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Public Works for a Better Government

May 4, 2015

Chief Counsel
Attn: FOIA Appeal
National Highway Traffic Safety Administration
1200 New Jersey Avenue, SE
West Building, W41-227
Washington, DC 20590

Re: FOIA Appeal, FOIA Request No. ES15-001704

Dear Chief Counsel:

This letter is an appeal from the April 16, 2015, denial of a Freedom of Information Act (FOIA) request that I sent to the National Highway Traffic Safety Administration (NHTSA) on behalf of Public.Resource.Org on April 1, 2015. That request sought a copy of 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](#).

On April 16, 2015, in a letter signed by Andrew J. DiMarsico, Senior Attorney, NHTSA the request was denied. The letter stated: "Because NHTSA adheres to U.S. copyright law in its dissemination practices, NHTSA is unable to disclose the document you seek. You must request a copy of the document directly from ANSI/RESNA."

Copies of my [April 1, 2015 request](#) and NHTSA's [April 16, 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 USC § 552\(a\)\(3\), \(b\)](#); see also [49 CFR 7.23](#) ("DOT makes reasonably described records available upon request from a member of the public . . . except to the extent that the records contain information exempt from FOIA's mandate of disclosure as provided in 5 USC 552(b)."). Here, NHTSA's denial 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," the Copyright Act does not qualify as an Exemption 3 statute. See U.S. Department of Justice, Office of Information 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 document 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 yours,

Carl Malamud
President and Founder
Public.Resource.Org

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