

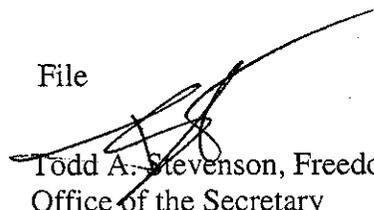


UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, DC 20207

Memorandum

Date: January 25, 2002

TO : File

FROM :  Todd A. Stevenson, Freedom of Information Officer
Office of the Secretary

SUBJECT : FY 2001 FOIA Appeals

FOIA Request No. Requesters Name/Firm Subject
FOIA Exemption, Dates: Appeal/ Recvd in OS / GC Due
Disposition / Date / Person Responsible

- (1) S0060048 Kuntz / Strategic Safety Seeking Cosco CPSA 6(b) Comment Letters
FOIA Ex. 3, 6(b)(1)
9/14 10/18 10/19 DUE 11/16
Affirmed 11/7/00 by GC Michael S. Solender
- (2) S0100042 Hendricks/Rouse Hendricks Seeking Active Compliance File on Invensys
Building Systems Siebe Actuators
FOIA Ex. 5 and 7(A)
10/11, 11/15 11/20 DUE Tues Dec. 19
Affirmed 12/07/00 by GC Micheal S. Solender
- (3) S0090051 and S0090052 Bough / Shamberg Johnson Seeking Withheld Portions of File
RP940096/RP960134 Whirlpool Dishwashers
FOIA Ex. 3 and CPSA 6(b)(1), Materials Not Responsive
10/27 11/13 DUE Tues Dec. 12
Affirmed 12/13/00 GC Michael S. Solender
- (4) S0100138 Crick/Humphrey Seeking Milton Bradley Fibro-Clay Withheld Portions of File
IC830037
FOIA Exs. 3 and 4, and CPSA 6(a)(2)
12/18, 12/28 DUE 1/29
Part reconsidered and Affirmed 2/1/2001 by GC Michael S. Solender

- (5) S0100119 Cooper/Hoey King Seeking Tropitone Furniture Metal Dining Chair Active Compliance File RP000001
FOIA Exs. 5 and 7(A)
11/17 2/2 2/12 DUE 3/13
Affirmed, 3/9/2001 GC Michael Solender
- (6) S1010104 Schwarz seeking records on herself and other individuals, and German Nazi Terrorists / the Response was a no record
2/9, 2/16, due 3/19
Moot
- (7) S0090003 Izzo / Cozen O'Connor Seeking records about home pool products mfrd by Olin Corporation under many names
FOIA Exs. 3 and CPSA 6(b)(1)
2/9, 2/14 DUE 3/15
Affirmed, 3/5/2001, GC Michael Solender
- (8) S1020014, 17, 18, 19, 22, 24, 26 Felcher Seeking Active Compliance Files on Graco Swings, Cosco carriers, Cosco High Chairs, Evenflo carriers, Century car seats, Kolcraft car seats and Safety 1st baby walkers
FOIA Ex. 5 and 7(A)
3/7, 3/9, DUE Friday April 6
Affirmed 4/6/2001, GC Micheal Solender
- (9) S1020004 Moore/Robinson Kriger Seeking Active Compliance File on Emerson/Sears Craftsman Radial Arm Saws
FOIA Ex. 5 and 7(A)
2/9, 3/15, 3/20, DUE Tuesday April 17, 2001
Affirmed 4/16/2001 GC Michael Solender
- (10) S102111 Levit / Wolf Popper Seeking Active Compliance File on General Electric Dishwashers
FOIA Ex. 5 and 7(A)
3/1, 3/30, 4/2 DUE Monday April 30, 2001
Affirmed 4/23/2001 by GC Micheal Solender
- (11) S1020025 Felcher Seeking Kolcraft Strollers Compliance File RP000217 Withheld Portions
FOIA Exs. 3 and 4, and CPSA 6(a)(2)
3/27, 4/2 4/12 DUE May 10
Affirmed in part 5/2/2001 by GC Michael Solender
- (12) S1010109 Recupero Seeking CPSA 6(b)(1) comments from B & D about their complaint
FOIA Exs. 3 and CPSA 6(b)(1)
4/13, 4/19, DUE 5/17

Affirmed 4/25/2001 by GC Michael Solender

- (13) S0110040 Kaplan / Kleinfeld Kaplan Seeking Staff memos, drafts in Compliance File on Drugs Dispensed for Household use in clinical trials Project File
FOIA Ex. 5
4/23, 4/26, DUE Thurs May 24
Affirmed and part reconsidered, June 1, 2001, by GC Michael Solender
- (14) S1040166Carolla / LA Times Seeking Compliance IDI tracking database
FOIA Ex. 5
5/7 5/16 5/17 DUE June 15
Moot by agreement, July 2, 2001
- (15) S1050022 Carolla / LA Times Seeking database or records on tort claims and lawsuits
No record response
5/7 5/16 5/17 DUE June 15
Moot by agreement July 2, 2001
- (16) S1040164 Carolla / LA Times Seeking database or records on fines
We provided a list of the fines and referred him to the Federal Register Notices on each
4/28 5/16 5/17 DUE June 15
Moot by agreement July 2, 2001
- (17) S1040004 Andracki Seeking Active Compliance File on Sears/Ryobi Cordless Drills
FOIA Ex. 5 and 7(A), and complaints CPSA 6(b)(1)
4/30, 5/8, 5/15, DUE Wednesday June 13
Affirmed and part reconsidered, June 8, 2001, by GC Michael Solender
- (18) S1030145 Limperis/Haralson, Miller Seeking TJX Companies Rayon Skirts and Scarves,
Withheld Portions of File RP000206
FOIA Exs. 3, 4, 5, 7(E), and CPSA 6(a)(2)
4/9, 5/8, 5/15, DUE Wednesday June 13
Affirmed and part reconsidered June 29, 2001, by GC Michael Solender
- (19) S1040092 Carolla / LA Times Seeking Voluntary Standards Tracking Reports database
FOIA EX 5
5/15, 5/21, 5/30 DUE June 27
Moot by agreement , July 2, 2001
- (20) S1040163, Carollo / Los Angeles Times Seeking All computer databases containing
information regarding deaths
FOIA Ex. 3 and CPSA 6(b)(1)
5/18, 5/21, 5/30 DUE June 27
Moot by agreement , July 2, 2001

- (21) SS1050034, Carollo / Los Angeles Times Seeking Correspondence between CPSC and UL Concerning Omega Sprinklers
No record response
5/18, undated 5/30 DUE June 27
Moot by agreement July 2, 2001
- (22) S1010095 Byard Seeking records on "Playskool Kick N Start" Gym
Withheld unconfirmed complaints and identities of complainants and injured person
FOIA Exs. 3 and 6 and CPSA 6(b)(1) and 25(c)
6/29 7/2 DUE Wednesday AUG 1
Affirmed 7/9/01 by GC Michael S. Solender
- (23) S1050122 Taylor Lopez seeking Active Compliance File on Emerson Electric Sears Craftsman radial arm saws file CA990090
FOIA Ex. 5 and 7(A)
6/29 7/2 DUE Wednesday August 1, 2001
Affirmed and part reconsidered, July 27, 2001 by GC Michael Solender
- (24) S1050131 Stachewicz / FOIA Group Seeking Credit Card Charges Report in a certain format
No record response
6/15 6/20 DUE July 20 Affirmed August 17, 2001, by GC Michael Solender
Affirmed 8/17/01, GC Michael S. Solender
- (25) S1070113 Robinson/Watts seeking Dynacraft Shockzone Mountain Bicycles Active Compliance file RP010144
FOIA Exs. 5 and 7(A), 3 and CPSA 6(b)(1)
8/10, 8/16, DUE Sept. 14, 2001
Affirmed 9/14/01 by GC Michael S. Solender
- (26) S1070106 Winiecki /Kasdore Lewis seeking Marco CCT decorative Gas Fireplaces Active Compliance file CA980016
FOIA Exs. 5 and 7(A)
8/2, 9/5 9/10, DUE Oct. 9, 2001
Reconsidered and reprocessed 9/26/01
- (27) S1070047 Bailey/Valinoti & Dito, Seeking Active Compliance File on Fisher Price Power Wheels Ride-On Powered Vehicles
FOIA Ex. 5 and 7(A), and 3, 4, and CPSA 6(a)(2) and 6(b)(1)
8/13, 9/18, 9/19 DUE Thurs, Oct 18
Reconsidered and reprocessed 10/5/01

U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, D.C. 20207-0001

OFFICE OF THE GENERAL COUNSEL

Michael S. Solender
General Counsel
Tel: 301-504-0980 ext. 2299
Fax: 301-504-0403

November 6, 2000

Ms. Sherry Kuntz
Strategic Safety
4414 36th Street South
Arlington, Virginia 22206

Re: FOIA Appeal 0060048 on comment letters from Cosco

Dear Ms. Kuntz:

On October 18, 2000, you appealed the decision of the Commission's Freedom of Information Officer to withhold information responsive to your Freedom of Information Act (FOIA) request. Under authority delegated to me by the Commission, 16 C.F.R. § 1015.7, I have reviewed your appeal. I affirm the Freedom of Information Officer's decision to withhold a letter from Cosco's attorney that commented on disclosure to you of in-depth investigation reports and consumer complaints.¹

Exemption 3 of the FOIA provides for withholding information that is specifically exempted from disclosure by another statute. In applying Exemption 3 to the withheld complaint, I am relying on section 6(b)(1) of the Consumer Product Safety Act (CPSA). 15 U.S.C. § 2055(b)(1).

Section 6(b)(1) requires that before disclosing information that would enable the public to identify the manufacturer or private labeler of a consumer product, the Commission "shall take reasonable steps to assure . . . that such disclosure is fair in the circumstances. . ." By regulation, the Commission has

¹ There are two additional letters from Cosco that commented on consumer complaints you received. However, those letters do not fall within the scope of your FOIA request, which sought Cosco's comments on your FOIA request (as opposed to the comments on the underlying documents you sought). Those letters are not addressed in this appeal.

Ms. Sherry Kuntz
November 6, 2000

Page 2

addressed the "fairness" of disclosing a manufacturer's comments on disclosure of product-specific information:

(a) The steps set forth below are the steps the Commission has determined are reasonable to take to assure disclosure of information to the public is fair in the circumstances:

(1) The Commission will accompany information disclosed to the public with the manufacturer's or private labeler's comments unless the manufacturer or private labeler asks in its section 6(b) comments that its comments or a designated portion thereof not accompany the information.

16 C.F.R. § 1101.33(a). See also C.F.R. §§ 1101.24(b) and (c), which specify how and when a manufacturer must claim confidentiality and object to disclosure of its comments.

The "unless" clause of the Commission's regulation (section 1101.33(a)) applies directly to your FOIA request. Cosco has asked that its comments be withheld in their entirety. And we are therefore withholding the entire letter.

You have the right to seek judicial review of this decision, as provided by 5 U.S.C. § 552(a)(4)(B).

Sincerely,



Michael S. Solender



U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, DC 20207

Michael S. Solender
General Counsel

Office of the General Counsel

Tel: (301) 504-0980
Fax: (301) 504-0403
Email: cpsc-gc@cpsc.gov

October 27, 2000

Aaron Locker, Esq.
Locker, Greenberg & Brainin, P.C.
420 Fifth Avenue
New York, N.Y. 10018

Re: FOIA Appeal S0070110
Daisy Powerline 880 856 Airguns

Dear Mr. Locker:

On October 20, 2000, I responded, by letter, to your appeal of your Freedom of Information Act (FOIA) request. You and I have since spoken a couple of times. As I advised you, I am reaffirming my conclusions in the October 20th letter.

After sending that letter, we located three additional responsive engineering reports. As with the human factors report, I am withholding them pursuant to FOIA Exemptions 5 and 7(A). 5 U.S.C § 552(b)(5) and (b)(7)(A).

FOIA Exemption 5 provides for the withholding of certain inter-agency and intra-agency documents and incorporates the deliberative process privilege. This privilege protects advice, recommendations, and opinions that are part of the deliberative, consultative, and decision-making processes of the agency. Although this privilege applies only to the opinions or recommendations in a document and not to factual information, facts are withheld here because they are inextricably intertwined with the exempt portions.

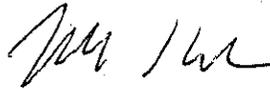
FOIA Exemption 7(A) provides for the withholding of investigatory information compiled for law enforcement purposes to the extent that the production of such information could reasonably be expected to interfere with enforcement proceedings. I have determined that disclosure of the three engineering reports could reasonably be expected to interfere with ongoing law enforcement proceedings.

Mr. Aaron Locker

Page 2

You have the right to seek judicial review of this decision as provided by 5 U.S.C § 552(a)(4)(B).

Sincerely,

A handwritten signature in black ink, appearing to read "MS Solender", written in a cursive style.

Michael S. Solender



U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, DC 20207

Michael S. Solender
General Counsel

Office of the General Counsel

Tel: (301) 504-0980
Fax: (301) 504-0403
Email: cpsc-gc@cpsc.gov

October 20, 2000

Aaron Locker, Esq.
Locker, Greenberg & Brainin, P.C.
420 Fifth Avenue
New York, N.Y. 10018

Re: FOIA Appeal S0070110
Daisy Powerline 880 856 Airguns

Dear Mr. Locker:

By letter dated September 19, 2000, you appealed the decision of the Commission's Freedom of Information (FOI) Officer to withhold information responsive to your Freedom of Information Act (FOIA) request, specifically a metallurgical engineering report and a human factors report. Under authority delegated to me by the Commission, 16 C.F.R. § 1015.7, I have reviewed your appeal and the responsive information. The Commission's files have been searched at my direction and we have not found any metallurgical engineering reports relating to the above-mentioned products. With respect to the human factors report, I affirm the FOI Officer's decision to withhold the information pursuant to FOIA Exemption 7(A). 5 U.S.C § 552(b)(7)(A).

FOIA Exemption 5 provides for the withholding of certain inter-agency and intra-agency documents and incorporates the deliberative process privilege. This privilege protects advice, recommendations, and opinions that are part of the deliberative, consultative, and decision-making processes of the agency. Although this privilege applies only to the opinions or recommendations in a document and not to factual information, facts are withheld here because they are inextricably intertwined with the exempt portions. The information being withheld pursuant to FOIA Exemption 5 consists of a human factors report.

In your letter, you alleged that Exemption 5 "permits release to a party to the investigation of agency memoranda which would be available by law to a party." However, the courts have construed this exemption to "exempt those documents . . . that are normally privileged in the civil discovery context." N.L.R.B. v. Sears, Roebuck & Co., 421 U.S. 132, 149 (1975). In this case, we are invoking the deliberative process privilege.

Mr. Aaron Locker

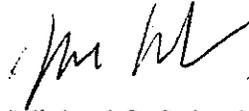
Page 2

FOIA Exemption 7(A) provides for the withholding of investigatory information compiled for law enforcement purposes to the extent that the production of such information could reasonably be expected to interfere with enforcement proceedings. I have determined that disclosure of the human factors report could reasonably be expected to interfere with ongoing law enforcement proceedings.

In your letter, you referred to “[t]his proceeding [being] closed five years ago.” However, the Commission has reopened this investigation and it is currently an ongoing case.

You have the right to seek judicial review of this decision as provided by 5 U.S.C § 552(a)(4)(B).

Sincerely,

A handwritten signature in black ink, appearing to read "Michael S. Solender", is written over the typed name.

Michael S. Solender

Memorandum

To: Michael S. Solender, General Counsel
Through: Alan Shakin, Assistant General Counsel
From: Todd A. Stevenson, FOI Officer, Office of the Secretary

Date: October 19, 2000

RE: FOIA REQUEST S0060048 Kuntz / Strategic Safety Seeking Cosco
CPSA Section 6(b)(1) Comments

The FOIA Appeal dated October 18, 2000, of our denial dated September 14, attached was received in the Office of the Secretary on October 19. Ms. Kuntz is appealing the withholding of the CPSA section 6(b) comments made by Cosco concerning the materials being released for her request. We withheld the comments pursuant to FOIA Exemption 3, CPSA section 6(b)(1) and 16 CFR 1101.24. Attached are the correspondence, our processing notes and the withheld materials. Should you need to discuss the materials or our processing, please see or call me X1239.

PLEASE NOTE: This requester is appealing our withholding of only the COSCO 6(b) comment letters, not the materials processed for her request and released on August 24, 2000.

Date of Appeal: 10/18/2000
Received in OS: 10/19/2000

Time Limit on

Appeal Decision: Thursday November 16, 2000

STRATEGIC SAFETY

4414 36th Street South, Arlington, VA 22206
<http://www.strategicsafety.com>

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9/14/00

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October 18, 2000

FOIA APPEAL
Office of General Counsel
U. S. Consumer Product Safety Commission
Washington, D. C. 20207

Att'n: Office of the Secretary

RE: Freedom of Information Request S-0060048
Cosco Touriva Child Safety Seat
Comment Letters from Cosco or their representatives

Gentlemen:

This is a Freedom of Information Act (FOIA) appeal of your response dated September 14, 2000 that was received in our office on or about September 21, 2000. In your response, you denied our request for comments submitted by Cosco or their representatives with regard to the above FOIA request.

Your original response concerning these comments was, "We would disclose Cosco's comments, but the company's attorney has asked that we not do so." (letter of August 24, 2000). Your subsequent response indicated the Commission is withholding Cosco's comments "[b]ecause the manufacturer has made confidentiality claims on those letters," and therefore the agency "must withhold the comment letters" pursuant to Exemption 3 of the FOIA, 5 U.S.C. Section 552(b)(3), Section 6(b)(1) of the Consumer Product Safety Act (CPSA), 15 U.S.C. Section 2055(b)(1), and your regulation 16 C.F.R. Section 1101.24.

You further stated that FOIA Exemption 3 provides for the withholding from disclosure of matters that are specifically exempted from disclosure by another statute, i.e., Section 6(b)(1) of the CPSA, that "prohibits the Commission from disclosing

FOIA Appeal
October 18, 2000
Page 2

information about a consumer product that identifies a manufacturer" unless the Commission has taken reasonable steps to assure the information is accurate, that disclosure is "fair in the circumstances...."

With regard to your reliance on Exemption 3 of the FOIA, which reads:

"(3) (matters) specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner so as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld"

it appears you are relating this exemption to Section 6(b)(1) of the CPSA that prohibits the Commission from disclosing information about a consumer product that identifies a manufacturer unless the Commission has taken "reasonable steps" to assure the information is accurate. That provision doesn't apply in this instance as the agency has supplied investigation reports and consumer complaints identifying Cosco as the manufacturer. Furthermore, the FOIA request specifically asked for information related to Cosco and no response at all would have been forthcoming had it not related to that particular manufacturer.

Your second claim for withholding, based on Section 6(b)(1), seems to stem from the sentence that reads:

"The Commission shall take reasonable steps to assure, prior to its public disclosure thereof, that information from which the identity of such manufacturer or private labelers may be readily ascertained is accurate, and that such disclosure is fair in the circumstances and reasonably related to effectuating the purposes of this Act."

Again, the portion of this provision relating to identification of the manufacturer doesn't apply in this instance for the reasons stated above. With regard to the language "such disclosure is fair in the circumstances," there has been no explanation as to why withholding comments from a manufacturer related to a product sold to the public is "fair in the circumstances" to the public, which the agency is mandated to protect under the CPSA, nor is there an explanation as to why disclosing such comments would be *unfair* "under the circumstances" to the manufacturer.

Exemption 3 provides that certain information may be exempted from disclosure by statute "provided that such statute (A) requires that the matters be withheld from the

FOIA Appeal
October 18, 2000
Page 3

public in such a manner *as to leave no discretion* on the issue." That certainly is not the case here. "Fair in the circumstances" is a broad and loose phrase that leaves the agency a great deal of discretion to determine what is "fair in the circumstances" and where that fairness lies - with the manufacturer or with the public. Your conclusory statement that you have determined it "would not be fair in the circumstances to disclose a firm's confidentiality claims and comments" is not sufficient to avoid disclosure in that you have stated no valid basis or any basis for that matter for such a determination nor is there any relationship of "confidentiality" between the agency and the manufacturer. Certainly, it is appropriate to disclose the basis of the claim of confidentiality and, if the manufacturer has properly sought confidentiality on the basis of trade secrets or any similar claim, then those portions of the materials can be redacted and the segregable portions disclosed as required by the FOIA.

You further base your denial on regulation 1101.24, Section ©, which states:

"If a firm objects to disclosure of its comments or a portion thereof, it must notify the Commission at the time it submits its comments. If the firm objects to the disclosure of a portion of its comments, it must identify those portions which should be withheld."

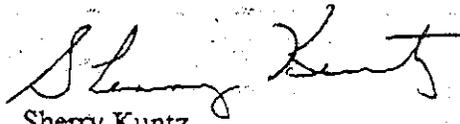
Nothing in that section says that a manufacturer's objection to disclosure is automatically granted upon *notification* of such an objection. In fact, it would seem that section © would relate directly to the preceding section (b) that requires a manufacturer seeking confidentiality to identify the specific information it believes to be confidential or trade secret material and state with specificity the grounds on which it bases such claim. If the manufacturer fails to state valid reasons why the comments should be confidential, i.e., that they relate to trade secrets or commercial or financial information, etc., there is no basis for the agency to grant such a request. Certainly there is no basis to claim confidentiality between a manufacturer and the agency, the records are not absolutely shielded from disclosure pursuant to 16 C.F.R. Section 1101.24, and it is proper to disclose all matters that are beneficial to the public interest.

Finally, disclosure is proper within the FOIA guidelines outlined in Attorney General Janet Reno's September 3, 1999 memo to the heads of departments and agencies. The Attorney General noted in her memo that the Department of Justice (DOJ) would no longer defend an agency's withholding of information simply because it may meet the legal basis for exemption in the FOIA (which is questionable in this instance). The Attorney General also requested that agencies apply a "foreseeable harm" standard in their FOIA decision-making and consider exercising discretionary disclosure even if the requested records should fall within one of the FOIA exemptions.

FOIA Appeal
October 18, 2000
Page 4

We would appreciate your response within twenty days after receipt of this appeal, pursuant to the requirements of 49 C.F.R. Section 7.23.

Sincerely,



Sherry Kuntz

2000139.skz



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COS

U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, DC 20207

Todd A. Stevenson
Deputy Secretary and
Freedom of Information Officer
Office of the Secretary

Tel: 301-504-0785X1239
Fax: 301-504-0127
Email: t Stevenson@cpsc.gov

September 14, 2000

CERTIFIED MAIL

Sherry Kuntz
Strategic Safety
600 River Oaks Drive
Cropwell, AL 35054

Re: FOIA Request S0060048: Cosco Touriva Child Safety Seat / Complaints, Reported Incidents, Deaths and Investigations of Incidents / File Search 1995 to Present / Comment letters from Cosco or their representatives about these materials

Dear Ms. Kuntz:

Thank you for your Freedom of Information Act (FOIA) request seeking information from the U.S. Consumer Product Safety Commission (Commission). As stated in our August 24, 2000, letter responding to your request, you received (with that letter) the materials that are responsive to your request dated March 9, 2000.

Also as explained in the letter, we did not release comment letters submitted by the manufacturer or its representatives about those released materials. Because the manufacturer has made confidentiality claims on those letters, we must withhold the comment letters pursuant to Exemption 3 of the FOIA, 5 U.S.C. § 552(b)(3), and section 6(b)(1) of the Consumer Product Safety Act (CPSA), 15 U.S.C. § 2055(b)(1), and our regulations, 16 C.F.R. § 1101.24. FOIA Exemption 3 provides for the withholding from disclosure of matters that are specifically exempted from disclosure by another statute. In applying FOIA Exemption 3, we are relying on section 6(b)(1) of the CPSA, that prohibits the Commission from disclosing information about a consumer product that identifies a manufacturer or private labeler unless the Commission has taken "reasonable steps" to assure that the information is accurate, that disclosure is fair in the circumstances, and that disclosure will be reasonably related to effectuating the purposes of the laws that the Commission administers. It would not be fair in the circumstances to disclose a firm's confidentiality claims and comments, when the company has requested confidentiality and such records are protected from disclosure pursuant to 16 C.F.R. § 1101.24.

Sherry Kuntz
Strategic Safety
Page 2

According to the Commission's regulations implementing the FOIA at 16 C.F.R. § 1015.7, a partial denial of access to records may be appealed to the General Counsel of the Commission within thirty (30) days of your receipt of this letter. An appeal must be in writing and addressed to: FOIA APPEAL, General Counsel, ATTN: Office of the Secretary, U.S. Consumer Product Safety Commission, Washington, D. C. 20207.

Processing this request, performing the file searches and preparing the information, cost the Commission \$80.00. In this instance, we have decided to waive all of the charges.

Sincerely,

Todd A. Stevenson

STRATEGIC SAFETY

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PLEASE REPLY TO ALABAMA ADDRESS

March 9, 2000

1549
COS

Mr. Todd Stevenson
Deputy Secretary/Freedom of Information Act Officer
U. S. Consumer Product Safety Commission
Washington, D. C. 20207

RE: FOIA Request S-0060048

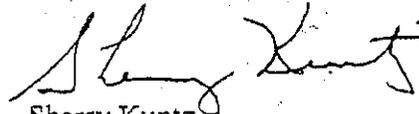
Dear Mr. Stevenson:

I am in receipt of your letter of August 24, 2000, with enclosures.

Please confirm that the reports provided with your letter are all the reports currently held by the CPSC and that no reports have been withheld. Your letter was unclear in this regard.

Also, please provide Cosco's comments in relation to this FOIA request or provide a letter of denial citing the specific exemption you feel justifies your denial as well as an explanation of the appeal procedures available under the law.

Sincerely,


Sherry Kuntz

2000139.skz



Officer (6b rel),
chron, 2618

1549 Cosco

U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, DC 20207

Todd A. Stevenson
Deputy Secretary and Freedom of Information Act Officer
Office of the Secretary
Freedom of Information Division

Tel: 301-504-0785 ext. 1239
Fax: 301-504-0127
Email: tstevenson@cpsc.gov

August 24, 2000

Ms. Sherry Kuntz
Strategic Safety
36th Street, South
Arlington, VA 22206

RE: FOIA S-0060048: Cosco Touriva Child Safety Seat

Dear Ms. Kuntz:

Enclosed are in-depth investigation reports and consumer complaints that are responsive to your above-identified Freedom of Information Act (FOIA) request.

Under section 6(b) of the Consumer Product Safety Act (CPSA), the Commission must take reasonable steps to assure that any disclosed information on consumer products is accurate and that its disclosure is fair in the circumstances and reasonably related to effectuating the purposes of the CPSA. 15 U.S.C. § 2055(B). Section 6(b) also requires the Commission to permit identified manufacturers of consumer products to comment on release of the information.

Please note that the Commission received the information in the investigation reports through formal investigation systems designed to identify specific products that are associated with injury or death. To assure the accuracy of the information, the Commission staff interviewed the persons familiar with the product-related incidents and examined the products involved. 16 C.F.R. § 1101.32(a)(1). However, the Commission has made no determinations about any causes of the incidents.

In addition, the Commission has received the enclosed consumer complaints through the same formal investigation systems. As a step to assure the accuracy of the information under section 6(b), the Commission has obtained confirmation of the information from the submitters of the complaints. See 16 C.F.R. § 1101.32(a)(3). The Commission has made no determinations about any causes of the incidents.

As a further step to assure accuracy and as a step to assure the fairness of disclosure in the circumstances under section 6(b), the Commission has provided Cosco with the opportunity

Ms. Sherry Kuntz
Page 2

to comment on disclosure of the information. See 16 C.F.R. §§ 1101.32(b) and .33(a)(1). We would disclose Cosco's comments, but the company's attorney has asked that we not do so.

Sincerely,

Todd A. Stevenson

Enclosures

*Rec
5/2/00*

STRATEGIC SAFETY

4414 36th Street South, Arlington, VA 22206
<http://www.strategicsafety.com>

Sean E. Kane
165 Fairview Ave.
Rehoboth, MA 02769
508.252.2333
Fax 508.252.3137
sean@strategicsafety.com

Sherry Kuntz
600 River Oaks Drive
Cropwell, AL 35054
205.525.4616
Fax 205.525.4012
sherry@strategicsafety.com

Saleena Z. Schmidtke
4414 36th Street South
Arlington, VA 22206
703.575.8526
Fax 703.575.8528
saleena@strategicsafety.com

PLEASE REPLY TO ALABAMA OFFICE

April 26, 2000

Ms. Ann Montalbano
Freedom of Information Office/Clearinghouse
U. S. Consumer Product Safety Commission
Washington, D. C. 20207

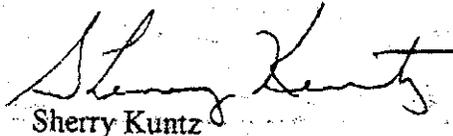
RE: FOIA Request - Cosco Touriva Child Safety Seat
Original Request March 9, 2000

Dear Ann:

Hopefully you will recall that we spoke on March 9, 2000 concerning the CPSC's activities with regard to child safety seats and you informed that the agency does track incidents involving those products. On the same day, I submitted a FOIA request (see attached) via fax transmission to your attention. To date, however, I have had no response of any kind - I have received none of the materials requested nor have I received an acknowledgement of my letter with the number assigned to the request.

I would appreciate it if you would advise me of the status of this matter and the identification or tracking number assigned to my FOIA request. I can be reached at 205-525-4616 or 205-525-4012 (fax).

Sincerely,


Sherry Kuntz

STRATEGIC SAFETY

4414 SOUTH 36TH STREET, ARLINGTON, VIRGINIA 22206

PHONE: (703) 575-8526 FAX: (703) 575-8528

ALABAMA OFFICE

600 River Oaks Drive, Cropwell, Alabama 35054

Phone: (205) 525-4616 Fax: (205) 525-4012

FACSIMILE

DATE: April 26, 2000
TO: Ann Montalbano/CPSC
FROM: Sherry Kuntz
SUBJECT: FOIA Request of March 9, 2000
Cosco Touriva Child Safety Seats

This transmission contains 2 page(s), including this cover sheet.

If there are problems with this transmission or if you have any questions about the transmitted material, please contact us at 205-525-4616.

COMMENTS:

CONFIDENTIALITY NOTICE

The documents accompanying this facsimile transmission contain confidential information intended only for the use of the above-named recipient. If you have received this facsimile transmission in error, please immediately notify us by telephone to arrange for the return of the transmitted documents. You are hereby notified that any disclosure, copying, distribution, or the taking of any action in reliance on the contents of this facsimile transmission is strictly prohibited.

Rec'd 3/13/00

STRATEGIC SAFETY4414 36th Street South Arlington, VA 22206
e-mail Strategic1@aol.comSean E. Kane
165 Fairview Avenue
Rehoboth, MA 02769
508.252.2333
Facsimile 508.252.3137Sherry Kuntz
600 River Oaks Drive
Cropwell, AL 35054
205.525.4616
Facsimile 205.525.4012Salena Z. Schmidtke
4414 36th Street South
Arlington, VA 22206
703.575.8526
Facsimile 703.575.8528**PLEASE REPLY TO ALABAMA ADDRESS**

March 9, 2000

Ms. Ann Montalbano
Freedom of Information Office/Clearinghouse
U. S. Consumer Product Safety Commission
Washington, D. C. 20207

RE: FOIA Request -- Cosco Touriva Child Safety Seats

Dear Ann:

It was certainly good talking with you today. As always, your willing assistance is greatly appreciated.

Pursuant to the Freedom of Information Act, 5 U.S.C. 552, we are requesting access to and copies of accident data related to Cosco Touriva child safety seats for the time period January 1, 1995 through the present date, including the following:

- (1) Any Consumer Alerts and press releases issued by CPSC.
- (2) Death Certificates (DCs and MECAPs)
- (3) Reported incidents
- (4) Investigations of incidents

Again, thanks so much for your help. We will, of course, agree to pay reasonable copy and search costs. Please call if you have any questions concerning this request.

Sincerely,


Sherry Kuntz

S-0060048

STRATEGIC SAFETY
4414 SOUTH 36TH STREET, ARLINGTON, VIRGINIA 22206
PHONE: (703) 575-8526 FAX: (703) 575-8528

ALABAMA OFFICE
600 River Oaks Drive, Cropwell, Alabama 35054
Phone: (205) 525-4616 Fax: (205) 525-4012

FACSIMILE

DATE: March 9, 2000
TO: Ann Montalbano
FROM: Sherry Kuntz
SUBJECT: Cosco Touriva Child Safety Seat

This transmission contains 2 page(s), including this cover sheet.

If there are problems with this transmission or if you have any questions about the transmitted material, please contact us at 205-525-4616.

COMMENTS:

CONFIDENTIALITY NOTICE

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2

U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, D.C. 20207-0001

OFFICE OF THE GENERAL COUNSEL

Michael S. Solender
General Counsel
Tel: 301-504-0980 ext. 2299
Fax: 301-504-0403
E-Mail: msolender@cpsc.gov

December 7, 2000

Randall E. Hendricks, Esq.
Rouse Hendricks German May PC
One Petticoat Lane Building
1010 Walnut, Suite 400
Kansas City, Missouri 64106

Re: FOIA Appeal 0100042: Siebe Actuators

Dear Mr. Hendricks:

By letter dated November 15, 2000, you appealed the decision of the Commission's Freedom of Information (FOI) Officer to withhold information responsive to your Freedom of Information Act (FOIA) request. You have requested all information that relates to actuators made by your client, Invensys Building Systems (IBS), and that was submitted by any entity other than IBS. The information responsive to your request consists of a submission by Ruskin Co., Inc., a manufacturer of dampers containing the IBS actuators as components.

Under authority delegated to me by the Commission, 16 C.F.R. § 1015.7, I have reviewed your appeal and the responsive information. As explained below, I affirm the FOI Officer's decision to withhold the information pursuant to FOIA Exemptions 3, 4, and 7(A). 5 U.S.C. §§ 552(b)(3), (4), and 7(A).

FOIA Exemption 3 provides for withholding information that is specifically exempted from disclosure by another statute. In applying FOIA Exemption 3 to the withheld information, I am relying on sections 6(a)(2), 6(b)(1) and 6(b)(5) of the Consumer Product Safety Act (CPSA). 15 U.S.C. §§ 2055(a)(2), (b)(1) and (b)(5).

Section 6(a)(2) expressly prohibits the disclosure of information reported to or otherwise obtained by the Commission that contains or relates to trade secrets or other confidential

Randall E. Hendricks, Esq.
December 7, 2000

Page 2

commercial information. Section 6(a)(2) incorporates Exemption 4 of the FOIA. That exemption protects trade secrets and confidential commercial information obtained from a person. Commercial information is confidential if disclosure is likely (1) to impair the government's ability to obtain the necessary information in the future or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained. In addition, voluntarily-submitted information is confidential provided it is not customarily disclosed to the public by the submitter. The information being withheld pursuant to FOIA Exemption 3, relying on CPSA section 6(a)(2), and FOIA Exemption 4 consists of sales data, pricing data, and other confidential commercial information submitted to the Commission by Ruskin Co., Inc. that concerns its dampers. This is some, but not all, of the information in the Ruskin submission.

Section 6(b)(1) requires the Commission to take reasonable steps to assure that product-specific information is accurate and that its release would be fair in the circumstances and reasonably related to effectuating the purposes of the CPSA. Since the Commission has not yet taken the necessary reasonable steps, we are withholding all of the information submitted by Ruskin because all of it identifies Ruskin's dampers.

In applying Exemption 3, we are also relying on section 6(b)(5) of the CPSA, 15 U.S.C. § 2055(b)(5). This provision prohibits the Commission from disclosing information to the public that a company submits to the Commission pursuant to section 15 of the CPSA, 15 U.S.C. § 2064, unless: (1) the Commission has issued an administrative complaint concerning the product, (2) the Commission has accepted in writing a remedial settlement agreement dealing with the product, or (3) the company has agreed to the disclosure. See also 16 C.F.R. § 1101.61. In this case, none of the three exceptions applies. Under FOIA Exemption 3, relying on CPSA section 6(b)(5), we are therefore withholding all of the Ruskin-submitted information.

FOIA Exemption 7(A) provides for the withholding of investigatory information compiled for law enforcement purposes to the extent that the production of such information could reasonably be expected to interfere with enforcement proceedings. We have determined that disclosure of any of the Ruskin-submitted information at this stage of the investigation could be expected to interfere with our ongoing law enforcement proceedings. However, when the investigation and file are closed, some of this information may be disclosed (at that time, it may or may not be subject to other FOIA disclosure exemptions).

Randall E. Hendricks, Esq.
December 7, 2000

Page 3

Please note that some of the information described above is being withheld under more than one FOIA exemption.

Your appeal has asserted that the Ruskin-submitted documents are not "deliberative" and therefore do not fall within FOIA Exemption 5. We agree. Your appeal has also asserted that disclosure of the Ruskin-submitted documents "do not interfere with any ongoing enforcement proceedings" and that those documents were not "compiled" for law enforcement purposes. However, you provide no support for these assertions. In fact, the documents were compiled solely and precisely for our ongoing investigation into Ruskin dampers and IBS actuators. Disclosure of the documents at this time, particularly to a subject of the investigation, *would* interfere with that investigation.

You have the right to seek judicial review of this decision as provided by 5 U.S.C. § 552(a)(4)(B).

Sincerely,



Michael S. Solender

ROUSE HENDRICKS GERMAN MAY PC

ONE PETTICOAT LANE BUILDING
1010 WALNUT • SUITE 400
KANSAS CITY, MISSOURI
64106

TELEPHONE
(816) 471-7700

FACSIMILE
(816) 471-2221
rhgm.com

November 15, 2000

Via Federal Express

FOIA APPEAL
General Counsel
ATTN: Office of the Secretary,
U.S. Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814-4408

Via U.S. Mail

FOIA APPEAL
General Counsel
ATTN: Office of the Secretary,
U.S. Consumer Product Safety Commission
Washington, D.C. 20207

Re: Freedom of Information Act Appeal
FOIA Request S0100042 relating to
CPSC PI000106

To Whom It May Concern:

Invensys Building Systems ("IBS") presents this appeal under the Freedom of Information Act, 5 U.S.C. § 552(a). The Consumer Product Safety Commission ("CPSC") has an active investigatory file or files that relate to IBS' product, the Siebe MA 2xx-series Actuator ("Actuators"). On August 29, 2000 IBS requested certain information and documents be disclosed by the CPSC, relating to IBS' Actuators. Specifically, IBS requested all information and documents submitted to the CPSC by any entity, other than IBS, relating to IBS' Actuators. A copy of our Freedom of Information Request is attached as Exhibit 1.

On October 17, 2000, Todd A. Stevenson, Deputy Secretary and Freedom of Information Officer, denied the request citing FOIA Exemptions 5 and 7(A), 5 U.S.C §§ 552(b)(5) and (b)(7)(A). A copy of Mr. Stevenson's letter is attached as Exhibit 2. IBS appeals this denial.

The Siebe MA 2xx-series Actuator is sold to original equipment manufacturers ("OEMs") as a component to dampers that OEMs design, test, manufacture and sell generally to mechanical contractors and engineering firms that install heating and air conditioning systems in commercial buildings. Two such OEM damper manufacturers are Ruskin Co., Inc. ("Ruskin") and Tomkins Industries, Inc. ("Tomkins"). Both entities have submitted documents and information to the CPSC relating to IBS' Actuators. IBS believes that other OEMs may have also submitted documents and information relating to IBS' Actuators.

CPSC

November 15, 2000

Page 2

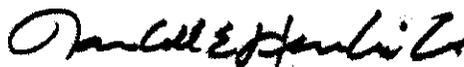
IBS requests these documents submitted by OEMs concerning IBS' Actuators. This request does not fall within the stated reasons for IBS asks that you evaluate this denial of its FOIA request, namely Exemptions 5 and 7(A) of 5 U.S.C. §§ 552(b)(5) and (b)(7)(A). Exemption 5 provides for the withholding from disclosure of inter-agency and intra-agency memoranda, which would not be available by law to a party other than an agency in litigation with the agency. IBS is not requesting such memoranda. IBS is not requesting any documents created by the CPSC or any documents that reflect the CPSC's deliberative process. The documents that IBS has requested are only those submitted to the CPSC by outside entities.

Exemption 7(A) provides for the withholding from disclosure of records or information compiled for law enforcement purposes, to the extent that the production of such law enforcement records or information could reasonably be expected to interfere with enforcement proceedings. The documents requested by IBS do not interfere with any ongoing enforcement proceedings.

Moreover, Ruskin and Tomkins voluntarily submitted documents to the CPSC. Thus, documents coming from Ruskin and Tomkins were not "compiled" for law enforcement purposes. Documents not submitted in response to any CPSC request cannot impinge on the CPSC's deliberative process.

IBS believes that it is entitled to disclosure of documents submitted by Ruskin and, Tomkins, as well as other entities under the provisions of the Freedom of Information Act. It asks that you evaluate the denial of this request and, on this appeal, grant IBS its request for these documents. If any further information is necessary for the General Counsel to make its determination, please contact us at (816) 471-7700.

Very truly yours,
ROUSE HENDRICKS
GERMAN MAY PC



By

Randall E. Hendricks
For Invensys Building Systems

REH/saa
Attachments

ROUSE HENDRICKS GERMAN MAY PC

ONE PETTICOAT LANE BUILDING
1010 WALNUT • SUITE 400
KANSAS CITY, MISSOURI
64106

TELEPHONE
(816) 471-7700

FACSIMILE
(816) 471-2221
rhm.com

August 29, 2000

Via Fax: 301-504-0359 and Mail

Richard K. Wright
Compliance Officer
Consumer Product Safety Commission
Washington, D.C. 20207-0001

Re: Freedom of Information Act request

Dear Mr. Wright:

As we discussed earlier this month, pursuant to the Freedom of Information Act, 5 U.S.C. § 552(a)(3) and the accompanying regulations promulgated by the Consumer Product Safety Commission, Invensys Building Systems (formerly Barber-Colman Co., Inc.) a/k/a Siebe Environmental Controls, requests that you make available the following information:

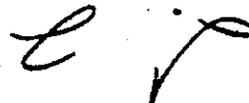
1. All information and data in your possession regarding Siebe MA 2xx-series Actuators. Specifically, we request all information submitted to you by any entity, other than Invensys Building System, relating to the MA 2xx-series Actuators.

Please invoice us for the fee amount for the production of information or, if pre-payment of fees is necessary, let us know at your earliest convenience the amount and procedure for remittance.

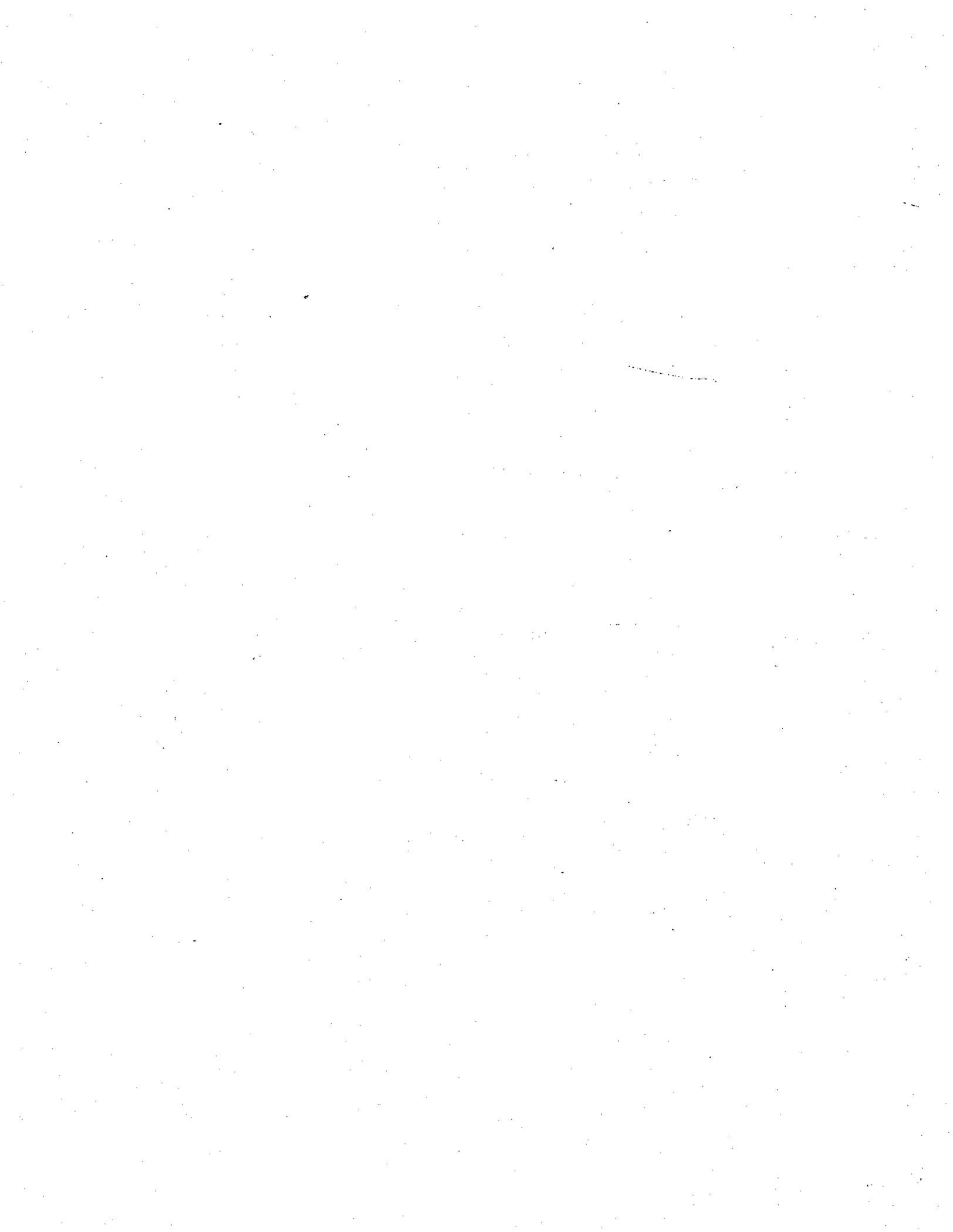
Very truly yours,

ROUSE HENDRICKS
GERMAN MAY PC

By


Leigh Bishop

LB:dja





U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, DC 20207

Todd A. Stevenson
Deputy Secretary and
Freedom of Information Officer
Office of the Secretary

Tel: 301-504-0785X1239
Fax: 301-504-0127
Email: tstevenson@cpsc.gov

October 11, 2000

CERTIFIED MAIL

Leigh Bishop
Rouse Hendricks German May
1 Petticoat Lane Building
1010 Walnut Suite 400
Kansas City, MO 64106

Re: FOIA Request S0100042: Invensys Building Systems (or Barber-Colman Co.) or Siebe Environmental Controls Siebe MA 2 Series Actuators / Information Submitted to the Commission or other Corrective Action or Recall Records**

Dear Ms. Bishop:

Thank you for your Freedom of Information Act (FOIA) request to the U. S. Consumer Product Safety Commission (Commission). We must withhold from disclosure the records responsive to your request, which are from the Commission's Office of Compliance active law enforcement investigatory file designated PI000106, pursuant to the FOIA Exemptions 5 and 7(A), 5 U.S.C. §§ 552(b)(5) and (b)(7)(A). Exemption 5 provides for the withholding from disclosure of inter-agency and intra-agency memoranda which would not be available by law to a party other than an agency in litigation with the agency. Exemption 7(A) provides for the withholding from disclosure records or information compiled for law enforcement purposes, to the extent that the production of such law enforcement records or information could reasonably be expected to interfere with enforcement proceedings.

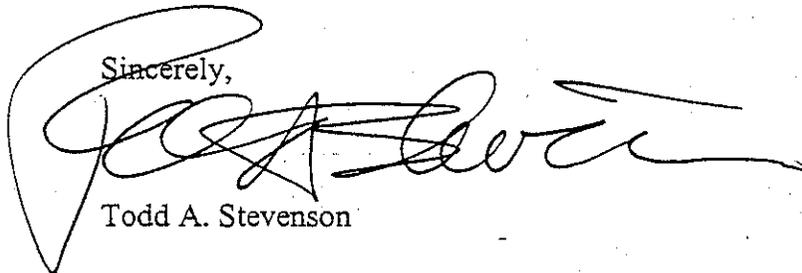
The records being withheld consist of internal staff memoranda and correspondence containing recommendations, opinions, suggestions and analyses of the Commission's technical and legal staffs. The records constitute both predecisional and deliberative discussion that clearly falls within the attorney-client and attorney-work product privileges. Any factual materials in the records not covered by some other exemption are inextricably intertwined with exempt materials or the disclosure of the factual materials would itself expose the deliberative process. We have determined that the disclosure of these certain law enforcement investigatory

records responsive to your request would be contrary to the public interest. It would not be in the public interest to disclose these materials because disclosure would (1) impair the frank exchange of views necessary with respect to such matters, and (2) prematurely reveal information used in the investigation, thereby interfering with this and other matters by disclosing the government's basis for pursuing this matter.

According to the Commission's regulations implementing the FOIA at 16 C.F.R. § 1015.7, a denial of access to records may be appealed to the General Counsel of the Commission within thirty (30) days of your receipt of this letter. An appeal must be in writing and addressed to: FOIA APPEAL, General Counsel, ATTN: Office of the Secretary, U.S. Consumer Product Safety Commission, Washington, D.C. 20207.

You may want to resubmit your request in a few months upon completion of the case. Processing this request, performing the file searches and reviewing the information, cost the Commission \$50.00. In this instance, we have decided to waive all of the charges.

Sincerely,

A handwritten signature in black ink, appearing to read "Todd A. Stevenson", written over a large, stylized, handwritten flourish that extends to the left and loops back under the signature.

Todd A. Stevenson



DEN
0100042

U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, DC 20207

Todd A. Stevenson
Deputy Secretary and
Freedom of Information Officer
Office of the Secretary

Tel: 301-504-0785X1239
Fax: 301-504-0127
Email: tstevenson@cpsc.gov

October 11, 2000

CERTIFIED MAIL

Leigh Bishop
Rouse Hendricks German May
1 Petticoat Lane Building
1010 Walnut Suite 400
Kansas City, MO 64106

Re: FOIA Request S0100042: Invensys Building Systems (or Barber-Colman Co.) or Siebe Environmental Controls Siebe MA 2** Series Actuators / Information Submitted to the Commission or other Corrective Action or Recall Records

Dear Ms. Bishop:

Thank you for your Freedom of Information Act (FOIA) request to the U. S. Consumer Product Safety Commission (Commission). We must withhold from disclosure the records responsive to your request, which are from the Commission's Office of Compliance active law enforcement investigatory file designated PI000106, pursuant to the FOIA Exemptions 5 and 7(A), 5 U.S.C. §§ 552(b)(5) and (b)(7)(A). Exemption 5 provides for the withholding from disclosure of inter-agency and intra-agency memoranda which would not be available by law to a party other than an agency in litigation with the agency. Exemption 7(A) provides for the withholding from disclosure records or information compiled for law enforcement purposes, to the extent that the production of such law enforcement records or information could reasonably be expected to interfere with enforcement proceedings.

The records being withheld consist of internal staff memoranda and correspondence containing recommendations, opinions, suggestions and analyses of the Commission's technical and legal staffs. The records constitute both predecisional and deliberative discussion that clearly falls within the attorney-client and attorney-work product privileges. Any factual materials in the records not covered by some other exemption are inextricably intertwined with exempt materials or the disclosure of the factual materials would itself expose the deliberative process. We have determined that the disclosure of these certain law enforcement investigatory

records responsive to your request would be contrary to the public interest. It would not be in the public interest to disclose these materials because disclosure would (1) impair the frank exchange of views necessary with respect to such matters, and (2) prematurely reveal information used in the investigation, thereby interfering with this and other matters by disclosing the government's basis for pursuing this matter.

According to the Commission's regulations implementing the FOIA at 16 C.F.R. § 1015.7, a denial of access to records may be appealed to the General Counsel of the Commission within thirty (30) days of your receipt of this letter. An appeal must be in writing and addressed to: FOIA APPEAL, General Counsel, ATTN: Office of the Secretary, U.S. Consumer Product Safety Commission, Washington, D.C. 20207.

You may want to resubmit your request in a few months upon completion of the case. Processing this request, performing the file searches and reviewing the information, cost the Commission \$50.00. In this instance, we have decided to waive all of the charges.

Sincerely,

Todd A. Stevenson

ROUSE HENDRICKS GERMAN MAY PC

ONE PETTICOAT LANE BUILDING
1010 WALNUT • SUITE 400
KANSAS CITY, MISSOURI
64106

TELEPHONE
(816) 471-7700

FACSIMILE
(816) 471-2221
rhgm.com

August 29, 2000

Via Fax: 301-504-0359 and Mail

Richard K. Wright
Compliance Officer
Consumer Product Safety Commission
Washington, D.C. 20207-0001

Re: Freedom of Information Act request

Dear Mr. Wright:

As we discussed earlier this month, pursuant to the Freedom of Information Act, 5 U.S.C. § 552(a)(3) and the accompanying regulations promulgated by the Consumer Product Safety Commission, Invensys Building Systems (formerly Barber-Colman Co., Inc.) a/k/a Siebe Environmental Controls, requests that you make available the following information:

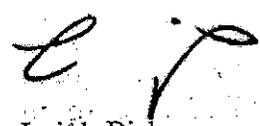
1. All information and data in your possession regarding Siebe MA 2xx-series Actuators. Specifically, we request all information submitted to you by any entity, other than Invensys Building System, relating to the MA 2xx-series Actuators.

Please invoice us for the fee amount for the production of information or, if pre-payment of fees is necessary, let us know at your earliest convenience the amount and procedure for remittance.

Very truly yours,

ROUSE HENDRICKS
GERMAN MAY PC

By


Leigh Bishop

LB:dja

RECEIVED
CPSC
OFFICE OF COMPLIANCE
200 SEP 25 PM 4:16

17A

9999

RC45

D.Y

5010042



U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, D.C. 20207
October 10, 2000

Leigh Bishop
Rouse Hendricks German May
1 Petticoat Lane Building
1010 Walnut, Suite 400
Kansas City, MO 64106-

RE: FOIA Request No. S-2000100042 (Invensys Building Systems Actuators)

Dear Ms. Bishop:

This is to acknowledge receipt of your Freedom of Information Act (FOIA) request seeking records from the Consumer Product Safety Commission.

Due to the heavy volume of FOIA requests we have received, and because of certain procedural steps we are required to take under our statute, there may be substantial delays in responding to many requests. Please be assured that every effort is being made to process each request as equitably as possible and that the records you requested which can be released will be made available to you at the earliest possible date.

If you have any questions concerning your request, feel free to contact this office at (301) 504-0785.

Sincerely,

Todd A. Stevenson
Freedom of Information Officer
Office of the Secretary



U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, DC 20207

Michael S. Solender
General Counsel
Office of the General Counsel

Tel: (301) 504-0980
Fax: (301) 504-0403
Email: cpsc-gc@cpsc.gov

December 13, 2000

Stephen R. Bough, Esq.
4551 West 107th Street
Suite 355
Overland Park, Kansas 66207

Re: FOIA Appeals S0090051 and S0090052
Whirlpool Dishwashers

Dear Mr. Bough:

By letter dated October 27, 2000, you appealed the decision of the Commission's Freedom of Information (FOI) Officer to withhold information responsive to your Freedom of Information Act (FOIA) request. Under authority delegated to me by the Commission, 16 C.F.R. § 1015.7, I have reviewed your appeal and the responsive information. As explained below, I affirm the FOI Officer's decision to withhold the information pursuant to FOIA Exemptions 3, 4, 5, 7A, 7D, and 7E. 5 U.S.C. §§ 552(b)(3), (b)(4), (b)(5), (b)(7)(A), (b)(7)(D), and (b)(7)(E). You have been provided with certain responsive materials that are numbered. We will refer to the withheld materials by their numbers from that number sequence.

FOIA Exemption 3 provides for withholding information that is specifically exempted from disclosure by another statute. In applying FOIA Exemption 3, I am relying on section 6(a)(2) of the Consumer Product Safety Act (CPSA). 15 U.S.C. § 2055(a)(2).

Section 6(a)(2) expressly prohibits the disclosure of information reported to or otherwise obtained by the Commission that contains or relates to trade secrets or other confidential commercial information. Section 6(a)(2) incorporates Exemption 4 of the FOIA. That exemption protects trade secrets and confidential commercial information obtained from a person. Commercial information is confidential if disclosure is likely (1) to impair the government's ability to obtain the necessary information in the future or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained. In addition, voluntarily-submitted information is confidential provided it is not customarily disclosed to the public by the submitter. The information being withheld pursuant to FOIA Exemption 3, relying on CPSA section 6(a)(2), and Exemption 4 consists of production quantities, engineering plans and drawings, and customer and supplier information from pages 5-

Stephen R. Bough, Esq.

Page 2

16, 80-81, 81A-81B, 131, 133-161, 167-171, and 175-250 of the withheld materials. We are withholding portions of pages 22, 24-34, 36-50, 55, and 255.

In applying Exemption 3, we are relying also on CPSA section 6(b)(1). Section 6(b)(1) requires the Commission to take reasonable steps to assure that product-specific information is accurate and that its release would be fair in the circumstances and reasonably related to effectuating the purposes of the CPSA. It would not be fair in these circumstances to disclose notes, drafts or minutes of meetings to discuss and negotiate settlement agreements with a company. Specifically, we are withholding pages 103-108 and 162-166 on these grounds. In addition, there are 40 consumer product complaints for which the Commission has not received confirmation of the accuracy of the information therein. Therefore, we are withholding them pursuant to Exemption 3, relying also on CPSA section 6(b)(1).

FOIA Exemption 5 provides for the withholding of certain inter-agency and intra-agency documents and incorporates the deliberative process privilege. This privilege protects advice, recommendations, and opinions that are part of the deliberative, consultative, and decision-making processes of the agency. Although this privilege applies only to the opinions or recommendations in a document and not to factual information, facts are withheld here because they are inextricably intertwined with the exempt portions. The information being withheld consists of a portion of page 25, an intra-agency document. This portion of page 25 is also being withheld pursuant to FOIA Exemption 7(E). Exemption 7(E) provides for the withholding of investigatory information compiled for law enforcement purposes that would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law. I have determined that this portion of page 25 meets the criteria for withholding pursuant to Exemption 7(E).

FOIA Exemption 7(D) provides for the withholding of records or information compiled for law enforcement purposes which could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis. I have determined that since the disclosure of certain portions of pages 25-47, 49, 50, and 55, would disclose the identity of confidential sources, they are being withheld.

FOIA Exemption 7(A) provides for the withholding of investigatory information compiled for law enforcement purposes to the extent that the production of such information could reasonably be expected to interfere with enforcement proceedings. Since this case has been reopened for investigation, all of the documents being withheld under the above-mentioned FOIA exemptions are also being withheld under Exemption 7(A).

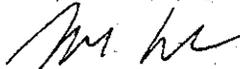
Stephen R. Bough, Esq.

Page 3

Finally, the records that were determined to be non-responsive to your initial FOIA request are now being handled as a separate FOIA request. Accordingly, it will be addressed under separate cover.

You have the right to seek judicial review of this decision as provided by 5 U.S.C. § 552(a)(4)(B).

Sincerely,



Michael S. Solender

SHAMBERG, JOHNSON & BERGMAN

Chartered

JOHN E. SHAMBERG†
LYNN R. JOHNSON*
VICTOR A. BERGMAN*
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October 27, 2000

Mr. Todd A. Stevenson
Deputy Secretary and Freedom of Information Officer
Office of the Secretary
U.S. Consumer Product Safety Commission
Washington, D.C. 20207

FOIA Appeals
General Counsel
Attn: Office of the Secretary
U.S. Consumer Product Safety Commission
Washington, D.C. 20207

Re: Whirlpool Dishwasher Fires

Dear Mr. Stevenson and General Counsel:

Thank you for your letter of October 6, 2000 regarding my Freedom of Information Act request to the U.S. Consumer Product Safety Commission. We appreciate your thorough response and believe that some background on why I am making the Freedom of Information Act request will be helpful in my appeal.

I represent the family of a young girl who died in a fire. According to the Fire Marshall in the State of Kansas. This fire most likely was caused by a defective dishwasher sold by Whirlpool. A lawsuit has been filed and is currently pending. Whirlpool has disclosed to us almost twenty (20) fires which have allegedly started in dishwashers which were not covered by a recall. We believe there to be a systemic problem with these dishwashers. Furthermore, Whirlpool's own documents reveal that they do not know the root cause of the fires in the recalled dishwashers and that the only hope that these fires will not continue is that a connector switch is burning out, in essence acting as a fuse. Obviously, a conductor is not a fuse and by Whirlpool's own records the fires continue.

With that in mind, we respectfully appeal the denial of some information from my Freedom of Information Act Request. Attached to this letter is the CPSC's response of October 6, 2000. On page three, it is noted that "we are withholding records that are not part of the file and are not responsive to your request at pages 18-21, 23, 35, 61, 63, 85-88, 101, 172-174, 245-247, 252-254, 256-279, 281-302, 305-312, 315, 317-321, 323-327, 332-336, 338-342 and 344-375." Without knowing what is in these records, it is impossible for me to argue that my request includes those documents. However, given my three Freedom of Information Act requests, which are

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OFFICE OF THE SECRETARY
FREEDOM OF INFORMATION

Mr. Todd A. Stevenson
FOIA Appeals - General Counsel
October 27, 2000
Page 2

attached as Exhibits 2, 3 and 4, I believe all documents in the CPSC's possession regarding Whirlpool dishwashers would be responsive to my requests. Pursuant to the Freedom of Information Act, I hereby request any and all documents in the CPSC's possession regarding Whirlpool dishwashers. Since no exemption is being claimed for these documents, I would hope that this appeal and this further clarification of my request will allow for these documents to be produced to me.

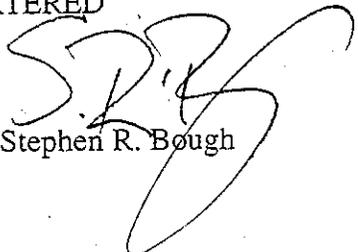
On page four of the October 6, 2000 response, the Commission takes the position that FOIA Exemption 3 and the Consumer Product Safety Act 6(b)(1) allows for the Commission to withhold information regarding consumer complaints where the Commission has not taken "reasonable steps" to ensure that the information is accurate. I can appreciate and understand that the Commission does not have unlimited resources to confirm consumer complaints. However, the only reason that the Consumer Product Safety Commission exists is to protect United States citizens from defective products. That is the sole purpose of the Consumer Product Safety Act and disclosing all complaints would be the most reasonable way to effectuate the purpose of the Consumer Product Safety Act. Keep in mind a United States citizen died in the fire where it is alleged that the Whirlpool dishwasher burnt down the home. The Consumer Product Safety Commission has been entrusted with the important duty of protecting our citizens from defective products. While I appreciate that you do not have the resources to investigate every complaint, every complaint needs to be investigated. If the Consumer Product Safety Commission does not have the resources, I will do so on behalf of my client. However, United States citizens trust that the Consumer Product Safety Commission will investigate these claims and the only way that that can be achieved is through my client following up with these complaints of fires. My client hopes that the horrible nature in which their daughter died would be reason enough for the Consumer Product Safety Commission to disclose all consumer complaints about this product.

Thank you for entertaining this appeal of my FOIA request and please do not hesitate to contact me should you have any questions.

Sincerely,

SHAMBERG, JOHNSON & BERGMAN,
CHARTERED

By:


Stephen R. Bough

SRB/kk
Enclosures

SHAMBERG, JOHNSON & BERGMAN

Chartered

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Kansas City, MO 64106

August 29, 2000

Freedom of Information Officer
U.S. Consumer Product Safety Commission
Washington, D.C. 20207

Re: Whirlpool Dishwasher Fires

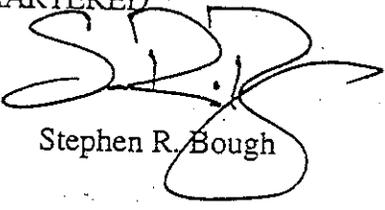
Dear Sir or Madam:

Pursuant to the Freedom of Information Act, we are respectfully requesting any and all information regarding Whirlpool's compliance with § 37 of the CPSA. We understand that there was a recall in 1996. We also understand that the CPSC has knowledge of at least five fires outside of the recall area. Additionally, we believe that there have been an excess of three civil law suits regarding New Generation dishwashers in which fires took place. Please produce any and all documents you have regarding § 37 compliance with the CPSA by Whirlpool in relationship to these multiple law suits.

Sincerely,

SHAMBERG, JOHNSON & BERGMAN,
CHARTERED

By:


Stephen R. Bough

SRB/kk

SHAMBERG, JOHNSON & BERGMAN

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JOHN E. SHAMBERG†
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August 29, 2000

Freedom of Information Officer
U.S. Consumer Product Safety Commission
Washington, D.C. 20207

Re: Whirlpool Dishwasher Fires

Dear Sir or Madam:

Pursuant to the Freedom of Information Act, please produce any and all information you may have regarding an ongoing investigation of Whirlpool dishwashers. Following the 1996 recall of Whirlpool dishwashers the CPSC gained knowledge of at least five other fires outside of the recall. To add to those five fires, I know that at least two deaths are associated with Whirlpool dishwashers outside of the recall area.

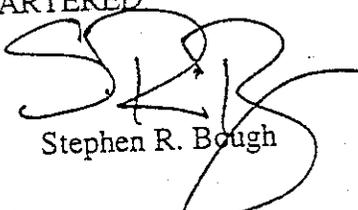
We believe that the CPSC has at one time investigated, or is now investigating, these fires. We are respectfully requesting any and all information regarding that ongoing investigation.

Thank you for your prompt response to this Freedom of Information Act request and please do not hesitate to call me should you have any questions.

Sincerely,

SHAMBERG, JOHNSON & BERGMAN,
CHARTERED

By:


Stephen R. Bough

SRB/kk

SHAMBERG, JOHNSON & BERGMAN

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Kansas City, MO 64106

August 29, 2000

Freedom of Information Officer
U.S. Consumer Product Safety Commission
Washington, D.C. 20207

Re: Whirlpool Dishwasher Fires

Dear Sir or Madam:

Pursuant to the Freedom of Information Act, we respectfully request any and all information you have regarding a 1989 recall of Whirlpool dishwashers. This request encompasses any complaints by citizens.

Please do not hesitate to contact me should you have any questions about this Freedom of Information Act request and I look forward to receiving your documents in the near future.

Sincerely,

SHAMBERG, JOHNSON & BERGMAN,
CHARTERED

By:


Stephen R. Bough

SRB/kk

SHAMBERG, JOHNSON & BERGMAN

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August 29, 2000

Freedom of Information Officer
U.S. Consumer Product Safety Commission
Washington, D.C. 20207

Re: Whirlpool Dishwasher Fires

Dear Sir or Madam:

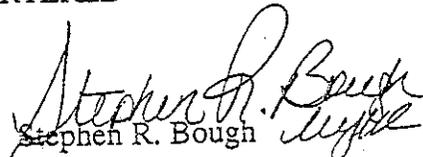
Pursuant to the Freedom of Information Act, we are respectfully requesting any and all documents you have relating to a 1994 closed-door meeting with Whirlpool regarding dishwashers. We understand that there was a voluntary action plan instituted. We are seeking information on any and all consumers who were damaged by fires with these dishwashers as well as any other follow up information that you may have.

I look forward to receiving these documents and please do not hesitate to call me should you have any questions.

Sincerely,

SHAMBERG, JOHNSON & BERGMAN,
CHARTERED

By:


Stephen R. Bough

SRB/kk



U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, DC 20207

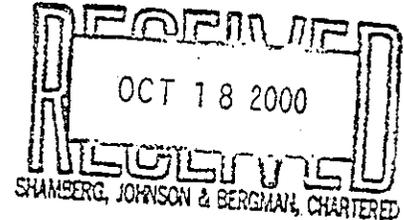
Todd A. Stevenson
Deputy Secretary and
Freedom of Information Officer
Office of the Secretary

Tel: 301-504-0785X1239
Fax: 301-504-0127
Email: tstevenson@cpsc.gov

October 6, 2000

CERTIFIED MAIL

Stephen R. Bough
Shamberg, Johnson & Bergman
4551 West 107th Street Suite 355
Overland, KS 66207



Re: FOIA Requests S0090051 and S0090052: Whirlpool Dishwashers / Complaints, Reported Incidents, Investigations of Incidents and Corrective Action or Recall File RP940096/RP960134 / File Search 1990 to Present

Dear Mr. Bough:

Thank you for your Freedom of Information Act (FOIA) requests seeking information from the U.S. Consumer Product Safety Commission (Commission). The records from the Commission files responsive to your requests have been processed and copies of the releasable responsive records are enclosed. The enclosed records include file information generated by the Commission itself or its contractors for regulatory or enforcement purposes. These records are from law enforcement investigatory file including hazard assessments, memoranda, and other correspondence, notes and documents. The Commission has established management systems under which supervisors are responsible for reviewing the work of their employees or contractors. The file information materials are final and have been prepared and accepted by the Commission's staff under such review systems. The Commission believes that it has taken reasonable steps to assure the accuracy of the information. Please note that the Commission's staff, not the Commissioners themselves, made the preliminary determination that this product presented a substantial risk of injury to the public as defined by the Consumer Product Safety Act (CPSA).

The enclosed records include twenty-three Epidemiologic Investigation Reports with the underlying and supporting documentation and two reports from local fire departments. The Commission has received this information from its formal investigation systems. Through these systems the Commission hopes to learn when specific products are associated with illness, injury or death. The Commission believes that it has taken reasonable steps to assure the accuracy of this information. While conducting the interviews for the investigation reports, Commission staff or contractors have spoken with the individuals involved or with others who witnessed or

are familiar with the incidents. Where possible, Commission staff has examined the products reportedly involved in the incidents. Although the Commission has investigated the incidents described in the investigation reports, the Commission has not necessarily determined the cause of the incidents.

Also enclosed are records pertaining to thirty-six product complaints and reported incidents that were submitted to the Commission by consumers and others. The consumers or submitters have confirmed the accuracy of the information in the complaints and reported incidents. The Commission has neither investigated the incidents nor conducted or obtained any evaluations of the products that corroborate the substance of the information contained in the complaints and reported incidents. In some of the complaints and reported incidents we have removed the identities of the complainants at their request.

Other records responsive to your request are being withheld from the Commission's law enforcement investigatory file, RP940096/RP960134, pursuant to the Exemptions 3, 4, 5, 7(D) and 7(E), 5 U.S.C. §§ 552(b)(3), (b)(4), (b)(5), 7(D) and (b)(7)(E), and sections 6(a)(2), 6(b)(1) and 25(c) of the CPSA, 15 U.S.C. §§ 2055(a)(2) and (b)(1), and 2074(c). FOIA Exemption 3 provides for the withholding from disclosure of matters that are specifically exempted from disclosure by another statute. In applying FOIA Exemption 3 to these records, we are relying in part on section on CPSA section 6(a)(2) to withhold files that contain proprietary and confidential information. We must withhold pursuant to Exemptions 3 and 4 and section 6(a)(2) of the CPSA. Section 6(a)(2) prohibits the Commission from disclosing information that is exempt from disclosure under Exemption 4 of the FOIA. That exemption protects trade secrets and confidential commercial information directly related to a firm's business that the firm has not made public and whose disclosure could give a substantial commercial advantage to a competitor. Specifically, we are withholding production quantities, engineering plans and drawings, and customer and supplier information from pages 5-16, 80-81, 81A-81B, 131, 133-161, 167-171, and 175-250. We are withholding portions of pages 22, 24-34, 36-50, 55 and 255.

We are also relying in part to section 6(b)(1) of the CPSA. That section prohibits the Commission from disclosing information about a consumer product that identifies a manufacturer or private labeler unless the Commission has taken "reasonable steps" to assure that the information is accurate, that disclosure is fair in the circumstances, and that disclosure will be reasonably related to effectuating the purposes of the laws that the Commission administers. It would not be fair in the circumstances to disclose a firm's notes, drafts or minutes of meetings to discuss and negotiate settlement agreements, when the company has requested confidentiality and such records are protected from disclosure pursuant to 16 C.F.R. § 1101.33. Specifically, we are withholding notes, drafts and negotiation materials from pages 103-108 and 162-166.

Certain preliminary internal staff memoranda and analyses, including a portion of page 25, are also being withheld pursuant to FOIA Exemptions 5, and 7(E). Exemption 5 provides for the withholding from disclosure of inter-agency and intra-agency memoranda which would not be available by law to a party other than an agency in litigation with the agency. Exemption 7(E) provides for the withholding from disclosure records or information compiled

for law enforcement purposes, to the extent that the production of such law enforcement records or information would disclose techniques and procedures for law enforcement investigations or prosecutions or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law. The staff memoranda and analyses being withheld are both predecisional and deliberative, consisting of recommendations, opinions, suggestions and analyses. Any factual materials in the memoranda not covered by some other exemption are inextricably intertwined with exempt materials or the disclosure of the factual materials would itself expose the deliberative process. We have determined that the disclosure of the law enforcement investigatory records responsive to your request would be contrary to the public interest. It would not be in the public interest to disclose these materials because disclosure would (1) impair the frank exchange of views necessary with respect to such matters, and (2) reveal the techniques, guidelines and strategies utilized by the investigative and legal staff in developing the information regarding this investigation and other on-going investigations, which if disclosed would significantly risk circumvention of the statutes and regulations that the Commission administers.

FOIA Exemption 7(D) provides for the withholding from disclosure of records or information compiled for law enforcement purposes to the extent that the production of such records could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis. We have determined that the disclosure of the identities of confidential sources at pages 25-47, 49, 50 and 55, would be contrary to the public interest. It would not be in the public interest to disclose confidential sources or trade complaints because disclosure would discourage the public from making such trade complaints and deprive the Commission of that source. Confidential sources or trade complaints are an important source of information for the Commission where there are possible violations of federal law and regulations, and the anonymity of the complainants are a vital aspect to this means of information gathering.

You will note that in some documents disclosed information that could identify injured parties has been deleted, because section 25(c) of the CPSA, 15 U.S.C. § 2074(c)(1), prohibits such disclosures without the consent of those individuals. In some cases the parties have denied consent or consent has not otherwise been obtained.

We are withholding records that are not part of the file and are not responsive to your request at pages 18-21, 23, 35, 61, 63, 85-88, 101, 172-174, 245-247, 252-254, 256-279, 281-302, 305-312, 315, 317-321, 323-327, 332-336, 338-342 and 344-375.

Finally, other records from the Commission files responsive to your request relate to thirty-six product complaints and reported incidents that the Commission has obtained from consumers, attorneys for consumers and others. The Commission has not received confirmation of the accuracy of the information in the complaints and reported incidents. Pursuant to Exemption 3 of the FOIA, 5 U.S.C. § 552(b)(3) and section 6(b)(1) of the Consumer Product Safety Act (CPSA), 15 U.S.C. § 2055(b)(1), and our regulations, 16 C.F.R. § 1101.32, we must withhold the unconfirmed product complaints and reported incidents.

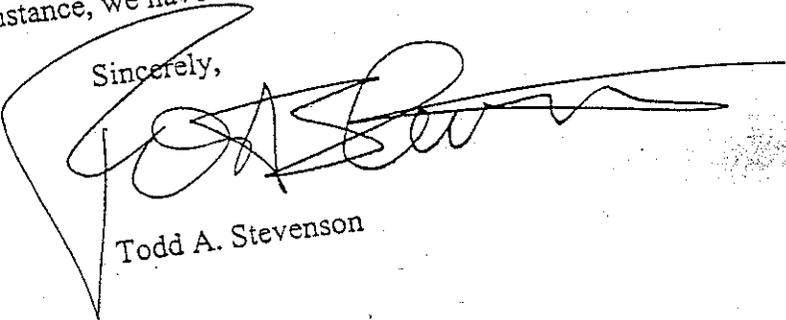
n R. Bough, Shamberg, Johnson & Bergman

FOIA Exemption 3 provides for the withholding from disclosure of matters that are specifically exempted from disclosure by another statute. In applying FOIA Exemption 3, we rely on section 6(b)(1) of the CPSA. That section prohibits the Commission from disclosing information about a consumer product that identifies a manufacturer or private labeler unless the Commission has taken "reasonable steps" to assure that the information is accurate, and that disclosure will be reasonably related to the purposes of the laws that the Commission administers. See Commission regulation, 16 C.F.R. § 1101.32. The Commission has conducted an investigation of the complaint and reported incident unless: (1) the Commission has conducted a technical, scientific, or other evaluation of the product that is the subject of the complaint and reported incident, and the investigation corroborates the substance of the complaint and reported incident; (2) the Commission has conducted or obtained a technical, scientific, or other evaluation of the product that is the subject of the complaint and reported incident, and the investigation corroborates the substance of the complaint and reported incident; or (3) the consumer or person reporting or submitting the incident confirms the accuracy of the information. The Commission did not take any of these steps with regard to these certain consumer complaints and reported incidents responsive to your request. While it has been Commission practice since June 1983 to seek confirmation of incoming consumer complaints and incidents, the Commission does not have the resources to seek confirmation of the complaints and incidents where a consumer has not responded to our request for confirmation of the information.

According to the Commission's regulations implementing the FOIA at 16 C.F.R. § 1015.7, a partial denial of access to records may be appealed to the General Counsel of the Commission within thirty (30) days of your receipt of this letter. An appeal must be in writing and addressed to: FOIA APPEAL, General Counsel, ATTN: Office of the Secretary, U.S. Consumer Product Safety Commission, Washington, D. C. 20207.

Processing this request, performing the file searches and preparing the information, cost the Commission \$200.00. In this instance, we have decided to waive all of the charges.

Sincerely,



Todd A. Stevenson

Enclosures

SHAMBERG, JOHNSON & BERGMAN

CPSC/DEC OF THE SECRETARY
FREEDOM OF INFORMATION ACT
Chartered

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STEPHEN R. BOUGH*
ANN E. AGNEW*

*ADMITTED IN KANSAS & MISSOURI
OF COUNSEL

August 29, 2000

Freedom of Information Officer
U.S. Consumer Product Safety Commission
Washington, D.C. 20207

Re: Whirlpool Dishwasher Fires

Dear Sir or Madam:

Pursuant to the Freedom of Information Act, please produce any and all information you may have regarding an ongoing investigation of Whirlpool dishwashers. Following the 1996 recall of Whirlpool dishwashers the CPSC gained knowledge of at least five other fires outside of the recall. To add to those five fires, I know that at least two deaths are associated with Whirlpool dishwashers outside of the recall area.

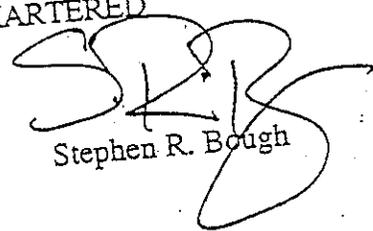
We believe that the CPSC has at one time investigated, or is now investigating, these fires. We are respectfully requesting any and all information regarding that ongoing investigation.

Thank you for your prompt response to this Freedom of Information Act request and please do not hesitate to call me should you have any questions.

Sincerely,

SHAMBERG, JOHNSON & BERGMAN,
CHARTERED

By:


Stephen R. Bough

SRB/kk

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SHAMBERG, JOHNSON & BERGMAN

OFFICE OF THE SECRETARY
FREEDOM OF INFORMATION ACT

Chartered

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August 29, 2000

Freedom of Information Officer
U.S. Consumer Product Safety Commission
Washington, D.C. 20207

Re: Whirlpool Dishwasher Fires

Dear Sir or Madam:

Pursuant to the Freedom of Information Act, we are respectfully requesting any and all documents you have relating to a 1994 closed-door meeting with Whirlpool regarding dishwashers. We understand that there was a voluntary action plan instituted. We are seeking information on any and all consumers who were damaged by fires with these dishwashers as well as any other follow up information that you may have.

I look forward to receiving these documents and please do not hesitate to call me should you have any questions.

Sincerely,

SHAMBERG, JOHNSON & BERGMAN,
CHARTERED

By:

Stephen R. Bough
Stephen R. Bough

SRB/kk

S-0090052

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PART OF RP940096
RP960134

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D.Y

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WHL

U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, DC 20207

Todd A. Stevenson
Deputy Secretary and
Freedom of Information Officer
Office of the Secretary

Tel: 301-504-0785X1239
Fax: 301-504-0127
Email: tstevenson@cpsc.gov

October 6, 2000

CERTIFIED MAIL

Stephen R. Bough
Shamberg, Johnson & Bergman
4551 West 107th Street Suite 355
Overland, KS 66207

A handwritten signature in black ink, appearing to be "WHL".

Re: FOIA Requests S0090051 and S0090052: Whirlpool Dishwashers / Complaints, Reported Incidents, Investigations of Incidents and Corrective Action or Recall File RP940096/RP960134 / File Search 1990 to Present

Dear Mr. Bough:

Thank you for your Freedom of Information Act (FOIA) requests seeking information from the U.S. Consumer Product Safety Commission (Commission). The records from the Commission files responsive to your requests have been processed and copies of the releasable responsive records are enclosed. The enclosed records include file information generated by the Commission itself or its contractors for regulatory or enforcement purposes. These records are from law enforcement investigatory file including hazard assessments, memoranda, and other correspondence, notes and documents. The Commission has established management systems under which supervisors are responsible for reviewing the work of their employees or contractors. The file information materials are final and have been prepared and accepted by the Commission's staff under such review systems. The Commission believes that it has taken reasonable steps to assure the accuracy of the information. Please note that the Commission's staff, not the Commissioners themselves, made the preliminary determination that this product presented a substantial risk of injury to the public as defined by the Consumer Product Safety Act (CPSA).

The enclosed records include twenty-three Epidemiologic Investigation Reports with the underlying and supporting documentation and two reports from local fire departments. The Commission has received this information from its formal investigation systems. Through these systems the Commission hopes to learn when specific products are associated with illness, injury or death. The Commission believes that it has taken reasonable steps to assure the accuracy of this information. While conducting the interviews for the investigation reports, Commission staff or contractors have spoken with the individuals involved or with others who witnessed or

are familiar with the incidents. Where possible, Commission staff has examined the products reportedly involved in the incidents. Although the Commission has investigated the incidents described in the investigation reports, the Commission has not necessarily determined the cause of the incidents.

Also enclosed are records pertaining to thirty-six product complaints and reported incidents that were submitted to the Commission by consumers and others. The consumers or submitters have confirmed the accuracy of the information in the complaints and reported incidents. The Commission has neither investigated the incidents nor conducted or obtained any evaluations of the products that corroborate the substance of the information contained in the complaints and reported incidents. In some of the complaints and reported incidents we have removed the identities of the complainants at their request.

Other records responsive to your request are being withheld from the Commission's law enforcement investigatory file, RP940096/RP960134, pursuant to the Exemptions 3, 4, 5, 7(D) and 7(E), 5 U.S.C. §§ 552(b)(3), (b)(4), (b)(5), 7(D) and (b)(7)(E), and sections 6(a)(2), 6(b)(1) and 25(c) of the CPSA, 15 U.S.C. §§ 2055(a)(2) and (b)(1), and 2074(c). FOIA Exemption 3 provides for the withholding from disclosure of matters that are specifically exempted from disclosure by another statute. In applying FOIA Exemption 3 to these records, we are relying in part on section on CPSA section 6(a)(2) to withhold files that contain proprietary and confidential information. We must withhold pursuant to Exemptions 3 and 4 and section 6(a)(2) of the CPSA. Section 6(a)(2) prohibits the Commission from disclosing information that is exempt from disclosure under Exemption 4 of the FOIA. That exemption protects trade secrets and confidential commercial information directly related to a firm's business that the firm has not made public and whose disclosure could give a substantial commercial advantage to a competitor. Specifically, we are withholding production quantities, engineering plans and drawings, and customer and supplier information from pages 5-16, 80-81, 81A-81B, 131, 133-161, 167-171, and 175-250. We are withholding portions of pages 22, 24-34, 36-50, 55 and 255.

We are also relying in part to section 6(b)(1) of the CPSA. That section prohibits the Commission from disclosing information about a consumer product that identifies a manufacturer or private labeler unless the Commission has taken "reasonable steps" to assure that the information is accurate, that disclosure is fair in the circumstances, and that disclosure will be reasonably related to effectuating the purposes of the laws that the Commission administers. It would not be fair in the circumstances to disclose a firm's notes, drafts or minutes of meetings to discuss and negotiate settlement agreements, when the company has requested confidentiality and such records are protected from disclosure pursuant to 16 C.F.R. § 1101.33. Specifically, we are withholding notes, drafts and negotiation materials from pages 103-108 and 162-166.

Certain preliminary internal staff memoranda and analyses, including a portion of page 25, are also being withheld pursuant to FOIA Exemptions 5, and 7(E). Exemption 5 provides for the withholding from disclosure of inter-agency and intra-agency memoranda which would not be available by law to a party other than an agency in litigation with the agency. Exemption 7(E) provides for the withholding from disclosure records or information compiled

for law enforcement purposes, to the extent that the production of such law enforcement records or information would disclose techniques and procedures for law enforcement investigations or prosecutions or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law. The staff memoranda and analyses being withheld are both predecisional and deliberative, consisting of recommendations, opinions, suggestions and analyses. Any factual materials in the memoranda not covered by some other exemption are inextricably intertwined with exempt materials or the disclosure of the factual materials would itself expose the deliberative process. We have determined that the disclosure of the law enforcement investigatory records responsive to your request would be contrary to the public interest. It would not be in the public interest to disclose these materials because disclosure would (1) impair the frank exchange of views necessary with respect to such matters, and (2) reveal the techniques, guidelines and strategies utilized by the investigative and legal staff in developing the information regarding this investigation and other on-going investigations, which if disclosed would significantly risk circumvention of the statutes and regulations that the Commission administers. .

FOIA Exemption 7(D) provides for the withholding from disclosure of records or information compiled for law enforcement purposes to the extent that the production of such records could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis. We have determined that the disclosure of the identities of confidential sources at pages 25-47, 49, 50 and 55, would be contrary to the public interest. It would not be in the public interest to disclose confidential sources or trade complaints because disclosure would discourage the public from making such trade complaints and deprive the Commission of that source. Confidential sources or trade complaints are an important source of information for the Commission where there are possible violations of federal law and regulations, and the anonymity of the complainants are a vital aspect to this means of information gathering.

You will note that in some documents disclosed information that could identify injured parties has been deleted, because section 25(c) of the CPSA, 15 U.S.C. § 2074(c)(1), prohibits such disclosures without the consent of those individuals. In some cases the parties have denied consent or consent has not otherwise been obtained.

We are withholding records that are not part of the file and are not responsive to your request at pages 18-21, 23, 35, 61, 63, 85-88, 101, 172-174, 245-247, 252-254, 256-279, 281-302, 305-312, 315, 317-321, 323-327, 332-336, 338-342 and 344-375.

Finally, other records from the Commission files responsive to your request relate to thirty-six product complaints and reported incidents that the Commission has obtained from consumers, attorneys for consumers and others. The Commission has not received confirmation of the accuracy of the information in the complaints and reported incidents. Pursuant to Exemption 3 of the FOIA, 5 U.S.C. § 552(b)(3) and section 6(b)(1) of the Consumer Product Safety Act (CPSA), 15 U.S.C. § 2055(b)(1), and our regulations, 16 C.F.R. § 1101.32, we must withhold the unconfirmed product complaints and reported incidents.

FOIA Exemption 3 provides for the withholding from disclosure of matters that are specifically exempted from disclosure by another statute. In applying FOIA Exemption 3, we are relying on section 6(b)(1) of the CPSA. That section prohibits the Commission from disclosing information about a consumer product that identifies a manufacturer or private labeler unless the Commission has taken "reasonable steps" to assure that the information is accurate, that disclosure is fair in the circumstances, and that disclosure will be reasonably related to effectuating the purposes of the laws that the Commission administers. See Commission regulation, 16 C.F.R. § 1101.32. The Commission's policy is to withhold each consumer complaint and reported incident unless: (1) the Commission has conducted an investigation of the complaint and reported incident, and the investigation corroborates the substance of the complaint and reported incident; (2) the Commission has conducted or obtained a technical, scientific, or other evaluation of the product that is the subject of the complaint and reported incident, and evaluation corroborates the substance of the information contained in the complaint and reported incident; or (3) the consumer or person reporting or submitting the incident confirms the accuracy of the information. The Commission did not take any of these steps with regard to these certain consumer complaints and reported incidents responsive to your request. While it has been Commission practice since June 1983 to seek confirmation of incoming consumer complaints and incidents, the Commission does not have the resources to seek confirmation of the complaints and incidents where a consumer has not responded to our request for confirmation of the information.

According to the Commission's regulations implementing the FOIA at 16 C.F.R. § 1015.7, a partial denial of access to records may be appealed to the General Counsel of the Commission within thirty (30) days of your receipt of this letter. An appeal must be in writing and addressed to: FOIA APPEAL, General Counsel, ATTN: Office of the Secretary, U.S. Consumer Product Safety Commission, Washington, D. C. 20207.

Processing this request, performing the file searches and preparing the information, cost the Commission \$200.00. In this instance, we have decided to waive all of the charges.

Sincerely,

Todd A. Stevenson

Enclosures

SHAMBERG, JOHNSON & BERGMAN

CPSC/DEC OF THE SECRETARY
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Chartered

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*ADMITTED IN KANSAS & MISSOURI
OF COUNSEL

August 29, 2000

Freedom of Information Officer
U.S. Consumer Product Safety Commission
Washington, D.C. 20207

Re: Whirlpool Dishwasher Fires

Dear Sir or Madam:

Pursuant to the Freedom of Information Act, please produce any and all information you may have regarding an ongoing investigation of Whirlpool dishwashers. Following the 1996 recall of Whirlpool dishwashers the CPSC gained knowledge of at least five other fires outside of the recall. To add to those five fires, I know that at least two deaths are associated with Whirlpool dishwashers outside of the recall area.

We believe that the CPSC has at one time investigated, or is now investigating, these fires. We are respectfully requesting any and all information regarding that ongoing investigation.

Thank you for your prompt response to this Freedom of Information Act request and please do not hesitate to call me should you have any questions.

Sincerely,

SHAMBERG, JOHNSON & BERGMAN,
CHARTERED

By:

Stephen R. Bough

SRB/kk

S-0090051

11A
0214
Part of 10440094
10/12
ERCS
D.Y.



U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, DC 20207

Michael S. Solender
General Counsel

Office of the General Counsel

Tel: (301) 504-0980
Fax: (301) 504-0403
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February 1, 2001

Steven E. Crick, Esq.
Humphrey, Farrington & McClain, P.C.
221 West Lexington, Suite 400
P.O. Box 900
Independence, Missouri 64051

Re: FOIA Appeal S0100138:Milton Bradley "Fibro-Clay"
1983 Recall/Corrective Action Recall File ID830037

Dear Mr. Crick:

By letter dated December 18, 2000, you appealed the decision of the Commission's Freedom of Information (FOI) Officer to withhold information responsive to your Freedom of Information Act (FOIA) request. Under authority delegated to me by the Commission, 16 C.F.R. § 1015.7, I have reviewed your appeal and the responsive information. The FOI Officer has reconsidered his decision to withhold pages 34, 44 (with portions deleted), 45, and 56-60. Therefore, these pages are enclosed. As to the remainder of the responsive information, I affirm the FOI Officer's decision to withhold the information pursuant to FOIA Exemptions 3 and 4. 5 U.S.C. §§ 552(b)(3) and (4).

FOIA Exemption 3 provides for withholding information that is specifically exempted from disclosure by another statute. In applying FOIA Exemption 3 to the withheld information, I am relying on section 6(a)(2) of the Consumer Product Safety Act (CPSA). 15 U.S.C. § 2055(a)(2).

Section 6(a)(2) expressly prohibits the disclosure of information reported to or otherwise obtained by the Commission that contains or relates to trade secrets or other confidential commercial information. Section 6(a)(2) incorporates Exemption 4 of the FOIA. That exemption protects trade secrets and confidential commercial information obtained from a person. Commercial information is confidential if disclosure is likely (1) to impair the government's ability to obtain the necessary information in the future or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained. In addition, voluntarily-submitted information is confidential

Steven E. Crick, Esq.
February 1, 2001

Page 2

provided it is not customarily disclosed to the public by the submitter. See, Critical Mass Energy Project v. NRC, 975 F.2d 871,879 (D.C.Cir. 1992). The documents being withheld pursuant to FOIA Exemption 3, relying on CPSA section 6(a)(2), and FOIA Exemption 4 contain Milton Bradley's proprietary sales volume information (pages 15, 262, 305-307, and 448-452) and the company's internal distribution processes, as well as the company's distributors' identities (pages 34 and 308-309). As a note of clarification, in the FOI Officer's letter, he referred to pages "205-307." It should have read pages "305-307."

You have the right to seek judicial review of this decision as provided by 5 U.S.C. § 552(a)(4)(B).

Sincerely,


Michael S. Solender

Enclosures

HUMPHREY, FARRINGTON & McCLAIN, P.C.

ATTORNEYS AT LAW

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RALPH K. PHALEN
AMY R. POWELL**
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*ADMITTED IN KANSAS & MISSOURI
**ADMITTED IN MISSOURI & NEW YORK

December 18, 2000

FOIA APPEAL
General Counsel
ATTN: Office of the Secretary
U.S. Consumer Product Safety Commission
Washington, D.C. 20207

2000 DEC 28 P 1:11

CPSC OFFICE OF THE SECRETARY
FIDELITY AND SECURITY DIVISION

Re: FOIA Request S0100138: Milton Bradley "Fibro-Clay" 1983 Recall/Corrective
Action Recall File ID830037

0569
MCC

Dear sir or madam:

I have received a December 6, 2000 response to my FOIA of October 25, 2000. Copies of both letters, (without enclosures) are enclosed. Important information was excluded from the packet of information submitted to me, particularly, information pertaining to Milton Bradley customers. I seek this information because I represent the family of a school teacher who died of mesothelioma. Did Milton Bradley include her employer, the State of Missouri or any subdivision of the State or her school, College View School for the Severely Handicapped or Eagle Picher School, in its submission to the CPSC? Those customers, along with potential suppliers to my client's employer or school may be listed.

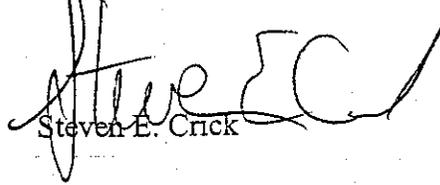
Certainly, since the product was discontinued in the early 1980's there is no strong argument against providing the list to a potential victim of the product. The victim's interests should over weigh that of Milton Bradley.

The CPSC letter of Dec. 6 specifies the documents withheld from production. We appeal that denial and request each withheld document. If there is another form to be served with this appeal, please provide that to my office, a fax would be appreciated.

Thank you.

FOIA APPEAL
December 18, 2000
Page 2

Sincerely,



Steven E. Crick

SEC:aes
Enc.



U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, DC 20207

Todd A. Stevenson
Deputy Secretary and
Freedom of Information Officer
Office of the Secretary

Tel: 301-504-0785X1239
Fax: 301-504-0127
Email: tstevenson@cpsc.gov

December 6, 2000

CERTIFIED MAIL

Steven E. Crick
Humphrey, Farrington & McClain
221 West Lexington Suite 400
PO BOX 900
Independence, MO 64051

Re: FOIA Request S0100138: Milton Bradley "Fibro-Clay" 1983 Recall / Corrective Action
Recall File ID830037

Dear Mr. Crick:

Thank you for your Freedom of Information Act (FOIA) request seeking information from the U.S. Consumer Product Safety Commission (Commission). The records from the Commission files responsive to your request have been processed and copies of the releasable portions are enclosed. The enclosed records include file information generated by the Commission itself or its contractors for regulatory or enforcement purposes. These records are in the Commission's Office of Compliance file ID830037 and are identified as hazard assessment memoranda, correspondence, notes and documents. The Commission has established management systems under which supervisors are responsible for reviewing the work of their employees or contractors. The file information materials are final and have been prepared and accepted by the Commission's staff under such review systems. The Commission believes that it has taken reasonable steps to assure the accuracy of the information.

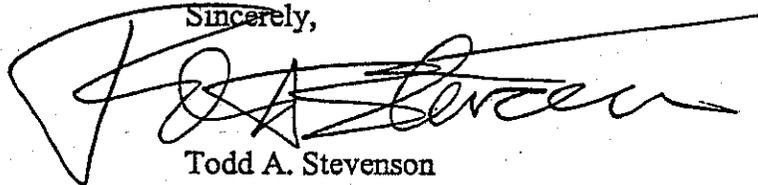
We must withhold from certain portions of the file materials containing proprietary and confidential information submitted by Milton Bradley Company to the Commission's Office of Compliance. The records have been claimed as confidential by the submitting firm and we must withhold those portions pursuant to Exemptions 3 and 4 of the FOIA, 5 U.S.C. §§ 552(b)(3) and (b)(4), and section 6(a)(2) of the Consumer Product Safety Act (CPSA), 15 U.S.C. § 2055(a)(2). FOIA Exemption 3 provides for the withholding from disclosure of matters that are specifically exempted from disclosure by another statute. In applying FOIA Exemption 3 in this instance we are applying in part section 6(a)(2) of the CPSA. Section 6(a)(2) prohibits the Commission from disclosing information that is exempt from disclosure under Exemption 4 of the FOIA. That exemption protects trade secrets and confidential commercial information.

Confidential commercial information is information directly related to a firm's business that the firm has not made public and whose disclosure could give a substantial commercial advantage to a competitor. Specifically, we withholding Milton Bradley Company proprietary sales volume details (from pages 15, 262, 205-307, and 448-452), and company internal distribution processed and distributor identities (from pages 34, 44-45, 56-60, and 308-309).

According to the Commission's regulations implementing the FOIA at 16 C.F.R. § 1015.7, a partial denial of access to records may be appealed to the General Counsel of the Commission within thirty (30) days of your receipt of this letter. An appeal must be in writing and addressed to: FOIA APPEAL, General Counsel, ATTN: Office of the Secretary, U.S. Consumer Product Safety Commission, Washington, D.C. 20207

Processing this request, performing the file searches and preparing the information, cost the Commission \$80.00. In this instance, we have decided to waive all of the charges.

Sincerely,

A handwritten signature in black ink, appearing to read "Todd A. Stevenson", is written over a horizontal line. The signature is stylized and cursive.

Todd A. Stevenson

Enclosures

HUMPHREY, FARRINGTON & McCLAIN, P.C.

ATTORNEYS AT LAW

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*ADMITTED IN KANSAS & MISSOURI
**ADMITTED IN MISSOURI & NEW YORK

October 25, 2000

VIA FAX: 301-504-0127

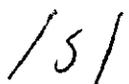
Consumer Products Safety Commission
Washington, D.C. 20207

Re: Freedom of Information Act
Milton Bradley Company-"Fibro-Clay"

Dear Sir or Madam:

Pursuant to the Freedom of Information Act, I request copies of any materials concerning the Milton Bradley product Fibro-Clay. It is my understanding that in 1983 the CPSC took action on this asbestos-containing product. A copy of the CPSC Press Release is enclosed. Thank you for your help.

Sincerely,


Steven E. Crick

SEC:aes
Enclosure



0564
MIL

U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, DC 20207

Todd A. Stevenson
Deputy Secretary and
Freedom of Information Officer
Office of the Secretary

Tel: 301-504-0785X1239
Fax: 301-504-0127
Email: tstevenson@cpsc.gov

December 6, 2000

CERTIFIED MAIL

Steven E. Crick
Humphrey, Farrington & McClain
221 West Lexington Suite 400
PO BOX 900
Independence, MO 64051

Re: FOIA Request S0100138: Milton Bradley "Fibro-Clay" 1983 Recall / Corrective Action
Recall File ID830037

Dear Mr. Crick:

Thank you for your Freedom of Information Act (FOIA) request seeking information from the U.S. Consumer Product Safety Commission (Commission). The records from the Commission files responsive to your request have been processed and copies of the releasable portions are enclosed. The enclosed records include file information generated by the Commission itself or its contractors for regulatory or enforcement purposes. These records are in the Commission's Office of Compliance file ID830037 and are identified as hazard assessment memoranda, correspondence, notes and documents. The Commission has established management systems under which supervisors are responsible for reviewing the work of their employees or contractors. The file information materials are final and have been prepared and accepted by the Commission's staff under such review systems. The Commission believes that it has taken reasonable steps to assure the accuracy of the information.

We must withhold from certain portions of the file materials containing proprietary and confidential information submitted by Milton Bradley Company to the Commission's Office of Compliance. The records have been claimed as confidential by the submitting firm and we must withhold those portions pursuant to Exemptions 3 and 4 of the FOIA, 5 U.S.C. §§ 552(b)(3) and (b)(4), and section 6(a)(2) of the Consumer Product Safety Act (CPSA), 15 U.S.C. § 2055(a)(2). FOIA Exemption 3 provides for the withholding from disclosure of matters that are specifically exempted from disclosure by another statute. In applying FOIA Exemption 3 in this instance we are applying in part section 6(a)(2) of the CPSA. Section 6(a)(2) prohibits the Commission from disclosing information that is exempt from disclosure under Exemption 4 of the FOIA. That exemption protects trade secrets and confidential commercial information.

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Processing this request, performing the file searches and preparing the information, cost the Commission \$80.00. In this instance, we have decided to waive all of the charges.

Sincerely,

Todd A. Stevenson

Enclosures



0564
MIL

U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, DC 20207

Todd A. Stevenson
Deputy Secretary and
Freedom of Information Officer
Office of the Secretary

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Email: tstevenson@cpsc.gov

A handwritten signature in black ink, appearing to be "D" followed by a long horizontal stroke.

December 6, 2000

CERTIFIED MAIL

Steven E. Crick
Humphrey, Farrington & McClain
221 West Lexington Suite 400
PO BOX 900
Independence, MO 64051

Re: FOIA Request S0100138: Milton Bradley "Fibro-Clay" 1983 Recall / Corrective Action
Recall File ID830037

Dear Mr. Crick:

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HUMPHREY, FARRINGTON & McCLAIN, P.C.

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JAMES M. ZIEGLER

*ADMITTED IN KANSAS & MISSOURI
**ADMITTED IN MISSOURI & NEW YORK

October 25, 2000

VIA FAX: 301-504-0127

1/A

Consumer Products Safety Commission
Washington, D.C. 20207

Re: Freedom of Information Act
Milton Bradley Company-"Fibro-Clay"

1376, 0564

0564

Dear Sir or Madam:

Pursuant to the Freedom of Information Act, I request copies of any materials concerning the Milton Bradley product Fibro-Clay. It is my understanding that in 1983 the CPSC took action on this asbestos-containing product. A copy of the CPSC Press Release is enclosed. Thank you for your help.

Sincerely,


Steven E. Crick

10 030 037
in 0564
0564

SEC:aes
Enclosure

5010 0138

NEWS from CPSC

U.S. Consumer Product Safety Commission

Office of Information and Public Affairs

Washington, DC 20207

FOR IMMEDIATE RELEASE

March 1983

Release # 83-012

CPSC and Milton Bradley Co. Recall "Fibro-Clay"

Washington, D.C. -- The Consumer Product Safety Commission and the Milton Bradley Company of Springfield, Massachusetts, have been advised that asbestos has been found in packages of Milton Bradley's "Fibro-Clay", a school art modeling compound used to make paper mache'. The company is voluntarily recalling the product.

The Commission is taking immediate action to assure that manufacturers have not resumed using asbestos in this or any similar school art supplies and to assure that no additional lots of the old products containing asbestos exist. This will be accomplished through a nationwide sampling and testing program of distributors of this type of product.

Milton Bradley made Fibro-Clay from 1967 until 1975, when it ceased manufacture of the product. The firm stated that no asbestos has been used in the formula since 1972, and that the quantity sold by its Educational Division was relatively small.

Schools and consumers are advised to stop using Milton Bradley Fibro-Clay, even through the presence of asbestos may be limited to only a small percentage of this product. The Commission recommends placing the product in a plastic bag, trying to disturb the product as little as possible, and cleaning any areas contacted by the Fibro-Clay with water.

Asbestos has been shown to cause cancer of the lung and other organs according to studies of workers and others exposed to asbestos. The Commission is concerned that children in schools where Fibro-Clay is used might be exposed to airborne asbestos in view of the powdered composition of the product. School authorities in Wayne, New Jersey, recently identified asbestos in Fibro-Clay.

The Commission has been alerted to this matter by a WCBS-TV broadcast in New York City and by a letter from Dr. Irving J. Selikoff, a Professor at the Mount Sinai Medical Center in New York City, describing recent tests of the product he conducted.

For further information, consumers may call the Milton Bradley Company (413) 525-6411, or the Consumer Product Safety Commission's toll-free Hotline on 800-638-CPSC. A teletypewriter number for the hearing impaired is 800-638-8270.

The U.S. Consumer Product Safety Commission protects the public from unreasonable risk of injury or death from 15,000 types of consumer products under the agency's jurisdiction. To report a dangerous product or a product-related injury and for information on CPSC's fax-on-demand service, call CPSC's hotline at (800) 638-2772 or CPSC's teletypewriter at (800) 638-8270. To order a press release through fax-on-demand, call (301) 504-0051 from the handset of your fax machine and enter the release number. Consumers can obtain this release and recall information or report product hazards to info@cpsc.gov.