



U.S. CONSUMER PRODUCT SAFETY COMMISSION  
4330 EAST WEST HIGHWAY  
BETHESDA, MD 20814

Stephanie Tsacoumis  
General Counsel

Tel: 301-504-7612  
Fax: 301-504-0403  
Email: STsacoumis@cpsc.gov

November 2, 2015

**VIA EMAIL AND CERTIFIED MAIL**

Carl Malamud  
President & Chief Executive Officer  
Public.Resource.Org  
1005 Gravenstein Highway North  
Sebastopol, CA 95472

*Re: U.S. Consumer Product Safety Commission  
Appeal of FOIA Request 15-F-00684  
ANSI/UL 325 (Fifth and Sixth Editions)*

Dear Mr. Malamud:

By letter dated October 2, 2015 and received on that day, you appealed the September 23, 2015 response of the U.S. Consumer Product Safety Commission's ("CPSC") Freedom of Information Officer to your Freedom of Information Act ("FOIA") request dated September 10, 2015 (FOIA No. 15-F-00684) ("FOIA Request"). The FOIA Request sought the following records:

1. Copies of the Fifth and Sixth editions of ANSI/UL 325, Safety for Door, Drapery, Gate, Louver, and Window Operators and Systems ("ANSI/UL 325"); and
2. Any communications between CPSC and Underwriters Laboratories Inc. ("UL") regarding "making available to the public of [ANSI/UL 325] or other standards produced by Underwriters Laboratories as part of the NPRM currently underway for garage door openers,...or after such documents become required by law."

In the September 23, 2015 response letter, the Freedom of Information ("FOI") Officer advised that a search of CPSC files failed to produce any records responsive to your request for communications between CPSC and UL. The FOI Officer also denied your request for

ANSI/UL 325, stating that the records are copyrighted materials that must be purchased from Underwriters Laboratories Inc. (“UL”). You have appealed the FOI Officer’s denial of your request for ANSI/UL 325.

Under authority delegated to me by the Commission, 16 C.F.R. § 1015.7, I have reviewed your appeal.

Confidential commercial information is protected from disclosure by CPSC under two provisions of the FOIA. First, Section 552(b)(4) of the FOIA specifically exempts trade secrets and confidential commercial information from disclosure (“Exemption 4”). *See also* 5 C.F.R. § 1015.16(d). Second, the FOIA also exempts from disclosure records that are specifically exempted from disclosure by another statute. 5 U.S.C. § 552(b). *See also* 5 C.F.R. § 1015.16(c). Section 6(a)(2) of the Consumer Product Safety Act (“CPSA”) expressly prohibits the disclosure of information reported to or otherwise obtained by the Commission which contains or relates to trade secrets or other confidential commercial information.

Whether records qualify as confidential commercial information that should be withheld from disclosure under FOIA depends on the facts and circumstances. In other circumstances, information and documents that are available to the public at some cost, such as ANSI/UL 325, may constitute confidential commercial information that may be withheld from disclosure under Exemption 4 of the FOIA. *See, e.g., Worthington Compressors, Inc. v. Costle*, 662 F.2d 45, 51 (D.C. Cir. 1981).

To determine whether ANSI/UL 325 constitutes “confidential commercial information” for purposes of FOIA and section 6(a)(2) of the CPSA, the FOI Officer will follow the procedures prescribed by the CPSA and will evaluate any claims of trade secret or commercial information in accordance with Section 6(a)(5) of the CPSA, 15 U.S.C. § 2055(a)(5), and 16 C.F.R. § 1015.18. *See generally Executive Order 12600, Predisclosure Notification Procedures for Confidential Commercial Information* (June 23, 1987) (requiring that agencies establish procedures to notify submitters of records containing confidential information when those records are requested under the FOIA).

To the extent that the FOI Officer’s decision in this matter is inconsistent with the analysis reflected in this letter, I reverse that decision.

Mr. Carl Malamud  
Public.Resource.Org  
Page 3

The process of assessing whether ANSI/UL 325 constitutes “confidential commercial information” noted above may take up to 30 days. After the FOI Officer completes this process, some information may continue to be exempt from disclosure under the FOIA. The FOI Officer, however, will notify you under separate cover, providing any information that may be properly disclosed under FOIA and identifying any materials that may remain exempt from disclosure.

Very truly yours,

U.S. Consumer Products Safety Commission

By:   
Stephanie Tsacoumis