



PUBLIC.RESOURCE.ORG ~ A Nonprofit Corporation

Public Works for a Better Government

August 12, 2015

VIA HTTP AND FIRST CLASS MAIL

U.S. Department of Housing and Urban Development
Attn: FOIA Appeals
OGC, Ethics and Appeals Law Division
451 7th Street, SW, Room 10139
Washington, DC 20410-3000
URL: <https://hudpal.foia-host.com/palMain.aspx>

RE: Freedom of Information Act Appeal
FOIA Control No.: 15-FI-HQ-01670

Dear FOIA Appeals Officer:

This letter is an appeal from the August 6, 2015, denial of a Freedom of Information Act (FOIA) request that I sent to the U.S. Department of Housing and Urban Development (HUD) FOIA Office on behalf of Public.Resource.Org on July 2, 2015. That request sought a copy of Underwriters' Laboratories *UL 737, 1996, Fireplace Stoves, Eight Edition, with 2000 revisions*, which is incorporated by reference in **24 CFR 3280.4** and used in **24 CFR 3280.703**.

On August 6, 2015, in a letter signed by Deborah Snowden for Vicky Lewis, Deputy Director, Office of the Executive Correspondence, HUD replied to the request. The letter stated that "[a] search of Headquarters' records by knowledgeable staff failed to locate any documents at HUD Headquarters that would be responsive to your request."

Copies of **my July 2 request** and HUD's **August 6 response** are enclosed with this appeal.

We are appealing the agency's determination that it could not locate the record, including the adequacy of its search. To begin with, the requested record is incorporated by reference in the Code of Federal Regulations (CFR) and is therefore part of the agency's binding law. It is inconceivable that knowledgeable HUD staff who had conducted an adequate search would be unable to locate a copy of the agency's own governing law. Indeed, the agency's ability to enforce its regulations would be highly suspect if the agency could not, upon conducting an adequate search, locate a copy of those regulations.

Moreover, 24 CFR 3280.4, which we cited in our FOIA request, states that the standards incorporated by reference in that section, including the requested record, are available for inspection at HUD’s Office of Manufactured Housing Program, Manufactured Housing and Construction Standards Division, which is located at 451 Seventh Street SW., Room B-133, Washington, DC 20410. HUD’s denial letter did not indicate whether or not it searched that location for the record. Given that a HUD regulation specifically states that record is located in that office, however, any adequate search would have included that location. And given that the regulation provides that the record is “available” at that location, an adequate search would have located it.

In addition to stating that the agency could not locate the requested record, HUD’s determination letter stated that the requested record “is copyrighted by UL” and that I “need to purchase a copy of the standard directly from UL.” If that rationale is part of why my request was not granted, I appeal that rationale as well. 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). HUD’s denial letter did not cite any FOIA 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,” 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 requested record must be released.

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.

Sincerely,



Digitally signed by Carl Malamud
 DN: cn=Carl Malamud,
 o=Public.Resource.Org,
 ou,
 email=carl@media.org,
 c=US
 Date: 2015.08.12 07:58:01
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Carl Malamud
 President & CEO
 Public.Resource.Org

cc: David Halperin
 Of Counsel
 Public.Resource.Org



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-3000

OFFICE OF ADMINISTRATION

AUG - 6 2015

Mr. Carl Malamud
President and CEO
Public Resource Organization
1005 Gravenstein Highway North
Sebastopol, CA 95472

RE: Freedom of Information Act Request
FOIA Control No.: 15-FI-HQ-01670

Dear Mr. Malamud:

This letter is in response to your Freedom of Information Act (FOIA) request dated July 2, 2015. Specifically, you requested the Underwriter Laboratories (UL) 737 standard which applies to homes and manufactured housing.

When responding to a FOIA request, the Department of Housing and Urban Development searches for responsive documents existing up to the date that the request is received in the Department's FOIA Branch. Your request was received on July 2, 2015.

A search of Headquarters' records by knowledgeable staff failed to locate any documents at HUD Headquarters that would be responsive to your request. The standard that you requested is copyrighted by UL. You will need to purchase a copy of the standard directly from UL.

I am the official responsible for this determination based on information provided by the Office of Housing. You may appeal this determination within 30 days from the date of this letter. If you decide to appeal, your appeal should include copies of your original request and this response, as well as a discussion of the reasons supporting your appeal. The envelope should be plainly marked to indicate that it contains a FOIA appeal and be addressed to:

U.S. Department of Housing and Urban Development
Attention: FOIA Appeals
OGC, Ethics and Appeals Law Division
451 Seventh Street, SW, Suite 213
Washington, DC 20410

Telephone: (202) 708-3815

For your information, your FOIA request, including your identity and any information made available, is releasable to the public under subsequent FOIA requests. In responding to these requests, the Department does not release personal information, such as home address telephone number, or Social Security number, all of which are protected from disclosure under FOIA Exemption 6.

If you need additional information, please contact Ms. Eugenia Harris at (202) 402-5074. Thank you for your interest in the Department's programs and policies.

Sincerely,

for Deborah Snowden

Vicky Lewis
Deputy Director, Office
Of the Executive Correspondence



PUBLIC.RESOURCE.ORG ~ A Nonprofit Corporation

Public Works for a Better Government

July 2, 2015

VIA HTTP AND FIRST CLASS MAIL

U.S. Department of Housing and Urban Development
Freedom of Information Act Office
451 7th Street, SW, Room 10139
Washington, DC 20410-3000
URL: <https://hudpal.foia-host.com/palMain.aspx>

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 request a copy of Underwriters' Laboratories *UL 737, 1996, Fireplace Stoves, Eight Edition, with 2000 revisions*, which is incorporated by reference in **24 CFR 3280.4** and used in **24 CFR 3280.703**.

Please provide the record in electronic form if possible.

If it is your position that *UL 737, 1996, Fireplace Stoves, Eight Edition, with 2000 revisions* (or portions thereof) is exempt from disclosure, please state the basis of the denial of each portion of the record withheld. In addition, please provide the nonexempt portions of the record.

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." Because it was incorporated by reference into the Code of Federal Regulations, the requested record is part of the agency's governing law. Accordingly, it is the essence of the "operations and activities of the government." However, because it is not published in the Federal Register, the public does not have the same access to it that it has to other parts of the agency's regulations. Disclosure of the record will allow the public to gain knowledge about what is included in the agency's binding law.

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: 2015.07.02 10:59:35
-07'00'

President & CEO
Public.Resource.Org

cc: David Halperin
Of Counsel
Public.Resource.Org