



**PUBLIC.RESOURCE.ORG** ~ A Nonprofit Corporation

**Public Works for a Better Government**

July 22, 2015

VIA FIRST CLASS MAIL AND HTTP

Food and Drug Administration  
Division of Freedom of Information  
Office of the Executive Secretariat, OC  
5630 Fishers Lane, Room 1035  
Rockville, MD 20857  
HTTP: <http://www.accessdata.fda.gov/scripts/foi/FOIRequest/index.cfm>

**RE: Freedom of Information Act Request**

Dear FOIA Officer:

On behalf of Public.Resource.Org, and pursuant to the Freedom of Information Act, **5 U.S.C. § 552**, I am submitting this request. Please provide the records in electronic form if possible.

LCDR Scott A. Colburn, MS, BSN, RN is the Director of the Standards Program at the Food and Drug Administration's Center for Devices and Radiological Health (CDRH). Lcdr Colburn also serves on the Boards of Directors of the American National Standards Institute (ANSI) and ASTM International.

Government officials serving in a fiduciary capacity in nonprofit organizations are subject to certain constraints, which are specified in **18 USC § 208(b)(2)** and **5 CFR § 2640.203(m)**. These constraints are detailed in the Office of Government Ethics **Legal Advisory LA-13-05**, "18 U.S.C. § 208(b)(2) Exemption for Official Participation in Nonprofit Organizations" (April 9, 2013).

I am requesting 3 types of records under FOIA regarding Mr. Colburn relationship with ANSI and ASTM International:

- Legal Advisory LA-13-05 states "it is a best practice for agencies to commit the scope of an employee's permissible activities to writing in a memorandum of understanding between the agency, the employee and the nonprofit organization." I am requesting a copy of any such memoranda and supporting documents leading to the issuance of such memoranda. If instead Lcdr Colburn's

service with ANSI and/or ASTM is or was in his individual capacity and not his official capacity, I would request any documents discussing such status and/or any waiver requested or approved.

- Legal Advisory LA-13-05 states “the employee may not receive any supplementation of salary, including personal reimbursement of travel expenses, from the nonprofit organization” and any such reimbursement must come from the nonprofit organization directly to the government. I am requesting records detailing the amounts and nature of such reimbursements from ANSI and ASTM International.
- Legal Advisory LA-13-05 outlines a number of additional limitations, such as “limiting or prohibiting the employee from participating in the development of regulations that could affect the nonprofit organization.” I am requesting any memoranda, email, or other records that discuss instances where LCDR Colburn is limited or prohibited from working on matters with the nonprofit organization or has been recused, limited, or prohibited from working on matters for the government in his official capacity.

Public.Resource.Org requests that all fees in connection with this FOIA request be waived in accordance with **5 U.S.C. § 552(a)(4)(A)(iii)**, because it does not seek the records for a commercial purpose and disclosure “is in the public interest because it is likely to contribute significantly to public understanding of the operations and activities of the government.”

Public.Resource.Org does not have a commercial interest in the requested record. Public.Resource.Org is a 501(c)(3) public charity chartered to make government information more broadly available without fee to any and all users.

Public.Resource.Org has demonstrated an ability to disseminate information about the government and its activities to the public. It is one of the largest distribution sites for public information related to the U.S. government, including over 14,000 hours of video from Congressional hearings posted at the request of the Speaker of the House, over 8 million Form 990 reports filed with the Internal Revenue Service, over 6,000 U.S. government videos posted in cooperation with the Archivist of the United States, and the historical opinions of the U.S. Court of Appeals. As the President of Public.Resource.Org, I am frequently quoted in major media publications such as **the New York Times, Business Week, the New Republic, and the Washington Post**. I also testify before Congress on issues of public access to government information and am a frequent public speaker on the subject.

Accordingly, we request that you waive all fees for locating and duplicating the requested record. If, however, a waiver is not granted, and if the fees to be assessed in connection with this request exceed \$200, please obtain my approval before any such costs are incurred.

We will expect a response within 20 working days as provided by law. If you have any questions regarding this request, please contact me at (707) 827-7290.

Thank you very much for your attention to this matter.

Sincerely,



Digitally signed by Carl  
Malamud  
DN: cn=Carl Malamud,  
o=Public.Resource.Org,  
ou,  
email=carl@media.org,  
c=US  
Date: 2015.07.22  
11:37:09 -07'00'

Carl Malamud  
President & CEO  
Public.Resource.Org

cc: David Halperin  
Of Counsel  
Public.Resource.Org