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Public Works for a Better Government

May 28 , 2015

VIA EMAIL AND FIRST CLASS MAIL

FOIA APPEAL

General Counsel

ATTN: Office of the Secretary

U.S. Consumer Product Safety Commission

4330 East West Highway

Bethesda, Maryland 20814-4408

E-mail: cpsc-foia@cpsc.gov

RE: FOIA Appeal, FOIA Request #15-F-00342

Dear General Counsel:

This letter is an appeal from the May 18, 2015, denial of a Freedom of Information Act (FOIA) request that I sent to the U.S. Consumer Product Safety Commission (CPSC) on behalf of Public.Resource.Org on April 1, 2015. That request sought a copy of *ASTM F 1447-94, Standard Specification for Protective Headgear Used in Bicycling 1994 Edition* which is incorporated by reference in **16 CFR 1203.53(b)** and used in **16 CFR 1203.53(a)**.

On May 18, 2015, in a letter signed by Todd A. Stevenson, the CPSC denied the request. The letter stated: "The records that you seek, *ASTM F 1447-94, Standard Specification for Protective Headgear Used in Bicycling 1994 Edition*, are the copyright property of ASTM (American Society for Testing and Materials. The ASTM standard must be purchased from ASTM from their website, www.astm.org/."

Copies of my **April 1, 2015 request** and the CPSC's **May 18, 2015 denial** are enclosed with this appeal.

We are appealing the denial of the FOIA request because no exemption applies to the requested record. FOIA requires agencies to release requested records unless those records fall within one of nine specified exemptions. See **5 U.S.C. § 552(a)(3), (b)**; see also **16 C.F.R. § 1015.6(b)(2)** (explaining that a "response denying a written request for a record" must include a "reference to the specific exemption or exemptions under the Freedom of Information Act authorizing the withholding of the record"). Here, the CPSC's response did not cite any exemptions. And although it mentioned copyright law, thereby suggesting that the record is exempt under FOIA Exemption 3, which applies to records "specifically exempted from disclosure by

statute,” 5 U.S.C. § 552(b)(3), the Copyright Act does not qualify as an Exemption 3 statute. See U.S. Dep’t of Justice, Office of Info. & Policy, *OIP Guidance: Copyrighted Materials and the FOIA*, FOIA Update, Vol. IV, No. 4 (1983) (“[T]here is nothing whatsoever in the [Copyright Act] or its legislative history to suggest that Congress intended it to trigger Exemption 3.”). Because the requested record is an agency record and no exemption from disclosure applies, the CPSC must release it in response to our request.

Thank you for your time and attention to this matter. We will expect a determination with respect to this appeal within twenty working days, as required by law. Should you have any questions regarding this appeal, please feel free to contact me at (707) 827-7290.

Thank you very much for your attention to this matter.

Sincerely,



Digitally signed by Carl
Malamud
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ou,
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Date: 2015.05.28
12:09:38 -07'00'

Carl Malamud
President & CEO
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cc: David Halperin
Of Counsel
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