MAY 2 5 2011

Mr. Ronald Brookman

Dear Mr. Brookman,

This responds to your Freedom of Information Act (5 U.S.C. § 552) (FOIA) appeal, dated March 4, 2010, appealing the National Institute of Standards and Technology's (NIST) denial of your January 1, 2010 FOIA request for "a copy of the structural calculations or ANSYS analysis results that substantiate the walk-off failures at columns 79 and 81" of World Trade Center Building 7 (WTC7). By letter dated January 26, 2010, Catherine Fletcher, FOIA Officer, NIST, informed you that the information you requested was exempt from disclosure pursuant to 5 U.S.C. § 552(b)(3) (FOIA Exemption (b)(3)), citing § 7(d) of the National Construction Safety Team Act (NCSTA) (15 U.S.C. § 7306(c)) as the underlying statutory authority. As discussed below, your appeal is denied.

In order to qualify for protection under FOIA Exemption (b)(3), the responsive records must be exempted from disclosure by another statute, and that statute must either (A) require that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establish particular criteria for withholding or refer to particular types of matters to be withheld. A statute falls within the exemption's coverage if it meets either one of these two disjunctive requirements. American Jewish Congress v. Kreps, 574 F.2d 624, 628 (D.C.Cir. 1978).

NCSTA § 7(d) expressly exempts from disclosure a specific type of information—information NIST receives in the course of an investigation conducted under NCSTA—and expressly provides particular criteria for withholding documents—a determination by the Director of NIST that the release of investigatory information "might jeopardize public safety." 15 U.S.C. § 7306(d). Because § 7(d) contains sufficiently particular criteria to guide non-disclosure, it meets the standard discussed above and is a proper FOIA Exemption (b)(3)(B) statute.

The information at issue in your appeal consists of input and results files of the ANSYS 16-story collapse initiation model, break element source code, ANSYS script files for the break elements, custom executable ANSYS file, and all spreadsheets used to develop floor connection failure modes and capacities. In accordance with § 7(d) of the NCSTA, on July 9, 2009, the Director of NIST made the required finding that release of this information might jeopardize public safety.

Your appeal contends first that the information you requested does not meet the threshold requirement for protection under § 7(d) because the information was developed by, not received by, NIST. Although you are correct that the information you requested was created by, not received by NIST, NIST has explained that the input files used to obtain the results were created by NIST by incorporating information received from various entities, including building

contractors, engineers, and photographers. NIST has further explained that any ANSYS user, even without the ANSYS executable file and break element source code and script files, would be able to back the input files out. Thus, by releasing the requested information, NIST would effectively be releasing that which § 7(d) was enacted to protect.

As a secondary matter, you challenge the validity of the NIST Director's determination that release of the requested information might jeopardize public safety, and request an explanation as how, in the Director's judgment, the release of calculations and analysis results for a building that no longer exists, which were developed at the taxpayers' expense, might jeopardize public safety. The withheld information contains detailed connection models that have been validated against actual events, and, therefore, provide tools that could be used to predict the collapse of a building. If released, these models might provide instruction to groups and individuals that wish to learn how to simulate building collapse and devise ways to destroy buildings. Therefore, although the buildings to which this information pertains no longer exist, the information contained in the withheld files is sufficiently detailed that it could be used to develop plans to destroy other, similarly constructed, buildings. Based on this rationale, the NIST Director's finding that release of this information could jeopardize public safety is reasonable.

In *Michael Quick v. United States Department of Commerce, National Institute of Standards and Technology*, Civil Action No. 09-02064 (CKK), U.S. District Court for the District of Columbia, Apr. 7, 2011, Judge Kollar-Kotelly ruled that the very information at issue in this appeal was properly withheld pursuant to FOIA Exemption (b)(3), citing § 7(d) of the NCSTA as the underlying statutory authority. Based on the same analysis set forth above, Judge Kollar-Kotelly found that the NIST Director acted in a manner consistent with Congress's intent in bringing his expertise to bear on the subject and determining that public disclosure of such information "might jeopardize public safety," finding that this explanation for non-disclosure was sufficiently "logical" or "plausible" to satisfy NIST's burden of justifying its withholdings. *Larson v. Dep't of State*, F.3d 857, 862 (D.C. Cir. 2009).

Accordingly, your appeal of NIST's determination that information responsive to your request is exempt from disclosure pursuant to FOIA Exemption (b)(3) is denied. This is the final determination of the Department of Commerce. You have the right to judicial review as provided in 5 U.S.C. § 552(a)(4)(B).

Sincerely,

Barbara S. Fredericks
Assistant General Counsel
for Administration