

U.S. Consumer Product Safety Commission (CPSC)
Chief FOIA Officer Report to the Department of Justice Pursuant to Attorney
General Holder's FOIA Guidelines
March 11, 2013

I. Steps Taken to Apply the Presumption of Openness

Describe the steps your agency has taken to ensure that the presumption of openness is being applied to all decisions involving the Freedom of Information Act (FOIA).

1. Did your agency hold an agency FOIA conference, or otherwise conduct training during this reporting period?

While the CPSC did not hold an agency FOIA conference, we did provide training to staff throughout the agency who are responsible for performing file searches for FOIA requests and to the FOIA Paralegal Specialists who process FOIA requests.

Did your FOIA Professionals attend any FOIA training, such as that provided by the Department of Justice?

FOIA request processing is centralized in the CPSC's Secretariat or Office of the Secretary, a division of the Office of the General Counsel. We have provided specialized training to the professional and clerical staff responsible for FOIA processing. CPSC FOIA professional staff also attended training sessions conducted by the U.S. Department of Justice, Office of Information Policy, and a contractor that administrates the CPSC FOIA electronic processing system.

2. Did your agency make any discretionary release of otherwise exempt information?

Yes. The FOIA professional staff has been trained and instructed on the discretionary release of previously withheld records, such as the withholding of staff records with internal discussions and draft staff memoranda, draft press releases, draft staff technical reports, and other early versions of reports. Those types of draft materials are now generally released with clear markings that they are draft versions.

3. What exemptions would have covered the information that was released as a matter of discretion?

Most records previously withheld would have been covered by exemptions 5 and 7(A).

4. Provide a narrative description, or some examples of, the types of information that your agency released as a matter of discretion.

Records from investigative files involving corrective actions, where the corrective actions are in place and are still open for the monitoring of the corrective action. Previously we would have withheld these files entirely, applying FOIA exemptions 5 and 7(A). More discretion is applied when processing draft documents and advice in closed investigative files.

5. Describe any other initiatives undertaken by your agency to ensure that the presumption of openness is being applied.

The policy of the CPSC with respect to requests for records is that disclosure is the rule and withholding is the exception. See 16 C.F.R. § 1015.1. All records that are not subject to an exemption are disclosed. Records that are subject to exemption from disclosure are made available as a matter of discretion except when prohibited by law. The presumption of openness is the central policy of the CPSC's Secretariat and Office of the General Counsel for the processing of FOIA requests. The FOIA Paralegal Specialists are reminded frequently during the review process about this policy. The FOIA office also reminds CPSC offices of the "presumption of openness policy" in the memorandum requesting them to perform file searches for responsive records.

II. Steps Taken to Ensure that Your Agency has an Effective System for Responding to Requests

Describe here the steps your agency has taken to ensure that your system for responding to requests is effective and efficient.

1. Do FOIA professionals within your agency have sufficient IT support?

The FOIA professionals receive sufficient and comprehensive information technology ("IT") support. The CPSC has implemented an electronic FOIA processing application and new document scanning procedures. In addition, the records of the agency are being systematically scanned into an electronic filing system that makes file searching and retrieval quicker and more efficient. The records can be retrieved into the FOIA processing application system where the materials can be copied to individual FOIA request files to be reviewed and redacted electronically. The Secretariat has a staff position to scan all official records and records responsive to FOIA requests to make these records more readily available and easier to process. The FOIA office has an Information Technology Specialist, who is dedicated to the maintenance of the FOIA processing application to ensure that the system is functioning at all times. All FOIA professional staff members have desktop scanning equipment and computer software to expedite the scanning needs for individual cases or requests. Shared scanning equipment

is used for large files that need to be processed. The IT support team maintains our computer equipment and responds immediately to any problems with the equipment.

2. Do your FOIA professionals interact with your agency's Open Government Team?

The FOIA office is an integral part of the Open Government Team. Most records that are placed on the CPSC's website, www.cpsc.gov, go through a review and clearance process by the Secretariat and FOIA office. The FOIA office reviews most records that are released to the public by any CPSC office.¹ The Secretariat manages certain portions of the website, including a Public Calendar of the CPSC's public activities and the FOIA Electronic Reading Room.

3. Has your agency assessed whether adequate staffing is being devoted to FOIA administration?

The Secretariat and the FOIA Officer meet regularly with their supervisors, the CPSC General Counsel or Deputy General Counsel, to discuss FOIA staffing and contractor needs. Presently the CPSC Inspector General is conducting an audit of the FOIA Office that will include adequate FOIA staffing.

4. Describe any other steps your agency has undertaken to ensure that your FOIA system operates efficiently and effectively, such as conducting self-assessments to find greater efficiencies, improving search processes, streamlining consultations, elimination redundancy, etc.

As stated above the CPSC Inspector General is conducting an audit of the FOIA Office that is focused on efficiency and effectiveness. The FOIA Office constantly reviews its processes for improvement. The office has an administrative assistant to improve management of the official records of the agency. The assistant conducts indexing, scanning, and filing records. The records are frequently the subject of FOIA requests and are disclosed proactively on the CPSC website. We also regularly disclose on the CPSC website records that are the subject of frequent FOIA requests, before we receive actual FOIA requests for such records.

III. Steps Taken to Increase Proactive Disclosures

Describe here the steps your agency has taken to both increase the amount of material that is available on your agency website and the usability of such information, including providing examples of proactive disclosures that have been made during this past reporting period.

1. Provide examples of material that your agency has posted this past year.

¹ The FOIA office does not review certain items that go on the website, such as, press releases and Commissioners' statements.

The CPSC has a policy of proactively disclosing on the CPSC website all materials distributed to the Commission with a few exceptions that involve active investigative or legal matters. All technical reports and documents created by CPSC staff or CPSC contractors are placed on the website when finalized. New material is added on an almost daily basis to the CPSC's website at www.cpsc.gov. The CPSC created or enhanced pages on its website devoted to topics of high interest. Documents pertaining to those subjects are proactively posted without any FOIA request. During this year, improvements have been made to the CPSC publicly available database of reports of harm with consumer products at a CPSC website, SaferProducts.gov. A section has been added to the CPSC website to include all documents and filings in the adjudicative administrative matters where the CPSC has filed a Complaint against a manufacturer.

The types of records regularly posted on the agency's website, www.cpsc.gov, are the publicly available database, contractor and CPSC laboratory testing, investigation reports of individual incidents, updates of CPSC overall activities for that product subject, area of safety, guidance to the public, frequent questions and answers, and activities with other agencies, federal and local. Records of Commission Actions on public matters, which include minutes of public decision-making meetings, are posted on the website within days, or sometimes, immediately after the decisions are taken by the Commission. All public statements of Commissioners about public decisions are posted on the website. The CPSC also posts all information relating to CPSC *Federal Register* notices, including drafts of the notices for regulatory and rulemaking activities, Sunshine Act meeting notices, and Paperwork Reduction Act matters. The CPSC webcasts all of the public hearings and meetings of the Commission and then posts videos of those webcasts on our web site. The Commission also maintains an electronic docket of all current adjudicative proceedings initiated pursuant to section 2064(c) of the CPSA.

The Commission posts on its website numerous staff technical reports, summaries of meetings with the public, and all of its contracts with the public, as well as, interagency agreements. Commission guidance and staff guidance for the application of new legislation are posted proactively and provided to the public.

2. Beyond posting new material, is your agency taking steps to make the posted information more useful to the public, especially to the community of individuals who regularly access your agency's website, such as soliciting feedback on the content and presentation of the posted material, improving search capabilities on the site, creating mobile applications, providing explanatory material, etc.?

Yes.

3. If so, provide examples of such improvements.

The CPSC redesigned its website to improve its usability, partly based on comments from the public and agency stakeholders. The CPSC is engaging the public through social media, including Facebook, Twitter, the OnSafety blog, Flickr, YouTube, recall widgets, email announcements and Podcasts, as well as specific pages or sections

of the website devoted to particular product areas. The website also offers a way for consumers or businesses to contact the agency by email. The CPSC directs the public to post their comments on regulatory matters on www.Regulations.gov, which allows the public to review all comments on a given matter. Previously, the public had to wait until the closing the comment period, when the comments were posted on the website.

4. Describe any other steps taken to increase proactive disclosures at your agency.

The CPSC Open Government Plan provides descriptions and guidelines for the use of the CPSC website and links to much of the information on the website. See: <http://www.cpsc.gov/open/open.pdf>. Pursuant to the Consumer Product Safety Improvement Act of 2008, the Commission added a publicly available searchable database on reports of harm received from consumers and other stakeholders. The database is accessed at <http://www.SaferProducts.gov/>. This database helps the public by providing direct access to reports received by the Commission without a FOIA request. <http://www.cpsc.gov/about/cpsia/sect212.html>.

During this year the Commission held Open Government meetings for its stakeholders at its headquarters and by webcast on Testing Procedures, All Terrain Vehicle Safety, CPSC Safety Academy, Trilateral Consumer Product Safety Summit (with Canada and China), U.S. – China Safety Summit, Workshop on NanoRelease Consumer Products, Small Business Ombudsman Webcasts on Children’s Dolls, Third Party Toy Testing and Small Batch Manufacturer Registration, Stakeholder Roundtable on Industry Education and Outreach, CPSC Symposium on Phthalates Screening and the Chronic Hazard Advisory Panel (CHAP) on Phthalates and Testing Methods.

IV. Steps Taken to Greater Utilize Technology

Electronic receipt of FOIA requests:

1. Can FOIA requests be made electronically to your agency?

The CPSC receives FOIA requests at its website page, <http://www.cpsc.gov/library/foia/foiaonline.html>; by email at several email addresses, including CPSC-FOIA@cpsc.gov, and CPSC-OS@cpsc.gov; and the addresses of the FOIA Public Liaison Officers, Deborah Acosta - dacosta@cpsc.gov and Lynn Carter - lcarter@cpsc.gov; and the FOIA Officer, Alberta Mills – amills@cpsc.gov; and the Chief FOIA Officer, Todd Stevenson – tstevenson@cpsc.gov; at the CPSC website Contact Information automated form at <http://www.cpsc.gov/cgibin/info.aspx>; and by facsimile at 301-504-0127.

2. If your agency is decentralized, can FOIA requests be made electronically to all components of your agency?

Within the CPSC, the processing of FOIA requests is centralized in the Secretariat. There are no other agency components that process FOIA requests. The Secretariat has the capability to receive FOIA requests electronically.

Online Tracking of FOIA requests:

3. Can a FOIA requester track the status of his/her requests electronically?

Requesters cannot electronically track their requests. CPSC has a FOIA page <http://www.cpsc.gov/library/foia/requeststatus.html> that provides the email addresses for the FOIA Public Liaisons, where the requesters can send an email to request the status of their requests.

4. If so, describe the information that is provided to the requester through the tracking system.

We are working with the contractor that administrates our electronic processing system for FOIA requests in order to develop a tracking system for requesters.

5. In particular, does your agency tracking system provide the requester with an estimated date of completion for his or her request.

Requesters cannot electronically track their requests.

6. If your agency does not provide online tracking of requests, is your agency taking steps to establish this capability?

We are working with the contractor that administrates our electronic processing system for FOIA requests to provide online tracking of requests.

Use of technology to facilitate processing of requests:

7. Beyond using technology to redact documents, is your agency taking steps to utilize more advanced technology to facilitate overall FOIA efficiency, such as improving record search capabilities, utilizing document sharing platforms for consultations and referrals, or employing software that can sort and de-duplicate documents?

The CPSC is taking steps to utilize more advanced technology with its record searching and filing systems.

8. If so, describe the technological improvements being made.

The publicly available searchable database improves record searching and provides a process for the public to directly search for incident information on consumer products. The CPSC is improving its electronic FOIA processing application system and an electronic filing system that makes file searching and retrieval quicker and more efficient. Newer versions of the application system have been purchased and installed and training has been conducted for the FOI professionals. More efficient scanning equipment and computers have also been purchased.

V. Steps Taken to Improve Timeliness in Responding to Requests and Reduce Backlogs

1. Section VII.A of your agency's Annual FOIA Report, entitled "FOIA Requests – Response Time for All Processed Requests,"

- a. Does your agency utilize a separate track for simple requests?

The CPSC uses a separate track for simple requests.

- b. If so, for your agency overall, for Fiscal Year 2012, was the average number of days to process simple requests twenty working days or fewer?

The average number of days to process simple requests was not twenty days or fewer.

- c. If your agency does not track simple requests separately, was the average number of days to process non-expedited requests twenty working days or fewer?

Not applicable since the agency utilizes a separate track for simple requests.

2. Sections XII.D(2) and XII.E(2), of your agency's Annual FOIA Report, entitled "Comparison of Numbers of Requests/Appeals from Previous and Current Annual Report – Backlogged Requests/Appeals," show the numbers of any backlog of pending requests or pending appeals from Fiscal Year 2012 as compared with Fiscal Year 2011. In addition, Section VI.C.(5), entitled "Ten Oldest Pending Administrative Appeals," from both Fiscal Year 2012 as compared with Fiscal Year 2011 should be used for this section.

- a. If your agency had a backlog of requests at the close of Fiscal Year 2012, did that backlog decrease as compared to Fiscal Year 2011?

The backlog of requests at CPSC decreased from 237 in Fiscal Year 2011 to 232 in Fiscal Year 2012 (a decrease of 1%).

b. If your agency had a backlog of administrative appeals in Fiscal Year 2012, did that backlog decrease as compared to Fiscal Year 2011?

CPSC did not have a backlog of administrative appeals in Fiscal Year 2011 or Fiscal Year 2012.

c. In Fiscal Year 2012, did your agency close the ten oldest requests that were pending as of the end of Fiscal Year 2011?

CPSC closed four of the ten oldest requests that were pending as of the end of Fiscal Year 2011.

d. In Fiscal Year 2012, did your agency close the ten oldest administrative appeals that were pending as of the end of Fiscal Year 2011?

CPSC did not have any pending administrative appeals as of the end of Fiscal Year 2011.

3. If you answered “no” to any of the above questions, describe why that has occurred. In doing so, answer the following questions then include any additional explanation:

Request Backlog:

a. Was the lack of a reduction in the request backlog a result of an increase in the number of incoming requests?

Not applicable to CPSC.

b. Was the lack of a reduction in the request backlog caused by a loss of staff?

Not applicable to CPSC.

c. Was the lack of a reduction in the request backlog caused by an increase in the complexity of the requests received?

Not applicable to CPSC.

d. What other causes, if any, contributed to the lack of a decrease in the request backlog?

Not applicable to CPSC.

Administrative Appeal Backlog:

a. Was the lack of a reduction in the back of administrative appeals a result of an increase in the number of incoming appeals?

Not applicable to CPSC.

b. Was the lack of a reduction in the appeal backlog caused by a loss of staff?

Not applicable to CPSC.

c. Was the lack of a reduction in the appeal backlog caused by an increase in the complexity of the requests received?

Not applicable to CPSC.

d. What other causes, if any, contributed to the lack of a decrease in the appeal backlog?

Not applicable to CPSC.

4. If your agency has a backlog in Fiscal Year 2012, please provide an estimate of the number of cases in the backlog where a substantive interim response was provided during the fiscal year, even though the request was not finally closed.

During Fiscal Year 2012, substantive interim responses were provided to an estimated 50 requests.

Use of FOIA's Law Enforcement "Exclusions"

In order to increase transparency regarding the use of the FOIA's statutory law enforcement exclusions, which authorize agencies under certain exceptional circumstances to "treat the records as not subject to the requirements of [the FOIA], 5 U.S.C. § 552(c)(1), (2), (3), please answer the following questions:

1. Did your agency invoke a statutory exclusion during Fiscal Year 2012?

CPSC did not invoke the statutory exclusion during Fiscal Year 2012.

2. If so, what is the total number of times exclusions were invoked?

CPSC did not invoke the statutory exclusion during Fiscal Year 2012.

Spotlight on Success

The CPSC website, www.cpsc.gov, has been redesigned to improve the ease of use of the website. The new website gives users more navigational choices to find

information and a more dynamic design. The website is built using a Content Management System, which allows the agency to better organize, automate and display content on multiple webpages and on other technology platforms, such as smartphones and tablets.

In addition, a webpage has been developed that contains the complete dockets in the CPSC's adjudicative matters seeking mandatory relief under section 15 of the CPSA. See <http://www.cpsc.gov/library/foia/adjudicative.html>. For each of the ongoing adjudicative proceedings the filings by Complaint Counsel (CPSC staff) and Respondents and the orders issued by the Administrative Law Judge are electronically filed and become publicly available the same day they are filed with the Secretariat. The CPSC Secretariat serves as the "Clerk of the Court" in the CPSC's adjudications.

Todd Stevenson
Chief FOIA Officer
Secretariat, Office of the Secretary
Office of the General Counsel
U.S. Consumer Product Safety Commission