



UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

OFFICE OF THE  
GENERAL COUNSEL

Stop 9612

December 2, 2015

Mr. Gary Aguirre  
Aguirre Law, APC  
501 W. Broadway, Suite 800  
San Diego, CA 92101

Re: Appeal, Freedom of Information Act (FOIA) Request No. 15-01819-FOIA  
(15-00302-APPS and 15-00052-REMD), designated on appeal as No.  
16-00069-APPS

Dear Mr. Aguirre:

I am responding to your October 23, 2015, Freedom of Information Act appeal of the decisions of the FOIA/Privacy Act Officer, Securities and Exchange Commission, regarding your client Richard Edelman's request for "all documents, records, material of any nature concerning investigation in the matter of Empire State Realty Trust MNY-08894." On September 28, 2015, the FOIA Officer granted Mr. Edelman access to 1,442 pages of documents, but withheld certain information in the documents under FOIA Exemptions (b) (4), (5), (6), and 7(C). The FOIA Office's decision also classifies Mr. Edelman as a "commercial" requester for purposes of determining the fees he may be charged for processing his FOIA request.

I am remanding your request to the FOIA Officer for further consideration of whether to assert Exemptions 4, 5, 6, and 7(C). Upon appeal, I determined that in asserting those FOIA exemptions there was not an adequate review of the responsive documents identified, there are other potentially responsive documents not reviewed by the FOIA Office, and that some responsive documents are subject to confidential treatment requests which must be considered by the FOIA Office before it can determine whether those documents may properly be released.

I am also remanding to the FOIA Office the issue of the appropriate classification of your client for FOIA processing fees purposes. On March 19, 2015, the FOIA Office informed Mr. Edelman that he was classified as a "commercial" requester. However, the FOIA Office did not charge Mr. Edelman any fees when it provided him with the 1,442 pages of documents. Therefore, your appeal on that ground is moot. *See Hall v. CIA*, 437 F.3d 94, 99 (D.C. Cir. 2006) (finding that agency's release of documents without seeking payment mooted plaintiff's "arguments that the district court's denial of a fee waiver was substantively incorrect"). However, the FOIA Office has at times classified Mr. Edelman as a "commercial" requester and other times as an "other" requester. Resolution of the question of the proper classification of Mr. Edelman may be

relevant to the issue whether the FOIA Office should charge fees for processing the responsive documents on remand. Thus, on remand the FOIA Office should reconsider how to classify Mr. Edelman.

You may contact Mr. Ray McInerney, FOIA Branch Chief, at 202-551-6376, regarding the status of the file on remand.

For the Commission  
by delegated authority,



Richard M. Humes  
Associate General Counsel