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Public Works for a Better Government

October 2, 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-00684

Dear General Counsel:

This letter is an appeal from the September 23, 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 September 10, 2015. That request sought a copy of *UL 325, Standard for Safety for Door, Drapery, Gate, Louver, and Window Operators and Systems, Fifth Edition (2002)* as initially mandated by Section 203 of the Consumer Product Safety Improvement Act of 1990 (Public Law No. 101-608) and updated to the Fifth Edition on September 27, 2007 ([72 FR 54816](#)). I also requested a the Sixth Edition of the same document.

On September 23, 2015, in a letter signed by Alberta E. Mills, the CPSC denied the request. The letter stated: "The standards you requested constitute copyright material that the Commission is not at liberty to release to the public. The standards are available by contacting Underwriters Laboratories, Inc. (UL) and American National Standards Institutes (ANSI) respectively."

Copies of my [September 10, 2015 request](#) and the CPSC's [September 23, 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.

I wish to add that the information contained in the September 23 denial of my request about availability of the standards for purchase is incorrect. ANSI does not make UL 325 available for sale. I also attempted to purchase the Fifth Edition of UL 325 from Underwriters Laboratories, which has two sales outlets. On the **C2 Standards Store**, the Fifth Edition of UL 325 is “not available for sale.” The other vendor, the **IHS Standards Store** does list the Fifth Edition of UL 325, however one must fill out a Individual Standards Acquisition Authorization Form which the Historical UL Standards for Safety Authorization Group Personnel must approve. I filled out this request on **September 10, 2015** and it was rejected on **September 11, 2015**. It is clear that this document, which is incorporated into federal law, is not available to me to purchase.

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
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Carl Malamud
President & CEO
Public.Resource.Org

cc: David Halperin
Of Counsel
Public.Resource.Org