ACUS officials. Where there was even a tangential nexus to your request, we opted to interpret your request broadly and to disclose the record. For instance, if the communication had no specific reference to IBR (or the specific language in your request), but referred to an event at which IBR was going to be discussed (e.g., references to a "June 7 Event"), those records were included. In order to minimize duplicate emails, only the last email in a conversation string was included, in addition to any others in the string that had attachments.

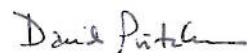
Some of the emails prior to adoption of the final ACUS recommendation on December 8, 2011, could technically fall under the deliberative privilege exemption (Exemption 5) under FOIA, but we have opted not to invoke the exemption in order to provide complete transparency. Emails sent or received after final adoption of Recommendation 2011-5 were all related to implementation (e.g., scheduling workshops or briefings, filing comments on Office of Management and Budget guidance and Office of Federal Register regulations, etc.). The only information that has been redacted is a handful of personal email addresses, which fall squarely within FOIA Exemption 6. We carefully weighed the privacy interest of the affected individuals and the public interest in accessing personal email addresses, and determined that the former outweighed the latter—especially where the substance of the communication was not affected by redaction. A final point is that Ms. Bremer published academic articles related to IBR in her personal capacity as a subject matter expert, and not on behalf of ACUS. In this regard, some of the emails contain drafts of her personal writings on the subject. She has voluntarily agreed to our disclosure of those materials in response to your FOIA request.

Because of the large size of the collection of records we have identified that are responsive to your request, we have made this material accessible to you using Dropbox. You can retrieve them at: <https://www.dropbox.com/sh/6yp6imlu7tix0b7/AAD5Wd3XR87HvZ8FHH5MpGGa?dl=0>

Because we have redacted a small portion of the records being supplied to you that contain personal information falling within FOIA Exemption 6, this is considered a partial adverse determination denying your request. Therefore, you are entitled to appeal this decision pursuant to section 304.8 of our agency's FOIA regulations (see our website for a link to the regulations, www.acus.gov). However, if you think an appeal might be necessary, we request that you first contact me, David Pritzker dpritzker@acus.gov, or Shawne McGibbon smcgibbon@acus.gov, to discuss your concerns prior to filing an appeal in this case.

We hope this information will be helpful and will fully meet your needs. Please include the above-referenced case number if there are any future communications to ACUS related to this request.

Sincerely,



David Pritzker
Deputy General Counsel/FOIA Public Liaison
Administrative Conference of the United States