



December 22, 2015

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

Re: NARA Appeal No. NGC15-079A

Dear Mr. Malamud:

This is in response to your Freedom of Information Act (FOIA) letter dated April 1, 2015, in which you appeal the response of the FOIA Officer, Office of General Counsel (OGC) to your FOIA request, case number NGC15-166. Your appeal was received in this office on June 10, 2015, and assigned tracking number NGC15-079A. We apologize for the delay in responding to your appeal.

On April 1, 2015, you submitted ten (10) separate Freedom of Information Act (FOIA) requests, all dated April 1, 2015, nine of which were addressed to the “FOIA Officer, Office of the Federal Register (OFR),” and the tenth of which was addressed to the “FOIA Officer, National Archives and Records Administration.” You sought access to specified material all of which has been incorporated by reference in several different parts of the Code of Federal Regulations (C.F.R.). Specifically, you sought access to:

1. *NFPA 221, Standard for Fire Walls and Fire Barrier Walls, 1994 Edition*, which is incorporated by reference into 36 CFR 1234.3 and 1234.4.
2. *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).
3. *ASME A17.1-2000, Safety Code for Elevators and Escalators, including ASME A17.1a-2002 and ASME A17.1b-2003 Addendums*, which is incorporated by reference in 36 CFR 1191, Appendix B, § 105.2.2 and used in 36 CFR 1191, Appendix D, § 407.1 *et. seq.*
4. *ANSI/RESNA Standard WC/Vol. 1-1998, Section 13, “Wheelchairs: Determination of Coefficient of Friction of Test Surfaces”* which is incorporated by reference in 49 CFR 571.5 and used in 49 CFR 571.403.
5. *American Association of Railroads AAR Manual of Standards and Recommended Practices, Section C—Part III, Specification for Tank Cars, Specification M-1002*,

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December 2000, which is incorporated by reference in 49 CFR 171.7 and used in 49 CFR 179.100-9 et. seq.

6. *ANSI B175.1-1991, Safety Requirements for Gasoline-Powered Chain Saws*, which is incorporated by reference in 29 CFR 1910.6 and used in 29 CFR 1910.266(e)(2).
7. Underwriters' Laboratories *UL 181-2003, Standard for Safety Factory-Made Air Ducts and Air Connectors* which is incorporated by reference in 24 CFR 3280.4 and used in 24 CFR 3280.702.
8. American Conference of Governmental Industrial Hygienists *Threshold Limit Values for Substance in Workroom Air (1972)*, which is incorporated by reference in 30 CFR 70.1900(c).
9. American Bureau of Shipping *Rules for Building and Classing Steel Vessels for Service on Rivers and Intracoastal Waterways, 1995*, which is incorporated by reference in 46 CFR 114.600 and used in 46 CFR 116.300.

By letter dated May 18, 2015, Mr. Joseph Scanlon, FOIA Officer, OGC, advised you that these standards are not subject to the request for records provisions of Section (a)(3) of the FOIA, 5 U.S.C. § 552(a)(3) and that all nine of the standards to which you sought access, and which were deemed published in the Federal Register when the Director approved the agencies' incorporation by reference requests, are fully compliant with the provisions of Section (a)(1) of the FOIA, 5 U.S.C. § 552(a)(1), and may be available to you for review one of three locations: (1) the reading room of the Office of the Federal Register (OFR); (2) the research room at NARA's College Park, Maryland facility to the extent the material has been accessioned to NARA; and (3) the reading rooms of the agencies associated with the standards to which you seek access.

On appeal, you assert that the requested ASME materials have not been made sufficiently available because these documents may only be obtained by inspection "at the-bricks-and-mortar offices of the Access Board and the Office of the Federal Register," or purchased online through ASME or its affiliated vendors. While such methods of availability may not represent your preferred methods of access or review, they are nonetheless fully consistent with federal law. Subsection 552(a)(1) expressly contemplates federal agencies incorporating materials by reference in the Federal Register (and Code of Federal Regulations, which is a special edition of the Federal Register) with approval of the OFR Director so long as such materials are "reasonably available" to the class of affected persons. OFR's implementing regulations over the relevant period, in turn, have conditioned approval on a finding that, among other things, the standard or other material proposed for incorporation is reasonably available. *See, e.g.*, 1 C.F.R. §§ 51.3, 51.7 (2002 & 2015). The OFR Director approved the Access Board's incorporation by reference of ASME A17.1-2000 in § 105.2.2 of the ADA/ABA Accessibility Guidelines, thereby necessarily finding that the agency's provision for availability of this standard through inspection (at the offices of either the Access Board or OFR) or purchase (through ASME) was reasonable and satisfied the statutory requirements in subsection 552(a)(1) of the FOIA.

After carefully reviewing your appeal, I find no basis for revising Mr. Scanlon's determination that your requested materials are not subject to production under 5 U.S.C. § 552(a)(3). I am therefore denying your appeal.

For your information, the Office of Government Information Services (OGIS) offers mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. The contact information for OGIS is as follows:

Office of Government Information Services
National Archives and Records Administration
Room 2510
8601 Adelphi Road
College Park, MD 20740-6001
E-mail: ogis@nara.gov
Telephone: 202-741-5770
Facsimile: 202-741-5769
Toll-free: 1-877-684-6448

If you are dissatisfied with my action on your appeal, the FOIA permits you to file a lawsuit in federal district court in accordance with 5 U.S.C. § 552(a)(4)(B). You may seek judicial review in the District of Columbia, the judicial district in which you reside or do business, or the District of Maryland which is where the records are located.

Sincerely,

A handwritten signature in black ink that reads "Debra Steidel Wall". The signature is written in a cursive style with a large, looping initial "D".

DEBRA STEIDEL WALL
Deputy Archivist of the United States