



Reply to the attention of:

JUN 16 2015

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

RE: Freedom of Information Act Request No. 777408 for Documents Pertaining to the
EO 12600 Query Conducted in Respect to an Earlier FOIA Request (No. 247616)

Dear Mr. Malamud:

This is in response to your May 14, 2015, Freedom of Information Act (FOIA) request, sent to the Occupational Safety and Health Administration (OSHA) and forwarded to the Directorate of Technical Support and Emergency Management for reply.

With respect to OSHA's denial, under FOIA Exemption 4, to your April 1 FOIA request for a copy of the American National Standards Institute's B175.1 - 1991, *Safety Requirements for Gasoline-Powered Chain Saws*, you requested the following information,

- Any records that indicate the name of the company which OSHA contacted and the person or persons who were contacted.
- Any records of correspondence with that company or any summaries of telephone conversations with that company pertaining to the fact that "they do foresee a potential harm to their business."
- Any records that document the process that led to the conclusion that "OSHA finds that their objections have merit."

OSHA contacted IHS Global Inc. (IHS), the company that provided the copy of the ANSI standard held by the Agency. Two documents were located that are responsive to your request, the letter sent from OSHA to IHS and their reply. Copies are enclosed.

Although we do not consider this a denial, you have the right to appeal this decision with the Solicitor of Labor within 90 days from the date of this letter. The appeal must state, in writing, the grounds for the appeal, including any supporting statements or arguments. The appeal should also include a copy of your initial request and a copy of this letter.

If you appeal, you may mail your appeal to: Solicitor of Labor, U.S. Department of Labor, Room N-2420, 200 Constitution Avenue, N.W., Washington, D.C. 20210 or fax your appeal to (202) 693-5538. Alternatively, you may email your appeal to foiaappeal@dol.gov; appeals

submitted to any other email address will not be accepted. The envelope (if mailed), subject line (if emailed), or fax cover sheet (if faxed), *and* the letter indicating the grounds for appeal, should be clearly marked: "Freedom of Information Act Appeal."

Thank you for your interest in occupational safety and health.

Sincerely,

A handwritten signature in blue ink, reading "Amanda L. Edens". The signature is written in a cursive style with a large initial 'A' and a long, sweeping tail.

Amanda L. Edens
Director
Directorate of Technical Support and Emergency Management

U.S. Department of Labor

Occupational Safety and Health Administration
Washington, D.C. 20210



Reply to the attention of:

APR 20 2015

Mr. Steve Green
Executive Vice President, Legal & Corporate Secretary
IHS Inc.
321 Inverness Drive South
Englewood CO 80112

Re: Freedom of Information Act Request SIMS No. 773545 to the Occupational Safety and Health Administration

Dear Mr. Green:

A request for records under the Freedom of Information Act (FOIA) (5 U.S.C. §552) has been filed with the Occupational Safety and Health Administration (OSHA) regarding disclosure of information in our files.

The specific document requested is the American National Standards Institute's (ANSI) standard B175.1 – 1991, titled, *Safety Requirements for Gasoline-Powered Chain Saws*. We have enclosed a copy for your review. This ANSI standard is an older version of more current releases and is available for purchase through IHS's online "Standards Store." The document might be protected from disclosure under exemption 4 of FOIA. Specifically, exemption 4 allows OSHA to withhold trade secrets and commercial or financial information that is obtained from a company or person and is privileged or confidential. By extension, it can be used to protect a company from loss of income that could result from the Agency releasing documents under FOIA.

We are writing in accordance with Departmental procedures and the provisions of Executive Order 12600, entitled "Predisclosure Notification Procedures for Confidential Commercial Information," to give you an opportunity to express your views on the possible disclosure of the information. Following the receipt of your views, we will reexamine the document, taking in account what you have provided, and determine whether or not the document should be disclosed. We ask that you respond to the questions below to help us evaluate whether exemption 4 is applicable in this case. If you object to disclosure of the ANSI document, it is extremely important that you be as specific as possible in your response.

- 1) What specific information in the documents do you consider to be a trade secret or confidential commercial information?
- 2) Did you voluntarily provide this information to the Department or were you required to submit it, for example, as the result of a subpoena, warrant, or in order to participate in a program or bid on a contract?
- 3) If you voluntarily gave the information to the Department, is it the kind of information you would customarily disclose to the public or does your company customarily control its availability? If the latter is the case, it would be helpful if

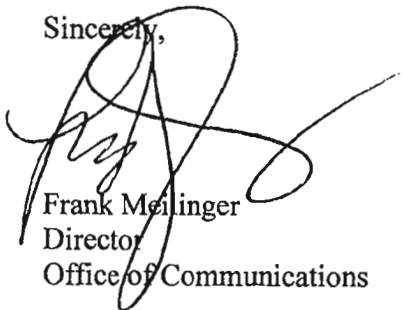
you can provide us with any evidence of directives, bulletins, etc., that show your efforts to restrict access to the information.

- 4) If you were required to submit this information to DOL, how would disclosure of this information, keeping in mind its age, be valuable to its competitors? (Indicate the nature of the harm to your competitive position that would likely result from disclosure of this information).
- 5) To what extent is this information known to the public or your competitors in products, articles, services, patents, your website or other means? If it is known, why would release of the information nevertheless be competitively harmful?
- 6) What steps have you taken to protect the confidentiality of this information?
- 7) Did you submit the information to the Department with any agreement or understanding that the information would not be disclosed to anyone else? If so, do you have a copy of the agreement?
- 8) If the information is disclosed by the Department, how would this affect your decision to submit similar information to the Department in the future?
- 9) Would release of the information, harm your company financially or otherwise damage the company competitively.

Because FOIA contains specific time frames in which we must respond to appeals, we need to have your views within 7 days from the date of this letter. If you would prefer to respond by fax, please send your response to our fax number, 202-693-1648. If you have any questions concerning this matter, please contact, Mr. Christopher Durso at (202) 693-2009.

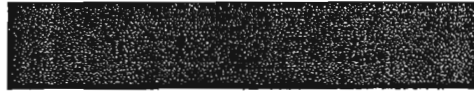
Finally, in accordance with the Executive Order, we will notify you of our decision should we decide to release the enclosed information despite your objection. We appreciate your assistance in this matter.

Sincerely,



Frank Meilinger
Director
Office of Communications

Enclosure



Fax

To: Mr. Frank Meilinger	From: Shane Richardson
Fax: 202-693-1648	Pages: 8 (including cover sheet)
Phone:	Date: April 27, 2015
Re: FOIA Request SIMS No. 773545	cc: Mr. Christopher Durso

Urgent **For Review** **Please Comment** **Please Reply** **Please Recycle**

● **Comments:** Enclosed, please find the IHS Global Inc. (IHS) response to FOIA Request SIMS No. 773545.



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April 27, 2015

Mr. Frank Meilinger
Director Office of Communications
Occupational Safety and Health Administration (OSHA)
Washington, D.C. 20210

Subject: Freedom of Information Act Request SIMS No. 773545 to the Occupational Safety and Health Administration
Specific to: American National Standards Institute's (ANSI) Standard B175.1 - 1991, titled, Safety Requirements for Gasoline-Powered Chain Saws.

Dear Mr. Meilinger:

On behalf of IHS Global Inc. ("IHS"), I am submitting this request for confidential treatment, pursuant to exemption 4 of FOIA and Section 18 (1) of The Freedom of Information and Protection of Privacy Act ("the Act") with respect to American National Standards Institute's (ANSI) Standard B175.1 - 1991, titled, Safety Requirements for Gasoline-Powered Chain Saws (hereafter "Standard B175.1"), on the grounds that this information is privileged and confidential and disclosure would be harmful to a third party's business interests and would cause loss of income to both IHS and ANSI, the third party owner of this standard.

IHS is in the business of delivering global market, industry and technical data through a unique combination of information, analytics and expertise. It is a publicly traded, for profit, corporation that obtains, analyzes and licenses its products and consulting expertise to customers worldwide, including the Occupational Safety and Health Administration (hereafter "OSHA").

IHS has a proprietary intellectual property interest in its products and services, as does its third party data providers. Use of any IHS product(s) and any third party owned information republished by IHS are subject to strict authorized use provisions in our contracts as well as to the protections of U.S. Copyright Law, including Fair Use provisions.

Because of the risk that a third party might rely, to its detriment, on data that becomes public and bring suit against IHS, a condition precedent to any permitted disclosure is that the customer agrees to defend and indemnify us from any claims resulting from or in relation to their disclosure to, and any use of and/or reliance on the information that was disclosed.

The clear intent of these measures is to: 1) protect the commercial value of IHS' and its third party data providers' intellectual property; 2) preserve the confidentiality of both the projects and the parties involved; and 3) limit the risk of liability for claims brought by third parties.



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Please be advised that IHS strongly objects to the release of Standard B175.1 or any IHS Product (i.e. industry standard, report, publication, presentation), negotiated product pricing, proposed or as awarded, all information and documentation relating to any product descriptions and product features presented in any IHS correspondence, offer or proposal, billing documentation, email and personal data, or any other documentation including such Information, that may have been incorporated into or be the result of the Subject FOIA Request.

The basis of our objection to disclosure of Standard B175.1 is that it is comprised of commercial technical information that is Copyright protected and was provided on a confidential basis and is treated consistently as confidential information by IHS and ANSI. It is IHS' determination that disclosure of Standard B175.1 would cause irreparable harm to IHS' and ANSI's business interests. Our objection to the release of Standard B175.1 is further established below in our response to the nine (9) questions in your letter to IHS dated April 20, 2015:

1) What specific information in the documents do you consider to be a trade secret or confidential commercial information?

IHS considers Standard B175.1, in its entirety, to be confidential information. Standard B175.1 is owned by a third party (ANSI) and is licensed for commercial business use by ANSI and IHS. Furthermore, Standard B175.1 is a work of authorship and, under U.S. and international law, is copyright protected, giving the owner certain rights of control and remuneration.

It is important to note that IHS is a republisher of Standard B175.1 and ANSI does not give IHS the right to allow an end user of ANSI property to distribute such property to any third party. IHS cannot grant rights that are broader than the rights granted to it.

2) Did you voluntarily provide this information to the Department or were you required to submit it, for example, as the result of a subpoena, warrant, or in order to participate in a program or bid on a contract?

IHS voluntarily provided the information as a direct result of an online purchase via its retail Standards Store.

3) If you voluntarily gave the information to the Department, is it the kind of information you would customarily disclose to the public or does your company customarily control its availability? If the latter is the case, it would be helpful if you can provide us with any evidence of directives, bulletins, etc., that show your efforts to restrict access to the information.

IHS is not authorized, nor does it agree to disclose Standard B175.1 to the public. IHS is a republisher of Standard B175.1 and does not have the right to permit disclosure of Standard B175.1 in any form without payment of applicable fees and subject to U.S. Copyright Law and/or an executed license agreement between IHS and the end user/customer.



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4) If you were required to submit this information to DOL, how would disclosure of this information, keeping in mind its age, be valuable to its competitors? (Indicate the nature of the harm to your competitive position that would likely result from disclosure of this information).

N/A – IHS was not required to provide the information.

5) To what extent is this information known to the public or your competitors in products, articles, services, patents, your website or other means? If it is known, why would release of the information nevertheless be competitively harmful?

Standard B175.1 is not "publically available" but rather only available to those companies and agencies that have: 1) purchased a hard copy or PDF, or 2) "subscribed" via internet to the information under contract with IHS or 3) directly licensed the information from ANSI. Standard B175.1 is provided by IHS subject to the IHS license terms and conditions and/or subject to U.S. Copyright Law.

6) What steps have you taken to protect the confidentiality of this information?

Hard copy and PDF documents provided by IHS contain a copyright notice and/or confidentiality statement and may contain a Water Mark, labeling the information as copyright protected. For internet subscriptions, IHS provides licensed access to standards, including Standard B175.1, under extensive Limited Rights provisions and confidentiality provisions found in IHS' standard and negotiated license agreements.

7) Did you submit the information to the Department with any agreement or understanding that the information would not be disclosed to anyone else? If so, do you have a copy of the agreement?

We are not able to determine an exact time frame as to when the information was provided to the Department. However, hard copy and online PDF purchases of standards provided by IHS include a copyright notice substantially similar to one of the following:

LEGAL NOTICE – PLEASE READ PRIOR TO OPENING

OPENING THIS SEALED PACKAGE CONSTITUTES YOUR ACCEPTANCE OF ALL THE TERMS AND CONDITIONS OF IHS STATED IN THIS AGREEMENT. PLEASE READ CAREFULLY THE FOLLOWING TERMS AND CONDITIONS BEFORE OPENING THIS PACKAGE AS OPENED DOCUMENTS MAY BE NON-RETURNABLE.

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corporate network, contact our sales department at global@ihs.com or 1-877-413-5184 or +1-303-397-7956 (outside US).

8) If the information is disclosed by the Department, how would this affect your decision to submit similar information to the Department in the future?

If the information is disclosed by the Department, IHS will be required, on a case by case basis, to carefully consider providing you access to the intellectual property of IHS and its third party data providers in the future. Intellectual property is the core of IHS' business and it takes the protection of its property and the property of its third party data providers very seriously.

9) Would release of the information, harm your company financially or otherwise damage the company competitively.

There are many costs associated with developing, maintaining, and distributing standards such as Standard B175.1 -- all of which are reflected in the price of Standard B175.1. The information contained in Standard B175.1 is the intellectual property of ANSI, the developing organization. When others want to use this property, they are expected to pay a fair value for it. Releasing the information without compensation to the owner and/or republisher may directly violate the Fair Use doctrine under U.S. Law.

As described in Section 18(1) of the Act, disclosure of Standard B175.1 would be harmful to a third party's business interests. The harm to ANSI (and IHS) is that disclosure of Standard B175.1 will result in: (i) the FOIA requestor benefiting by acquiring knowledge from Standard B175.1 to which they do not have a license; (ii) the requestor would forego the cost associated with the work of authorship; and (iii) the requestor may be unaware of the U.S. Copyright Law and restricted rights license that governs use of Standard B175.1. U.S. Copyright Law and IHS licensing terms do not allow copying, distribution to third parties, commercialization, or republishing of IHS Products or ANSI standards. Therefore, Standard B175.1 should be exempt from release as it will cause substantial harm to IHS and ANSI.

IHS asserts that providing the requested information to the requestor will cause material harm to both our company and ANSI. It would be arbitrary and capricious of OSHA to allow the requestor to manipulate the FOIA process in such a way as to make the Government FOIA office, in essence, (1) a reseller of IHS Products for zero dollars and (ii) in clear violation of the Fair Use Provision of the US Copyright Law. IHS further asserts that it should be incumbent upon the requestor to pay for a valid subscription, hard copy or PDF of Standard B175.1 and be obligated to agree to the terms and conditions under which access to the information is possible.

In summary, IHS objects to the release of any and all of Standard B175.1 because: 1) the information was provided voluntarily and is confidential and privileged, 2) disclosure would result in undue financial loss to IHS and ANSI and 3) this standard is a work of authorship and, under U.S. and international law, is copyright protected giving the third party owner certain rights of control and remuneration that cannot be taken away without just compensation.



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It is IHS' position that it has sufficiently demonstrated that Standard B175.1 included in the Subject FOIA Request should be excepted from disclosure under exemption 4 of the FOIA and Section 18(1) of the Act. Should you have any questions or require additional information, please contact me at (303) 858-6008 or via email at shane.richardson@ihs.com.

Sincerely,

A handwritten signature in black ink that reads "Shane Richardson". The signature is written in a cursive, flowing style.

Shane Richardson

Contract Specialist

IHS