



## **U.S. Consumer Product Safety Commission Chief FOIA Officer Report for 2017**

The Consumer Product Safety Commission (CPSC or Commission) is an independent regulatory agency established by the Consumer Product Safety Act. CPSC is charged with protecting the public from unreasonable risks of injury or death associated with the use of the thousands of types of consumer products under the agency's jurisdiction. Deaths, injuries, and property damage from consumer product incidents cost the nation more than \$1 trillion annually. CPSC is committed to protecting consumers and families from products that pose a fire, electrical, chemical, or mechanical hazard. CPSC's work to help ensure the safety of consumer products – such as toys, cribs, power tools, cigarette lighters, and household chemicals – has contributed to a decline in the rate of deaths and injuries associated with consumer products over the past 40 years.

As required by the Department of Justice's FOIA Guidelines, the CPSC Chief FOIA Officer conducted a review of the administration of the FOIA and analyzed the data from its FOIA Annual Report from Fiscal Year 2016 to generate this report.

### **Section I. Steps Taken to Apply the Presumption of Openness**

Please answer the following questions in order to describe the steps your agency has taken to ensure that the presumption of openness is being applied to all decisions involving the FOIA. You may also include any additional information that illustrates how your agency is working to apply the presumption of openness.

#### ***A. FOIA Training:***

1. Did your FOIA professionals or the personnel at your agency who have FOIA responsibilities attend any FOIA training or conference during the reporting period such as that provided by the Department of Justice?

Yes.

2. If yes, please provide a brief description of the type of training attended and the topics covered.

Although FOIA request processing is centralized in the CPSC's Secretariat, a division of the Office of the General Counsel (OGC), FOIA liaisons in agency units and divisions are responsible for locating and forwarding to the FOI Officer potentially responsive records. Four training sessions were held in February 2016 for the program office FOIA Liaisons so that they fully understand and comprehend their responsibilities and duties in searching for and providing responsive information to the FOIA office as expeditiously as possible. In addition, the Secretariat conducted in-house training for a new Government Information Specialist focusing on the FOIA and the Privacy Act. The topics addressed in the training included automatic disclosures of records, methods for identifying and locating records, procedural aspects of FOIA requests, appropriate use of FOIA exemptions, and protection of personal privacy in the context of FOIA requests. The FOIA Program Office Liaison training will be conducted annual, with the next training sessions scheduled for January 2017.

3. Provide an estimate of the percentage of your FOIA professionals and staff with FOIA responsibilities who attended substantive FOIA training during this reporting period.

Training for 100 % of the agency FOIA professional staff and Program Office Liaisons was held by the agency in Fiscal Year 2016. As mentioned above, training will occur annually for the FOIA professional staff and Program Office Liaisons.

4. OIP has directed agencies to "take steps to ensure that all of their FOIA professional attend substantive FOIA training at least once throughout the year." If your response to the previous questions that less than 80% of your FOIA professionals attended training , please explain your agencies plan to ensure that all FOIA professionals receive or attend substantive FOIA training during the next reporting year.

In keeping with this requirement, our FOIA office will monitor the Office of Information Policy of the Department of Justice for its training, including electronic training, and FOIA seminars and require the FOIA staff to attend substantive training and utilize all the resources made available by the Office of Information Policy for agency FOIA staff.

### ***B. Outreach***

5. Did your FOIA professionals engage in any outreach or dialogue with the requester community or open government groups regarding your administration of the FOIA?

FOIA professionals speak and correspond with requesters daily about FOIA issues relating to specific requests as well as general FOIA matters and policies. The scientific nature and complexity of many of the agency's records result in frequent dialogue between FOIA professionals and requesters. To facilitate this dialogue, the FOIA professionals provide requesters with their direct contact information.

In addition, requesters frequently contact our FOIA Public Liaisons through the FOIA Requester Service Center on the CPSC website.

<http://www.cpsc.gov/Newsroom/FOIA/FOIA-Requester-Service-Center-and-FOIA-Public-Liaisons--Check-Status-of-a-FOIA-Request/>.

The FOIA staff will work with the CPSC's Office of Communications to develop an outreach program specifically targeted to the requester community to further simplify the process of understanding and obtaining CPSC records. The program will be informative in nature to ensure that requesters fully understand the activities of the CPSC and the availability of CPSC records.

### ***C. Other Initiatives***

6. Describe any efforts your agency has undertaken to inform non-FOIA professionals of their obligations under the FOIA.

The Office of the General Counsel provided detailed training on FOIA and related obligations to non-FOIA staff. The training involved topics including interpreting the scope of a FOIA request, the obligations involved in searching for agency records and the CPSC'S Exemption 3 statutory obligations.

This year the Secretariat FOIA office and Office of General Counsel conducted in-house training for the program office designees or liaisons on the requirements for conducting FOIA searches and to provide all responsive information, regardless of sensitivity, to the FOIA office for a final determination on release.

7. If there are any other initiatives undertaken by your agency to ensure that the presumption of openness is being applied, please describe them here.

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. With respect to requests for records, disclosure is the rule, and withholding is the exception. *See* 16 C.F.R. § 1015.1(b). All records that are not subject to an exemption are disclosed. Records that may be subject to exemption from disclosure are made available if there is no foreseeable harm in release, except when prohibited by law. *See also* the CPSC Open Government plan on the CPSC website at: <http://www.cpsc.gov/About-CPSC/Agency-Reports/open/>.

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

Please answer the following questions to describe the steps your agency has taken to ensure that your management of your FOIA program is effective and efficient. You should also include any additional information that describes your agency's efforts in this area.

***A. Processing Procedures***

1. For Fiscal Year 2016, what was the average number of days your agency reported for adjudicating requests for expedited processing? Please see Section VIII.A of your agency's Fiscal Year 2016 FOIA Annual Report.

In FY 2016, CPSC received only two request for expedited processing. This requests were adjudicated in an average of three days.

2. If your agency's average number of days to adjudicate requests for expedited processing was above ten calendar days, please describe the steps your agency will take to ensure that requests for expedited processing are adjudicated within ten calendar days or less.

Not applicable to CPSC.

3. Optional: During the reporting period, did your agency conduct a self-assessment of its FOIA program? If so, please describe the methods used, such as reviewing Annual Report data, using active workflows and track management, reviewing and updating processing procedures, etc.

In 2015, CPSC Office of the Inspector General (OIG) conducted an audit of the FOIA program and made several recommendations to improve operational efficiency and to improve management controls such as the electronic applications that are used to track and control FOIA requests. During FY 2016, in response to OIG recommendations, the agency's FOIA Directive was comprehensively revised to address deficiencies identified by the OIG. The Directive memorializes new processes and procedures designed to implement effective processing and review of information subject to FOIA, including conducting annual training for CPSC FOIA liasons that have FOIA duties. The CPSC is implementing all the requirements in the new Directive. As a result a number of new procedures and processes have been implemented to expedite FOIA processing and to enhance responsiveness. Additionally, the FOIA office has implemented a number of standard operating procedures to the same end, including a processing checklist, and has developed templates for FOIA correspondence. The agency is also committed to expanding its online technology tool FOIAXpress to increase efficiencies in FOIA request document processing.

4. Please provide an estimate of how many requests your agency processed in Fiscal Year 2016 that were from, commercial use requesters. If your agency is decentralized, please identify any components within your agency that received a majority of their requests from commercial use requesters.

In FY 2016, an estimated 250 requesters were classified as commercial user requesters.

***B. Requester Services:***

5. Optional: Does your agency provide a mechanism for requesters to provide feedback about their experience with the FOIA process at your agency? If so, please describe the methods used, such as making the FOIA Public Liaison available to receive feedback, using surveys posted on the agency's website, etc.

The FOIA Liaison is the main mechanism for requesters feedback. The FOIA Liaison is listed on the FOIA page of the CPSC website, <https://www.cpsc.gov/Newsroom/FOIA>, and has a separate mail box, [CPSC-FOIA@cpsc.gov](mailto:CPSC-FOIA@cpsc.gov). Additionally, in most cases, the requester is provided the identity and contact information for the FOI Government Information Specialist working their request.

6. The FOIA Improvement Act of 2016 requires additional notification to requesters about the services provided by the agency's FOIA Public Liaison. Please provide an estimate of how often requesters sought assistance from your agency's FOIA Public Liaison.

Requesters sought advice or the status of their request an estimated 80 times in FY 2016.

7. The FOIA Improvement Act of 2016 requires agencies to make their reference material or guide for requesting records or information from the agency electronically available to the public. Please provide a link to your agency's FOIA reference guide.

<https://www.cpsc.gov/Newsroom/FOIA>

### ***Other Initiatives***

8. If there are any other steps your agency has undertaken to ensure that your FOIA system operates efficiently and effectively, such as improving search processes, eliminating redundancy, etc., please describe them here.

N/A

### **Section III. Steps Taken to Increase Proactive Disclosures**

Please answer the following questions to describe the steps your agency has taken to increase the amount of material that is available on your agency websites. In addition to the questions below, you should also describe any additional steps taken by your agency to make and improve proactive disclosures of information.

#### ***A. Posting Material***

1. Describe your agency's process system for identifying "frequently requested" records required to be posted online.

“Frequently requested” records are determined by the Commission’s FOIA professionals, based on the subject matter of FOIA requests received by the FOIA office. For example, if the FOIA office receives multiple requests for the same information, and if appropriate requirements have been satisfied, we post the material online. Similarly, documents relating to subjects that have garnered significant public interest routinely are posted online.

2. Does your agency have a distinct process or system in place to identify other records for proactive disclosure? If so, please describe your agency’s process or system.

Yes. CPSC’s FOIA professionals have a system in place to identify records for proactive disclosure, as reflected by CPSC’s policy of proactively disclosing on the CPSC website several different categories of records or information. For example, documents such as statistical and technical reports that are not affected by requirements under Section 6(b) of the Consumer Product Safety Act, 15 U.S.C. § 2055 6(b), are posted. Also, as previously mentioned, Commission briefing materials and other agency staff records and reports are made publicly available in the ordinary course, even though they reasonably could be withheld.

3. Has your agency encountered challenges that make it difficult to post records you otherwise would like to post?

Yes.

4. If so, please briefly explain those challenges.

Section 6(b) of the Consumer Product Safety Act, 15 U.S.C. § 2055(b), requires that prior to the public disclosure of information the CPSC must notify each manufacturer, importer, or private labeler identified in the records to be released to provide advance notice and the opportunity to comment on the accuracy of the information and the fairness of the release. The CPSC regulation implementing section 6(b), 16 C.F.R. part 1101, allows firms to comment about the information. When notified, many manufacturers submit extensive comments, claims and objections about the information to be disclosed. The FOIA office must review and respond to the comments and claims and renotify the firms if we disagree with any claims. The regulation also allows firms to request that the CPSC re-notify them for every release of the same information. In short, CPSC cannot post or otherwise make publicly available information subject to 6(b) without following time-consuming and cumbersome procedures.

5. Provide examples of material that your agency has proactively disclosed during the past reporting year, including links to the posted material.

The following types of records or information are subject to proactive disclosure on the CPSC website:

- Materials and briefing packages distributed to the Commission, except for matters that involve active investigations or legal advice, or other exempt matters. *See* <http://www.cpsc.gov/Newsroom/FOIA/Commission-Briefing-Packages/>.
- Records required under 5 U.S.C. § 522(a)(2) and Commission regulations at 16 C.F.R. § 1015.2 to be made available to the public for inspection and copying, as well as those that have been or are likely to become the subject of frequent FOIA requests. *See* <http://www.cpsc.gov/en/Newsroom/FOIA/>.
- Final technical and statistical reports and documents created by CPSC staff or CPSC contractors. *See* <http://www.cpsc.gov/en/Research--Statistics/-Technical-Reports-/>.
- Summaries of CPSC staff meetings with the public. *See* <http://www.cpsc.gov/en/Newsroom/Public-Calendar/>.
- CPSC contracts with the public and interagency agreements. *See* <http://www.cpsc.gov/en/About-CPSC/Agency-Reports/Interagency-Agreements-and-Contracts/>.
- Information concerning ongoing activities, such as agency rulemakings. *See* <http://www.cpsc.gov/en/Regulations-Laws--Standards/Rulemaking/>.
- Topics of high interest, such as ROVs, all-terrain vehicles (ATVs), phthalates, cribs, pools and spas, carbon monoxide, window cords, magnets, and thrift stores. *See* <http://www.cpsc.gov/en>.
- Filings in adjudicative proceedings where the CPSC has filed a Complaint against a manufacturer. *See* <http://www.cpsc.gov/en/Recalls/Recall-Lawsuits/Adjudicative-Proceedings/>.
- Records of Commission Actions on public matters, which include minutes of public decision-making meetings, are posted on the website almost immediately after decisions are taken by the Commission. *See* <http://www.cpsc.gov/Newsroom/FOIA/Records-of-Commission-Action-and-Commission-Meeting-Minutes>.
- Public statements of Commissioners. *See* <http://www.cpsc.gov/en/About-CPSC/Commissioners/>.
- Information relating to CPSC *Federal Register* notices, including the notices for regulatory and rulemaking activities and Paperwork Reduction Act matters. *See* <http://www.cpsc.gov/en/Regulations-Laws--Standards/Federal-Register-Notices/>.
- Webcasts of public hearings and meetings of the Commission and videos of those webcasts. *See* <http://www.cpsc.gov/en/Search/?query=webcast&filters=all>.

- Commission and staff guidance documents informing the public of new legislation and the implications of such legislation. *See* <https://www.cpsc.gov/en/Regulations-Laws--Standards/>.

6. Did your agency use any means to publicize or highlight important proactive disclosures for public awareness? If yes, please describe those efforts.

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 CPSC website. *See the CPSC Open Government Plan at <http://www.cpsc.gov/en/About-CPSC/Agency-Reports/open/> and the Guide to Public Information at <http://www.cpsc.gov/Newsroom/FOIA/Guide-to-Public-Information>.* Additionally, during this year, the Commission held Open Government meetings for its stakeholders at its headquarters and aired the meetings by webcast on a number of issues of public interest. Matters of public interest or frequently requested matters the agency is engaging with stakeholders on such as phthalates in toys and other children's products, window covering and crib bumper hazards are publicized and posted in a specific locations on the website.

In addition, pursuant to the Consumer Product Safety Improvement Act of 2008, the Commission continues to update, publicize and maintain a publicly available searchable database on reports of harm received from consumers and other stakeholders. *See <http://www.saferproducts.gov/>.* This database enables the public to directly accesses consumer reports of harm related to consumer products received by the Commission without a FOIA request.

***B. Other Initiatives***

7. If there are any other steps your agency has taken to increase proactive disclosures, please describe them here. For example, has your agency engaged requesters in determining how and what to post? Has your agency used web analytics to inform your proactive disclosures?

We post information proactively on the Commission's website. Requesters are continuously made aware of the Commission's publicly available website, [www.SaferProducts.gov](http://www.SaferProducts.gov) which provides information that was previously only available through FOIA requests. Also, see the responses to questions 6 and 7.

**Section IV. Steps Taken to Greater Utilize Technology**

Please answer the following questions to describe how your agency is utilizing technology to improve its FOIA administration and the public's access to information. You should also include any additional information that describes your agency's efforts in this area.



***A. Making Material Posted Online More Useful***

1. 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?

Yes.

2. If yes, please provide examples of such improvements.

The CPSC regularly updates and redesigns its website to improve its usability, partly based on comments from the public and agency stakeholders. CPSC is in the process of making our website more compatible to consumers who access the Internet through mobile devices, which will improve the usefulness and availability of information found on CPSC.gov. The CPSC website directs the public to post their comments on regulatory matters on [www.Regulations.gov](http://www.Regulations.gov), which allows the public to review all comments on a given matter. The CPSC's technical staff also solicits comments from the public for statistical reports that are posted. The website also offers a way for consumers or businesses to contact the agency by email. The website also provides a quarterly listing of Letters of Advice (LOAs), which inform manufacturers and importers of violations of safety standards and notify them of the corrective action required.

***B. Other Initiatives***

3. Did your agency successfully post all four quarterly reports for Fiscal Year 2016?

Yes.

4. If your agency did not successfully post all quarterly reports, with information appearing on FOIA.gov, please explain why and provide your agency's plan for ensuring that such reporting is successful in Fiscal Year 2017.

Not applicable to CPSC.

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

***A. Simple Track***

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

Yes. The CPSC uses a separate track for simple requests.

2. If so, for your agency overall in Fiscal Year 2016, was the average number of days to process simple requests twenty working days or fewer?

No. The average number of days to process simple requests was 28 days. Please note that the statutory requirements of section 6(b) noted above adversely impact the time required to respond even to simple requests.

3. Please provide the percentage of requests processed by your agency in Fiscal Year 2016 that were placed in your simple track.

Twenty-two percent.

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

Not applicable to CPSC, because the agency tracks simple requests separately.

***B. Backlogs:***

**BACKLOGGED REQUESTS**

5. If your agency had a backlog of requests at the close of Fiscal Year 2016, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2015?

Yes. The backlog of requests at CPSC decreased from 188 in FY 2015 to 171 in FY 2016.

6. If not, explain why and describe the causes that contributed to your agency not being able to reduce its backlog. When doing so, please also indicate if any of the following were contributing factors.

CPSC did reduce its backlog of requests.

7. If you had a request backlog please report the percentage of requests that make up the backlog out of the total number of requests received by your agency in Fiscal Year 2016.

Twenty-five percent.

**BACKLOGGED APPEALS:**

8. If your agency had a backlog of appeals at the close of Fiscal Year 2016, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2015?

CPSC did not have a backlog of appeals in FY 2015 or FY 2016.

9. If not, explain why and describe the causes that contributed to your agency not being able to reduce the backlog. When doing so, please also indicate if any of the following were contributing factors.

Not applicable to CPSC.

10. If you had an appeal backlog please report the percentage of appeals that make up the backlog out of the total number of appeals received by your agency in Fiscal Year 2016. If your agency did not receive any appeals in Fiscal Year 2016 and/or has no appeal backlog, please answer with "N/A."

Not applicable to CPSC.

### **TEN OLDEST REQUESTS**

11. In Fiscal Year 2016, did your agency close the ten oldest requests that were reported pending in your Fiscal Year 2015 Annual FOIA Report?

No.

12. If no, please provide the number of these requests your agency was able to close by the end of the fiscal year, as listed in Section VII.E of your Fiscal Year 2016 Annual FOIA Report. If you had less than ten total oldest requests to close, please indicate that.

CPSC closed eight of the 10 oldest requests that were pending as of the end of FY 2015.

13. Of the requests your agency was able to close from your ten oldest, please indicate how many of these were closed because the request was withdrawn by the requester. If any were closed because the request was withdrawn, did you provide any interim responses prior to the withdrawal?

Five of the requests were closed because the request was withdrawn by the requester.

### **TEN OLDEST APPEALS**

14. In Fiscal Year 2016, did your agency close the ten oldest appeals that were reported pending in your Fiscal Year 2015 Annual Report?

CPSC did not report any pending appeals as of the end of FY 2015 or FY 2016.

15. If no, please provide the number of these appeals your agency was able to close by the end of the fiscal year, as listed in Section VII.C.(5) of your Fiscal Year 2016 Annual FOIA Report. If you had less than ten total oldest appeals to close, please indicate that.

CPSC did not report any pending appeals as of the end of FY 2016.

## **TEN OLDEST CONSULTATIONS**

16. In Fiscal Year 2016, did your agency close the ten oldest consultations that were reported pending in your Fiscal Year 2015 FOIA Annual Report?

CPSC did not report any pending consultations as of the end of FY 2015 or FY 2016.

17. If no, please provide the number of these consultations your agency was able to close by the end of the fiscal year, as listed in Section XII.C. of your Fiscal Year 2016 Annual FOIA Report. If you had less than ten total oldest consultations to close, please indicate that.

Not applicable to CPSC.

### ***E. Additional Information on Ten Oldest Requests, Appeals, and Consultations & Plans***

18. Briefly explain any obstacles your agency faced in closing its ten oldest requests, appeals and consultations from Fiscal Year 2016.

The 10 oldest requests seek voluminous complicated records and are complicated by file searching issues and processing issues, including the section 6(b) procedures described above, which require numerous notifications to manufacturers or retailers regarding potential confidentiality claims on information those firms submitted to the CPSC.

19. If your agency was unable to close any of its ten oldest requests because you were waiting to hear back from other agencies on consultations you sent, please provide the date the request was initially received by your agency, the date when your agency sent the consultation, and the date when you last contacted the agency where the consultation was pending.

Not applicable to CPSC.

20. If your agency did not close its ten oldest pending requests, appeals, or consultations, please provide a plan describing how your agency intends to close those “ten oldest” requests, appeals, and consultations during Fiscal Year 2017.

CPSC’s FOIA professionals will be focusing attention on the 10 oldest requests by contacting CPSC program officers regarding pending requests for information, speaking with the requesters to clarify their requests, and consulting with our Office of the General Counsel staff to resolve any legal issues related to the requests.

### ***F. Success Story***

Out of all the activities undertaken by your agency since March 2016 to increase transparency and improve FOIA administration, please briefly describe here at least one success story that you would like to highlight as emblematic of your agency's efforts. The success story can come from any one of the five key areas. As noted above, these agency success stories will be highlighted during Sunshine Week by OIP. To facilitate this process, all agencies should use bullets to describe their success story and limit their text to a half page. The success story is designed to be a quick summary of a key achievement. A complete description of all your efforts will be contained in the body of your Chief FOIA Officer Report.

- The CPSC FOIA Directive, "Information Sharing Obligations under the FOIA," Order No. 0770.2, was revised. The FOIA office is implementing the directive by updating and preparing standard operating procedures and planning training for information specialists and office FOIA liaisons.
- CPSC continues working with contractors and technical staff to develop an electronic document sharing system that will allow the FOIA professionals to electronically handle all correspondence and notifications to consumer product manufacturers.
- When deployed, the system will speed up FOIA processing and significantly reduce printing, paperwork and mailing costs. This project is on track for completion in FY 2016.

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