



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

June 29, 2001

Peter T. Limperis, Esq.
Haralson, Miller, Pitt & McAnally, P.L.C.
One South Church Avenue, Suite 900
Tucson, Arizona 87501-1620

Re: FOIA Appeal S1030145: TJX Companies, Inc.
Flammable Rayon Skirts and Scarves

Dear Mr. Limperis:

By letter dated May 8, 2001, 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 appealed the information that TJX Companies, Inc. commented on and that TJX asked the Commission to withhold under Exemption 4 of the FOIA and section 6(a)(2) of the Consumer Product Safety Act (CPSA). 5 U.S.C. § 552(b)(4) and 15 U.S.C. § 2055(a)(2).

Under authority delegated to me by the Commission, 16 C.F.R. § 1015.7, I have reviewed your appeal and this information. As explained below, I affirm the FOI Officer's decision to withhold a portion of the information. As to the remainder of the information, the FOI Officer has reconsidered his decision. That information, as explained below, may be released in the future. To pursue the disclosure of this information, you do not need to take any additional action, as we explain below.

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) and (b)(1) of the CPSA. 15 U.S.C. §§ 2055(a)(2) and (b)(1).

Section 6(a)(2) of the CPSA 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 information 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

Peter T. Limperis, Esq.
June 29, 2001

Page 2

obtained. In addition, voluntarily-submitted information is confidential provided it is not customarily disclosed to the public by the submitter. Critical Mass Energy Project v. NRC, 975 F.2d 871, 879 (D.C. Cir. 1992). The information being withheld pursuant to FOIA Exemption 3, relying on CPSA section 6(a)(2), and FOIA Exemption 4, consists of the names of vendors, the number of buyers, the number of vendors, the number of products purchased, the amount of inventory on hand, the names of the retailer's stores, test reports, and the number of garments returned.

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. Under our regulations, it would not be fair in these circumstances to disclose a letter from the company's lawyer relating to the negotiation process. See 16 C.F.R. § § 1101.33(b)(1) and (2).

As noted above, there is other information that we are withholding, for now, but that may be disclosed in the future. This information has not yet been fully processed under CPSA section 6(a). We will give the company a 10-day notice, as required by 15 U.S.C. § 2055(a)(5). Then, if a court does not prohibit disclosure, we will send you this information.

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

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

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

August 15, 2001

Peter T. Limperis, Esq.
Haralson, Miller, Pitt & McAnally
1 South Church Avenue, Suite 900
Tucson, AZ 87501-1620

Re: FOIA Request S1030145: TJX Companies, Inc., Flammable Rayon Skirts and Scarves

Dear Mr. Limperis:

This is the final response to your Freedom of Information Act (FOIA) request seeking information from the Commission. These are records that were previously withheld and were the subject of your FOIA Appeal. This was explained in the response to your appeal dated June 29, 2001, from the Commission's General Counsel Michael S. Solender.

The enclosed records include file information generated by the Commission itself or its contractors for regulatory or enforcement purposes. These records are identified as 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.

Portions have been removed from the Commission's law enforcement investigatory file pursuant to the FOIA Exemptions 3, and 4, 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. The files contain proprietary and confidential information that 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

Peter T. Limperis, Esq.
Haralson, Miller, Pitt & McAnally
Page 2

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 portions of the file materials containing confidential commercial information, such as, submitted proprietary sales volume data, names of retailers and customers, and inventory figures.

Sincerely,

Todd A. Stevenson

Enclosures



Los Angeles Times

1040092-19
RECEIVED
LOGG
MOOT BY
AGREEMENT
7/2/01

RUSSELL CAROLLO
REPORTER

MAY 21, 2001

General Counsel
THRU: Alan Shakin
U.S. Consumer Product Safety Commission

This is an appeal under the Freedom of Information Act, 5 U.S.C. 552. On April 13, 2000, I filed the attached FOIA. On May 18, I received the attached response.

The denial of information is improper for the following reasons:

- 1) Again, large portions of my request were not addressed in the response.
- 2) The release did not include information on a number of products identified in documents released previously to me at the Dayton Daily News (see attached printout). These include, but are not limited to, information on Carbon monoxide detectors, elevators, home playground equipment, playground surfacing, pools & spas, public playground equipment, soft contained play equipment and toy chests – all addressed in the response to the Dayton FOIA but not addressed at all in the most recent release.
- 3) In a number of cases (see those marked “no reports” on attachment), the title of the voluntary standard appeared on a list but there was no additional documentation. It would be hard to believe that the only document a federal agency maintains concerning a voluntary standard that could potentially impact hundreds of business is two or three words on a piece of paper.
- 4) My request sought tracking reports and “all documents related in any way...” Either there are no letters, memos, emails or other documents related to the tracking reports (and, in effect, to voluntary standards), or that portion of my request was ignored.
- 5) The b5 exemption cannot apply to these documents because there is no decision to be rendered. Voluntary standards require no formal decision from a federal agency, and a tracking report is unrelated to the decision-making process. Non-governmental groups involved in these decisions enjoy no exemption under b5. And b5 still would not protect the decision-making process once a decision has been made. Clearly a decision was made because the process – according to the dates – was continued. The decision was made to move to the next step, so information on the previous step in the process cannot be withheld. In addition, the voluntary standards tracking report was mandated by Congress as a public record to be given in its entirety as a report to Congress, and, as such, does not fall under b5.
- 6) According to this response, CPSC kept tracking reports on (and only kept records on) roughly 66 voluntary standards. If so, can we accurately report that either these are the only voluntary standards tracked by the agency or no other records exist on these or any other standards during the period?

RAC

7)According to this release, CPSC has no records related in any way to tracking reports (and nothing on the voluntary standards because that would be considered "related in any way") other than gas water heaters prior to 1995. Again, if so, can we accurately report that either the agency has no other voluntary standards or no records exists on tracking voluntary standards except for those on water heaters prior to 1995?

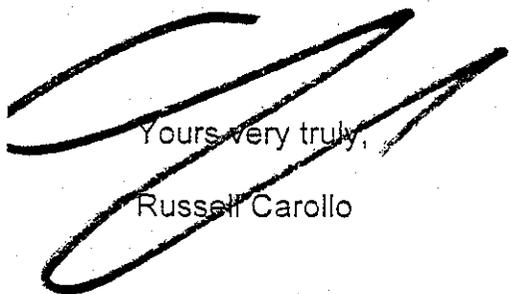
8)The documents provided to me clearly came from a computer printout, yet I was not given the records in a computer form as I had requested.

9)The FOIA response clearly indicated that only the "excised portions" were withheld.

10)The obvious omissions in the release of this material brings into question the possibly that other large portions of information may have been withheld but not identified in the response.

In any case, I expect to receive your decision no later than by 20 business days, as required by law.

Thank you for your assistance.



Yours very truly,

Russell Carollo

DAYTON PRODUCT

OH SPAN

LAMATCH

LA PRODUCT

 CARBON MONOXIDE DETECTORS
 ELEVATORS
 HOME PLAYGROUND EQUIPMENT
 PLAYGROUND SURFACING
 POOLS & SPAS
 PUBLIC PLAYGROUND EQUIPMENT
 SOFT CONTAINED PLAY EQUIPMENT
 TOY CHESTS

4/96 TO 1/98
 NO REPORTS
 11/95 12/97
 5/97 TO 11/97
 7/96 TO 2/98
 12/95 12/97
 12/95 TO 1/98
 NO REPORTS

✓ ✓

Reports with
NO
 Release for
 LA
 Request

Dayton FOIA

LA FOIA

DAYTON:PRO	OH:SPAN	L LA:PRODUCT	LA:SPAN	OHMATCH
ARC-FAULT CIRCUIT INTERRUPTER	NO REPORTS	Y ARC-FAULT CIRCUIT INTERRUPTERS	NO REPORTS	Y
BABY WALKERS	NO REPORTS	Y BABY WALKERS	NO REPORTS	Y
BASKETBALL-GOALS	NO REPORTS	Y BASKETBALL GOALS	NO REPORTS	Y
BASSINETS & CRADLES	7/98 TO 12/99	Y BASSINETS & CRADLES	7/98 TO 3/01	Y
LA PRODUCT ONLY	XXXXXXXXXX	BATH SEATS	NO REPORTS	N
BEAN BAG CHAIRS	NO REPORTS	Y BEAN BAG CHAIRS	NO REPORTS	Y
BED RAILS	2/98 TO 12/99	BED RAILS	2/98 TO 3/01	Y
BICYCLOERECREATIONAL HELMEN	10/96 TO 12/97	BIKE HELMETS	NO REPORTS	Y
CANDLES	NO REPORTS	Y CANDLES	NO REPORTS	Y
CAMPING HEATERS	4/96 TO 10/99	Y CAMPING HEATERS	4/96 TO 3/00	Y
CARBON MONOXIDE DETECTORS	4/96 TO 1/98	CHANGING TALBES	3/00 TO 3/01	N
LA PRODUCT ONLY	XXXXXXXXXX	CLOTHES DRYERS	3/00 TO 2/01	N
LA PRODUCT ONLY	XXXXXXXXXX	CHAIN SAWS	NO REPORTS	N
LA PRODUCT ONLY	XXXXXX	Y CLOTHING STRINGS	NO REPORTS	Y
CLOTHING STRINGS	NO REPORTS	CRIBS	NO REPORTS	Y
CRIBS	3/95 TO 4/99	CRIB CORNER POST EXTENSIONS	NO REPORTS	N
LA PRODUCT ONLY	XXXXXXXXXX	Y DEEP FAT FRYERS	6/98 TO 5/00	Y
DEEP FAT FRYERS	6/98 TO 12/99	ESCALATORS	NO REPORTS	Y
ELEVATORS	NO REPORTS	Y EXERCISE EQUIPMENT-TREADMILLS	6/97 TO 3/01	Y
ESCALATORS	5/96 TO 3/98	EXTENSION CORDS	NO REPORTS	N
EXERCISE EQUIPMENT-TREADMILLS	6/97 TO 12/99	FIRE BLANKETS (TOWELS)	NO REPORTS	N
EXTENSION CORDS	7/97 TO 6/98	FIRE ESCAPE LADDERS (PORTABLE)	NO REPORTS	N
FIRE BLANKETS	2/98 TO 5/99	FIREWORKS DEVICES (COMETS & MINE	NO REPORTS	N
FIRE ESCAPE LADDERS, PORTABLE	7/98 TO 5/99	FIREWORKS DEVICED (AERIAL SHELLS)	NO REPORTS	N
LA PRODUCT ONLY	XXXXXXXXXXXX	FUN KARTS	NO REPORTS	N
LA PRODUCT ONLY	XXXXXXXXXXXX	FURNITURE TIPOVER	NO REPORTS	N
FUN KARTS	8/96 4/98	Y GARAGE DOORS	3/97 TO 3/00	Y
FURNITURE TIP OVER	8/96 2/98	Y GAS WATER HEATERS	3/92 TO 3/01	Y
GARAGE DOORS	3/97 TO 10/99	GASOLINE CONTAINERS, CHILD RESIST	NO REPORTS	N
GAS WATER HEATERS	3/92 TO 10/99	GATE OPERATORS	NO REPORTS	N
LA PRODUCT ONLY	XXXXXX	GATES AND ENCLOSURES	NO REPORTS	N
GATE OPENERS	9/95 TO 5/98	HIGH CHAIRS	NO REPORTS	N
LA PRODUCT ONLY	XXXXXXXXXX			
HIGH CHAIRS	11/95 TO 1/99			

Dayton FCIA

LA FCIA

HOME PLAYGROUND EQUIPMENT	11/95 TO 12/97							
INFANT BEDDING	NO REPORTS	Y	INFANT BEDDING				NO REPORTS	Y
INFANT CARRIERS	5/97 TO 12/99	Y	INFANT CARRIERS, SOFT AND FRAMED				9/99 TO 3/01	Y
LA PRODUCT ONLY	XXXXXXX		INFANT WALKERS				NO REPORTS	N
LA PRODUCT ONLY	XXXXXX		LIGHTERS				NO REPORTS	N
NAIL GUNS	4/98 TO 12/99		NAIL GUNS				4/98 TO 3/01	Y
LA PRODUCT ONLY	XXXXXXX		NON-POWDER GUNS				NO REPORTS	N
PACIFIERS	NO REPORTS	Y	PACIFIERS				NO REPORTS	Y
PLAY YARDS	3/97 TO 4/99	Y	PLAY YARDS				NO REPORTS	Y
PLAYGROUND SURFACING	5/97 TO 11/97							
LA PRODUCT ONLY	XXXXXX		POLYMERIC MATERIALS IN APPLIANCE				NO REPORTS	N
POOLS & SPAS	7/96 TO 2/98							
PORTABLE LAMPS, HALOGEN TUBE	4/96 TO 5/98		PORTABLE LAMPS, HALOGEN TUBE BUL				NO REPORTS	N
PUBLIC PLAYGROUND EQUIPMENT	12/95 TO 12/97							
LA PRODUCT ONLY	XXXXXXXXXX		RESIDENTIAL ELEC. MAINTENANCE CODE				NO REPORTS	Y
SAWS, TABLE	4/98 TO 12/99	Y	SAWS, TABLE				4/98 TO 3/01	Y
LA PRODUCT ONLY	XXXXXXXXXX		SCOOTERS, UNPOWERED				12/00 TO 4/01	N
SOCCER GOALS	10/96 TO 3/99		SOCCER GOALS				NO REPORTS	
SOFT CONTAINED PLAY EQUIPMEN	12/95 TO 1/98							
LA PRODUCT ONLY	XXXXXXXXXX		STATIONARY ACTIVITY CENTERS				NO REPORTS	N
STROLLERS	NO REPORTS	Y	STROLLERS				NO REPORTS	Y
LA PRODUCT ONLY	XXXXXXXXXX		SWIMMING POOL ALARMS				6/00 TO 3/01	Y
SWING, BABY	3/97 TO 9/99	Y	SWINGS, BABY				3/97 TO 3/01	Y
LA PRODUCT ONLY	XXXXXX		TELEVISION/TV CARTS AND STANDS				6/99 TO 4/01	N
TOASTERS	6/97 TO 12/99	Y	TOASTERS				6/97 TO 3/00	Y
TOASTER OVENS	11/97 TO 4/99	Y	TOASTER OVENS				11/97 TO 7/00	Y
TOYS, BATTERY OPERATED RIDE-O	5/99 TO 12/99	Y	TOYS, BATTERY OPERATED RIDE ON				5/99 TO 1/01	
TOY CHESTS	NO REPORTS							
TOY SAFETY	9/97 TO XXX	Y	TOY SAFETY (PLAY FIGURES)				NO REPORTS	
TRAMPOLINES	2/97 TO 12/99	Y	TRAMPOLINES				2/97 TO 3/01	Y
LA PRODUCT ONLY	XXXXXXXXXX		VACUUM RELEASE SYSTEMS				11/00 TO 3/01	N
WINDOW GUARDS	8/95 TO 12/99		WINDOW GUARDS				NO REPORTS	Y



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

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

Tel: 301-504-0765X1239
Fax: 301-504-0127
Email: t Stevenson@cpsc.gov

May 15, 2001

CERTIFIED MAIL

Russell Carollo
Los Angeles Times
202 West 1st Street
Los Angeles, CA 90012

Re: FOIA Request S1040092: Voluntary Standards Tracking Reports

Dear Mr. Carollo:

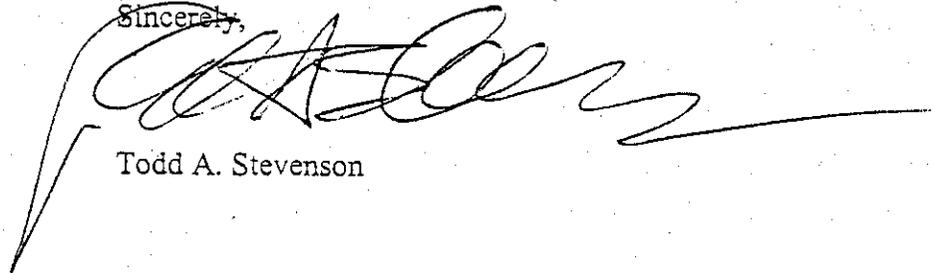
Thank you for your Freedom of Information Act (FOIA) request seeking information from the Commission. Enclosed are copies of the Voluntary Standards Tracking Reports with excisions of portions explained below. The Voluntary Standards Tracking Reports are not automated database systems, but rather they are internal working reports made periodically to assist the staff to track the various voluntary standards activities. We must withhold the excised portions of the reports that would reveal draft plans and proposals pursuant to the Exemption 5 of the FOIA, 5 U.S.C. §§ 552(b)(5). 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.

The records being withheld consist of internal staff summaries of plans, recommendations and opinions of the Commission's technical staffs. The records constitute pre-decisional discussion that clearly falls within the deliberative privilege. 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 portions 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 impair the frank exchange of views necessary with respect to such matters.

According to the Commission's FOIA regulations at 16 C.F.R. § 1015.7, a partial denial of access to records may be appealed within thirty (30) days of your receipt of this letter by writing 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 reviewing the information, cost the Commission \$120.00. 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", with a long horizontal line extending to the right.

Todd A. Stevenson

Enclosures



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

April 17, 2001

Russell Carollo
Los Angeles Times
202 West First Street
Los Angeles, CA 90012-

RE: FOIA Request No. S-2001040092 (Tracking)

Dear Mr. Carollo:

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,

A handwritten signature in black ink that reads "Todd A. Stevenson".

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



Los Angeles Times

RUSSELL CAROLLO
REPORTER

APRIL 13, 2001

Tod Stevenson
Consumer Product Safety Commission

Dear Mr. Stevenson,

Pursuant to the Federal Freedom of Information Act, 5 U.S.C. 552, I request access to and copies of all Voluntary Standards Tracking Reports and all documents related in any way to Voluntary Standards Tracking Reports. I can accept this in a database form, but not via the internet.

Please justify all deletions by reference to specific exemptions of the Act and release all reasonably segregable portions of otherwise exempt material. I, of course, reserve the right to appeal any decision.

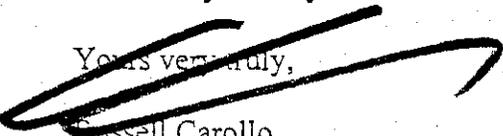
If you conclude that any of the documents are exempt under the Act, please exercise your discretion to disclose these records nonetheless. Include information attached to these materials that might otherwise be considered non-responsive, and let me know if any similar requests have been filed.

Notify me prior to incurring more than \$100 in expenses. The FOIA Act provides for a waiver or reduction of fees if disclosure is "likely to contribute significantly to public understanding of the operations or activities of the government." I am a reporter for the Los Angeles Times, and my request is part of research for a possible newspaper series reporting information never before released to the public. I ask that you waive all fees.

This information is of timely value, so please communicate questions by telephone rather than by mail. I look forward to your reply within 20 business days, as the statute requires.

Thank you for your assistance.

Yours very truly,


Russell Carollo

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*Kew
Kew
1040092*



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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

May 15, 2001

CERTIFIED MAIL

Russell Carollo
Los Angeles Times
202 West 1st Street
Los Angeles, CA 90012

Re: FOIA Request S1040092: Voluntary Standards Tracking Reports

Dear Mr. Carollo:

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The records being withheld consist of internal staff summaries of plans, recommendations and opinions of the Commission's technical staffs. The records constitute pre-decisional discussion that clearly falls within the deliberative privilege. 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 portions 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 impair the frank exchange of views necessary with respect to such matters.

According to the Commission's FOIA regulations at 16 C.F.R. § 1015.7, a partial denial of access to records may be appealed within thirty (30) days of your receipt of this letter by writing 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 reviewing the information, cost the Commission \$120.00. In this instance, we have decided to waive all of the charges.

Sincerely,

Todd A. Stevenson

Enclosures



Los Angeles Times

RUSSELL CAROLLO
REPORTER

APRIL 13, 2001

Tod Stevenson
Consumer Product Safety Commission

Dear Mr. Stevenson,

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Please justify all deletions by reference to specific exemptions of the Act and release all reasonably segregable portions of otherwise exempt material. I, of course, reserve the right to appeal any decision.

If you conclude that any of the documents are exempt under the Act, please exercise your discretion to disclose these records nonetheless. Include information attached to these materials that might otherwise be considered non-responsive, and let me know if any similar requests have been filed.

Notify me prior to incurring more than \$100 in expenses. The FOIA Act provides for a waiver or reduction of fees if disclosure is "likely to contribute significantly to public understanding of the operations or activities of the government." I am a reporter for the Los Angeles Times, and my request is part of research for a possible newspaper series reporting information never before released to the public. I ask that you waive all fees.

This information is of timely value, so please communicate questions by telephone rather than by mail. I look forward to your reply within 20 business days, as the statute requires.

Thank you for your assistance.

Yours very truly,

Russell Carollo

Y/m E

9999

EXM/C
[Signature]

D.5

S-1040092



Los Angeles Times

RUSSELL CAROLLO
REPORTER

MAY 21, 2001

General Counsel
THRU: Alan Shakin
U.S. Consumer Product Safety Commission

MOOTBY
NO AGREEMENT
5/24/01

This is an appeal under the Freedom of Information Act, 5 U.S.C. 552. On April 26, 2000, I filed the attached FOIA. On May 21, I received the attached response.

The response is improper for the following reasons:

- 1) I asked for "all computer databases." I did not ask for paper printouts. I received paper printouts.
- 2) I **DID NOT** -- as page 2 of the response letter states -- and will never modify a FOIA request to CPSC over the telephone. I specifically told the caller, Ida Harper-Brown, at the close of our conversation: "Nothing I have said during this conversation is intended to modify any of my requests in any way." This is my standard statement when called by a FOIA officer, and I specifically recall telling her this. I never told her that I did not want the DTHS database. I told her that what I wanted was spelled out in my FOIA requests. Unless Ms. Harper-Brown has some written documentation from me, all my requests stand as they are.
- 3) This response, like several other recent response, ignored what I was asking for and, instead, provided me with something else.
- 4) The first paragraph of the response says there is no "death database." My request never asked for a "death database."
- 5) Logic was never applied when reading or responding to my request. I was not provided with a list of all databases containing information on deaths. I was not given a list of fields in those databases and -- as I specifically requested -- was not given a reason why each specific field in those databases was withheld. Without an accurate list of all databases and a record layout for each database, I have no way to argue specific exemptions for specific pieces of information.
- 6) I have read a number of narrative fields that were released in printed form. Product names rarely appear in these fields, and even in cases where product names do appear, these paragraphs can be scanned by human eye over a computer at a rate of 20-30 a minute. At that rate, 1,500 can be scanned in an hour, and 12,000 during an 8-hour day.

In any case, I expect to receive your decision no later than by 20 business days, as required by law.

Thank you for your assistance.

Yours very truly,

Russell Carollo



DEN
S1040163

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

A handwritten signature in black ink, appearing to be "TS" or similar initials.

May 18, 2001

CERTIFIED MAIL

Russell Carollo
Los Angeles Times
202 West 1st Street
Los Angeles, CA 90012

Re: FOIA Request S1040163: "Death Database"

Dear Mr. Carollo:

Thank you for your Freedom of Information Act (FOIA) request seeking "all computer databases containing information regarding deaths ... not limited to the death database" from the U.S. Consumer Product Safety Commission (Commission). We have no "death database."

We solicit death reports from two sources: state vital records offices and medical examiners and coroners. Enclosed is a copy of the "Death Investigation in the United States and Canada, 1995," U.S. Department of Health and Human Services, August 1995, which is our resource for contacting state and localities to encourage them to report deaths through the Medical Examiners and Coroners Alert Project (MECAP). These reports are entered into our Injury and Potential Injury Incidents (IPII) database. We do not have a list compiled of the state vital records offices, but such a list does exist on-line, at: <http://vitalrec.com/>. The death certificate data that we collect from the states is entered into our Death Certificate (DTHS) database.

Enclosed are copies of the printout records from death certificate files for 1996 to the present. This represents 2,784 records of a total of 17,261 records. If you wish the remaining printout summaries submit a request with your expression of willingness to pay for the remaining records, which we estimate will be approximately 4,800 pages and cost \$480.00.

We have been informed that in your telephone conversations with the National Injury Information Clearinghouse you stated that you do not want the computer DTHS database, and that you have received that data in CD format before in response to previous requests and the data did not contain the information you are seeking. We have explained for your previous requests that in the DTHS database the fields containing the narratives of the incidents are not disclosed in automated format, because those many of those portions contain the identities of manufacturers and products. With these automated materials it is not possible or practicable to make any notifications to the firms identified to provide them the opportunity to comment on the accuracy of the information according to Section 6(b)(1) of the Consumer Product Safety Act (CPSA), 15 U.S.C. § 2055(b)(1). Furthermore, the Commission has not received confirmation of the accuracy of the information in the narrative sections of the automated database, and in this form, the Commission has not conducted an investigation or developed independent confirming information. Pursuant to Exemption 3 of the FOIA, 5 U.S.C. § 552(b)(3), and section 6(b)(1) of the CPSA, and our regulations, 16 C.F.R. § 1101.21 and .32, we must withhold the narrative portions of the automated DTHS database.

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 to the extent practicable, notified each manufacturer or private labeler of any consumer product to which such information pertains, a reasonable opportunity to submit comments in regard to the information. Additionally the Commission shall take "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. The Commission did not and cannot take any of these steps with regard to the narratives to this database.

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 \$150.00. In this instance, we have decided to waive all of the charges.

Sincerely,

Todd A. Stevenson

Enclosures



Los Angeles Times

RUSSELL CAROLLO
REPORTER

APRIL 26, 2001

Tod Stevenson
U.S. Consumer Product Safety Commission

Y/ME

Dear Mr. Stevenson,

999

EXTRAIC

Pursuant to the Federal Freedom of Information Act, 5 U.S.C. 552, I request access to and copies of all computer databases containing information regarding deaths. This request is not limited to the death database typically released to the public, but includes all death data held by the commission. In addition, I request all documents regarding deaths held by CPSC, including, but not limited to, death certificates from all sources. I also ask for the names and business telephone numbers of contacts in various states for death information, including, but not limited to, information relating in any way to death certificates.

D.Y

Please justify all deletions by reference to specific exemptions of the Act and release all reasonably segregable portions of otherwise exempt material. I, of course, reserve the right to appeal any decision.

If you conclude that any of the documents are exempt under the Act, please exercise your discretion to disclose these records nonetheless. Include information attached to these materials that might otherwise be considered non-responsive, and let me know if any similar requests have been filed.

Notify me prior to incurring more than \$100 in expenses. The FOIA Act provides for a waiver or reduction of fees if disclosure is "likely to contribute significantly to public understanding of the operations or activities of the government." I am a reporter for the Los Angeles Times, and my request is part of research for a possible newspaper series reporting information never before released to the public. I ask that you waive all fees.

This information is of timely value, so please communicate questions by telephone rather than by mail. I look forward to your reply within 20 business days, as the statute requires.

Thank you for your assistance.

Yours very truly,

Russell Carollo

51040163



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

May 18, 2001

CERTIFIED MAIL

Russell Carollo
Los Angeles Times
202 West 1st Street
Los Angeles, CA 90012

Re: FOIA Request S1040163: "Death Database"

Dear Mr. Carollo:

Thank you for your Freedom of Information Act (FOIA) request seeking "all computer databases containing information regarding deaths ... not limited to the death database" from the U.S. Consumer Product Safety Commission (Commission). We have no "death database."

We solicit death reports from two sources: state vital records offices and medical examiners and coroners. Enclosed is a copy of the "Death Investigation in the United States and Canada, 1995," U.S. Department of Health and Human Services, August 1995, which is our resource for contacting state and localities to encourage them to report deaths through the Medical Examiners and Coroners Alert Project (MECAP). These reports are entered into our Injury and Potential Injury Incidents (IPII) database. We do not have a list compiled of the state vital records offices, but such a list does exist on-line, at: <http://vitalrec.com/>. The death certificate data that we collect from the states is entered into our Death Certificate (DTHS) database.

Enclosed are copies of the printout records from death certificate files for 1996 to the present. This represents 2,784 records of a total of 17,261 records. If you wish the remaining printout summaries submit a request with your expression of willingness to pay for the remaining records, which we estimate will be approximately 4,800 pages and cost \$480.00.

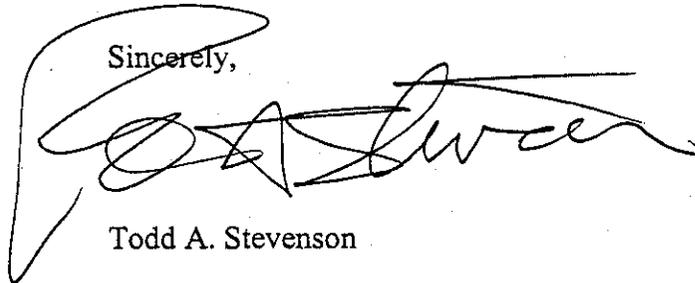
We have been informed that in your telephone conversations with the National Injury Information Clearinghouse you stated that you do not want the computer DTHS database, and that you have received that data in CD format before in response to previous requests and the data did not contain the information you are seeking. We have explained for your previous requests that in the DTHS database the fields containing the narratives of the incidents are not disclosed in automated format, because those many of those portions contain the identities of manufacturers and products. With these automated materials it is not possible or practicable to make any notifications to the firms identified to provide them the opportunity to comment on the accuracy of the information according to Section 6(b)(1) of the Consumer Product Safety Act (CPSA), 15 U.S.C. § 2055(b)(1). Furthermore, the Commission has not received confirmation of the accuracy of the information in the narrative sections of the automated database, and in this form, the Commission has not conducted an investigation or developed independent confirming information. Pursuant to Exemption 3 of the FOIA, 5 U.S.C. § 552(b)(3), and section 6(b)(1) of the CPSA, and our regulations, 16 C.F.R. § 1101.21 and .32, we must withhold the narrative portions of the automated DTHS database.

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 to the extent practicable, notified each manufacturer or private labeler of any consumer product to which such information pertains, a reasonable opportunity to submit comments in regard to the information. Additionally the Commission shall take "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. The Commission did not and cannot take any of these steps with regard to the narratives to this database.

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 \$150.00. 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, loopy flourish that extends to the left and underlines the signature.

Todd A. Stevenson

Enclosures

ALL REPORTED PRODUCTS - 1996 TO THE PRESENT

Number of DHS records retrieved from database: 17261

11:15 Thursday, May 17, 2001 1

DEATH CERTIFICATE FILE
NOT ALL STATES REPORTING DURING ENTIRE PERIOD
U.S. CONSUMER PRODUCT SAFETY COMMISSION
DIRECTORATE FOR EPIDEMIOLOGY
NATIONAL INJURY INFORMATION CLEARINGHOUSE

1 9620000759
 DATE OF DEATH: 960115
 SEX: M
 DATE ENTERED: 960402
 STATE: KS
 CITY: ATWOOD
 HAIR DRYER FELL IN BATH WATER - ELECTROCUTION - AUTOPSY NO

EXTERNAL CAUSE: 9259
 PRODUCTS: 1602HAIR DRYERS
 0611BATHTUBS OR SHOWERS
 WORK RELATED: NO
 LOT NUMBER: 96025
 RACE: WHITE
 LOCATION: HOME
 AGE: 009

2 9649000082
 DATE OF DEATH: 960105
 SEX: M
 DATE ENTERED: 960403
 STATE: UT
 CITY: RURAL
 INHALATION OF PRODUCTS OF COMBUSTION FROM PROPANE HEATER - ACUTE
 CARBON MONOXIDE POISONING - AUTOPSY NO

EXTERNAL CAUSE: 8680
 PRODUCTS: 0389GAS OR LP HEATERS, NOT ELSEWHERE CLASSIF
 0000
 WORK RELATED: NO
 LOT NUMBER: 96025
 RACE: WHITE
 LOCATION: HOME
 AGE: 015

3 9649000083
 DATE OF DEATH: 960105
 SEX: M
 DATE ENTERED: 960403
 STATE: UT
 CITY: RURAL
 INHALATION OF PRODUCTS OF COMBUSTION FROM PROPANE HEATER - ACUTE
 CARBON MONOXIDE POISONING - AUTOPSY NO

EXTERNAL CAUSE: 8680
 PRODUCTS: 0389GAS OR LP HEATERS, NOT ELSEWHERE CLASSIF
 0000
 WORK RELATED: NO
 LOT NUMBER: 96025
 RACE: WHITE
 LOCATION: HOME
 AGE: 048

4 9649000081
 DATE OF DEATH: 960105
 SEX: F
 DATE ENTERED: 960403
 STATE: UT
 CITY: RURAL
 INHALATION OF PRODUCTS OF COMBUSTION FROM PROPANE HEATER - ACUTE
 CARBON MONOXIDE POISONING - AUTOPSY NO

EXTERNAL CAUSE: 8680
 PRODUCTS: 0389GAS OR LP HEATERS, NOT ELSEWHERE CLASSIF
 0000
 WORK RELATED: NO
 LOT NUMBER: 96025
 RACE: WHITE
 LOCATION: HOME
 AGE: 013



U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, D.C. 20207
April 27, 2001

Russell Carollo
Los Angeles Times
202 West First Street
Los Angeles, CA 90012-

RE: FOIA Request No. S-2001040163 (Death Database)

Dear Mr. Carollo:

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,

A handwritten signature in black ink that reads "Todd A. Stevenson".

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



Los Angeles Times

RUSSELL CAROLLO
REPORTER

APRIL 26, 2001

Tod Stevenson
U.S. Consumer Product Safety Commission

Dear Mr. Stevenson,

Pursuant to the Federal Freedom of Information Act, 5 U.S.C. 552, I request access to and copies of all computer databases containing information regarding deaths. This request is not limited to the death database typically released to the public, but includes all death data held by the commission. In addition, I request all documents regarding deaths held by CPSC, including, but not limited to, death certificates from all sources. I also ask for the names and business telephone numbers of contacts in various states for death information, including, but not limited to, information relating in any way to death certificates.

Please justify all deletions by reference to specific exemptions of the Act and release all reasonably segregable portions of otherwise exempt material. I, of course, reserve the right to appeal any decision.

If you conclude that any of the documents are exempt under the Act, please exercise your discretion to disclose these records nonetheless. Include information attached to these materials that might otherwise be considered non-responsive, and let me know if any similar requests have been filed.

Notify me prior to incurring more than \$100 in expenses. The FOIA Act provides for a waiver or reduction of fees if disclosure is "likely to contribute significantly to public understanding of the operations or activities of the government." I am a reporter for the Los Angeles Times, and my request is part of research for a possible newspaper series reporting information never before released to the public. I ask that you waive all fees.

This information is of timely value, so please communicate questions by telephone rather than by mail. I look forward to your reply within 20 business days, as the statute requires.

Thank you for your assistance.

Yours very truly,

Russell Carollo

FAXED



Los Angeles Times

21
MOOT BY
AGREEMENT
1050034
7/2/01

RUSSELL CAROLLO
REPORTER

General Counsel
THRU: Alan Shakin
U.S. Consumer Product Safety Commission

This is an appeal under the Freedom of Information Act, 5 U.S.C. 552. On May 3, 2001, I filed the attached FOIA. On May 22, I received the attached response.

The response is improper for the following reasons:

1) As is the case with nearly every FOIA request I have filed with CPSC, this response ignores large portions of my request without explanation.

2) My request asked for:

a) All records released in response to FOIA request S-9050136, which requested "any correspondence between the CPSC and UL concerning Omega Sprinkler after Oct. 14, 1998.."

b) In addition: "All correspondence between CPSC and UL concerning Omega sprinklers generated since CPSC responded to request S-9050136."

The attached response said, "Staff of the commission's Office of Compliance" had no records "during the period of June 1999 to present."

The request was not limited to the Office of Compliance, and the response never mentioned the rest of CPSC.

The request was not limited to records for the period "June 1999 to present," and the response never addressed the rest of request. My request would have included, BUT WOULD NOT BE LIMITED TO, the response to FOIA request S-9050136, and this response letter was not included.

3) The response did not offer an appeal authority.

In any case, I expect to receive your decision no later than by 20 business days, as required by law.

Thank you for your assistance.

Yours very truly,



MAY 30 2001



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

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

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

May 18, 2001

Mr. Russell Carollo
Los Angeles Times
202 West First Street
Los Angeles, CA 90012

**RE: FOIA Request S-1050034: Correspondence between CPSC and UL
Concerning Omega Sprinklers**

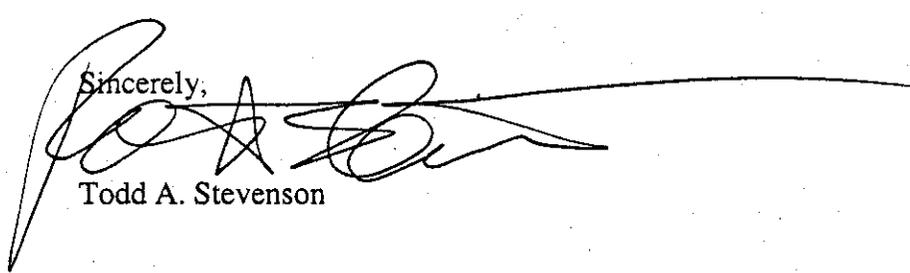
Dear Mr. Carollo:

This responds to your Freedom of Information Act request to the U. S. Consumer Product Safety Commission (Commission).

We are informed by staff of the Commission's Office of Compliance that they have had no correspondence with Underwriters Laboratories concerning Omega sprinklers during the period of June 1999 to the present.

Should you have questions, contact us by letter, facsimile (301) 504-0127 or telephone (301) 504-0785.

Sincerely,


Todd A. Stevenson



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

May 07, 2001

Russell Carollo
Los Angeles Times
202 West First Street
Los Angeles, CA 90012-

RE: FOIA Request No. S-2001050034 (Omega Sprinklers)

Dear Mr. Carollo:

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,

A handwritten signature in cursive script that reads "Todd A. Stevenson".

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



Los Angeles Times

RUSSELL CAROLLO
REPORTER

MAY 3, 2001

Tod Stevenson
U.S. Consumer Product Safety Commission

Dear Mr. Stevenson,

Pursuant to the Federal Freedom of Information Act, 5 U.S.C. 552, I request access to and copies of all records released in response to the attached request (S-9050136), and, in addition, all correspondence between CPSC and UL concerning Omega sprinklers generated since CPSC responded to request S-9050136.

Please justify all deletions by reference to specific exemptions of the Act and release all reasonable segregable portions of otherwise exempt material. Please notify me of any similar requests.

I, of course, reserve the right to appeal.

If you conclude that any of the documents are exempt under the Act, please exercise your discretion to disclose these records nonetheless. Include information attached to these materials that might otherwise be considered non-responsive, and let me know if any similar requests have been filed.

Notify me prior to incurring more than \$100 in expenses. The FOIA Act provides for a waiver or reduction of fees if disclosure is "likely to contribute significantly to public understanding of the operations or activities of the government." I am a reporter for the Los Angeles Times, and this material is intended to be used in a series of articles reporting information never before released to the public. I ask that you waive all fees.

This information is of timely value, so please communicate questions by telephone rather than by mail. I look forward to your reply within 20 business days, as the statute requires.

Thank you for your assistance.

Yours very truly,

Russell Carollo

FAVOD

The Washington Post

1150 15th STREET N.W.
WASHINGTON, D.C. 20071-7403
(202) 334-7550

May 25, 1999

Todd A. Stevenson
Office of the Secretary, Freedom of Information Division
U.S. Consumer Product Safety Commission
4340 East West Highway Room 502
Bethesda, Md 20814-4408

Dear Mr. Stevenson:

Pursuant to the Freedom of Information Act (5 U.S.C. §552, as amended), I hereby request disclosure of the following records for inspection and possible copying:
Any correspondence between the CPSC and Underwriters Laboratories concerning the Omega sprinkler after October 14, 1998 when the CPSC and Central Sprinkler Corp. announced a nationwide recall.

If you regard any of these records as exempt from required disclosure under the Act, I hereby request that you exercise your discretion to disclose them nevertheless. If you should decide not to exercise your discretion to disclose any records, I ask that you provide all non-exempt portions that are reasonably segregable, as required by 5 U.S.C. §552 (b) and the United States Supreme Court decision in NLRB v. Sears, Roebuck & Co., 421 U.S. 132 (1975).

I further request that you disclose the listed documents as they become available to you, without waiting until all the documents have been assembled.

I am making this request on behalf of the Washington Post, a newspaper of general circulation in the Washington, D.C. metropolitan area and throughout the United States. The records disclosed pursuant to this request will be used in the preparation of news articles for dissemination to the public. Accordingly, I request that, pursuant to 5 U.S.C. §552 (a) (4) (A), you waive all fees in the public interest because the furnishing of the information sought by this request is likely to contribute significantly to public understanding of the operations or activities of government and is not primarily in the commercial interest of the requester. If, however, you decline to waive all fees, I am prepared to pay your normal fees for news media requesters, but I request that you notify me if you expect the fees to exceed \$100.

I look forward to hearing from you within the ten-day statutory time period, if not before.. Should you have an questions regarding this request, do not hesitate to call me at 202-334-7550.

Sincerely,

Caroline E. Mayer
Caroline E. Mayer
Staff Writer

H/ME

0701

ER/C

D-4

Am 3285

S-9050136

23



✓ GRANTED 1050034

Chron, 2618
No record

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

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

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

May 18, 2001

Mr. Russell Carollo
Los Angeles Times
202 West First Street
Los Angeles, CA 90012

**RE: FOIA Request S-1050034: Correspondence between CPSC and UL
Concerning Omega Sprinklers**

Dear Mr. Carollo:

This responds to your Freedom of Information Act request to the U. S. Consumer Product Safety Commission (Commission).

We are informed by staff of the Commission's Office of Compliance that they have had no correspondence with Underwriters Laboratories concerning Omega sprinklers during the period of June 1999 to the present.

Should you have questions, contact us by letter, facsimile (301) 504-0127 or telephone (301) 504-0785.

Sincerely,

Todd A. Stevenson



Los Angeles Times

RUSSELL CAROLLO
REPORTER

MAY 3, 2001

4/m E

Tod Stevenson
U.S. Consumer Product Safety Commission

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I, of course, reserve the right to appeal.

If you conclude that any of the documents are exempt under the Act, please exercise your discretion to disclose these records nonetheless. Include information attached to these materials that might otherwise be considered non-responsive, and let me know if any similar requests have been filed.

Notify me prior to incurring more than \$100 in expenses. The FOIA Act provides for a waiver or reduction of fees if disclosure is "likely to contribute significantly to public understanding of the operations or activities of the government." I am a reporter for the Los Angeles Times, and this material is intended to be used in a series of articles reporting information never before released to the public. I ask that you waive all fees.

This information is of timely value, so please communicate questions by telephone rather than by mail. I look forward to your reply within 20 business days, as the statute requires.

Thank you for your assistance.

Yours,
Russell Carollo

0701

completed 7/8/99

7/99 +

EXC/C

D.S

51050034

05/25/99 TUE 13:43 FAX

002

The Washington Post

1150 15th STREET N.W.
WASHINGTON, D.C. 20071-7403
(202) 334-7550

May 25, 1999

Todd A. Stevenson
Office of the Secretary, Freedom of Information Division
U.S. Consumer Product Safety Commission
4340 East West Highway Room 502
Bethesda, Md 208144-4408

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I look forward to hearing from you within the ten-day statutory time period, if not before. Should you have any questions regarding this request, do not hesitate to call me at 202-334-7550.

Sincerely,

Caroline E. Mayer
Caroline E. Mayer
Staff Writer

5-9050136

(23)

*Completed
7/6/99*

*H/ME
ER/c
D-4
AM 3285*

0701

22

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

July 9, 2001

Ms. Lisa Byard
908 Silvertree Court
Virginia Beach, VA 23452

Re: FOIA Appeal 1010095 on Playskool Kick Start Gyms

Dear Ms. Byard:

On June 29, 2001, 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 10 unconfirmed consumer complaints and the names/identities of some consumers from the complaints that you received, based on FOIA Exemptions 3 and 6. 5 U.S.C. §§ 552(b)(3) and (6).

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 complaints, 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 [the] information . . . is accurate, and that such disclosure is fair in the circumstances and reasonably related to effectuating the purposes of the [CPSA]." The information that is being withheld pursuant to Exemption 3, relying on section 6(b)(1), consists of unconfirmed consumer complaints. The Commission's regulations require that this information be confirmed as a reasonable step to assure the accuracy of the information. 16 C.F.R. § 1101.32(a)(3).

When consumers submit complaints to the Commission, the Commission sends them forms requesting that they confirm

Ms. Lisa Byard
July 9, 2001

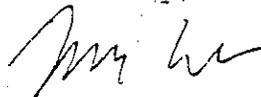
Page 2

the information as accurate to the best of their knowledge and belief. We also send each submitter a franked return envelope for mailing back the confirmation. This process, which is voluntary on the part of the submitter, has been in place since 1983. The complaints being withheld were subjected to this process. However, because the submitters of these complaints did not respond to the Commission's request for confirmation, the Commission may not disclose the complaints under the FOIA.

In applying Exemption 3 to the names/identities of the consumers, I am relying on section 25(c) of the CPSA, 15 U.S.C. § 2074(c), which prohibits such disclosure absent consent. The consumers have not given their consent. In addition, I am relying on Exemption 6 of the FOIA, 5 U.S.C. § 552(b)(6), which applies to "clearly unwarranted invasion[s] of personal privacy."

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

5004 PLA

OFFICE OF THE SECRETARY
2001 JUL -3 AM 11:32

June 29, 2001

U.S. Consumer Product Safety Commission
FOIA Appeal
General Counsel
Attn: Office of The Secretary
Washington, DC 20207

To Whom It May Concern:

I am writing to appeal the denial of access to records in regards to The Playskool Kick N Start Gym. (See letter attached.) I have received information on consumer complaints but I would like to obtain all records readily available to me.

I am in a pending social services case and I believe that this toy is the key to my case.

Please any further information on this product could be a huge piece of evidence that I need to end my case.

Thank you very much and I look forward to your response.

Sincerely,



Lisa Byard



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

JUN 25 2001

CERTIFIED MAIL

Lisa Byard
908 Silvertree Court
Virginia Beach, VA 23452

Re: FOIA Request S1010095: Playskool Kick Start Gym / Complaints, Reported Incidents, or Investigations of Incidents / File Search 1991 to Present

Dear Ms. Byard:

Enclosed are one in-depth investigation report and 13 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 report 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 person familiar with the product-related incident. 16 CFR § 1101.32(a)(1). However, the Commission has made no determinations about any causes of the incident.

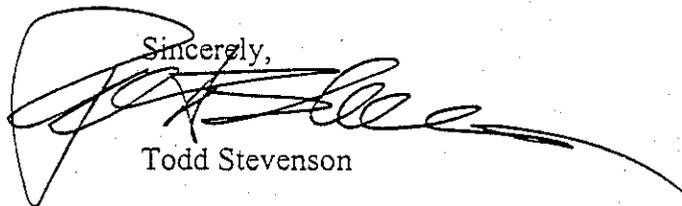
In addition, the Commission has received the enclosed consumer complaints through the same formal investigation systems. As a step to assure the accuracy of the information under section 6(b), the Commission has obtained confirmation of the information from the submitters of the complaints. See 16 CFR § 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 Hasbro, Inc. with the opportunity to comment on disclosure of the information. See 16 CFR §§ 1101.32(b) and .33(a)(1). We would disclose Hasbro's comments, but the company's attorney has asked that we not do so.

We are withholding the names of some consumer complainants who asked that we do so. See 15 U.S.C. § 2074(c) and 5 U.S.C. § 2055(b)(6). In addition, we are withholding portions of letters from Hasbro that are attached to the report and complaints. These portions are not responsive to your request.

You may appeal this partial denial of access to records by writing to the General Counsel, within thirty (30) days of receipt of this letter, at FOIA Appeal, General Counsel, Attn: Office of the Secretary, U.S. Consumer Product Safety Commission, Washington, D.C. 20207.

Sincerely,

A handwritten signature in black ink, appearing to read "Todd Stevenson", with a long horizontal flourish extending to the right.

Todd Stevenson

Enclosures



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PCA

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

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

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

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

JUN 25 2001

CERTIFIED MAIL

Lisa Byard
908 Silvertree Court
Virginia Beach, VA 23452

Re: FOIA Request S1010095: Playskool Kick Start Gym / Complaints, Reported Incidents, or Investigations of Incidents / File Search 1991 to Present

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Sincerely,

Todd Stevenson

Enclosures

BT031 for
COLISOIS

JAN 22 10 45 AM '01

January 18, 2001

U.S. Consumer Product
Safety Commission
FOI Office
4330 East West Highway
Bethesda, MD 20814

To Whom It May Concern:

Could you please inform me of any complaints or injuries in regards to the Playskool Kick and Start Gym?? The gym is for infants and older. My son may have broke his leg on this item and I would appreciate any assistance and information you can offer.

Please call at 757-628-6455 with information or mail information to:

Lisa Byard
908 Silvertree Court
Virginia Beach, VA 23452

Thank you very much for your assistance.

Regards,

LB4-

Lisa Byard

S-1010095

SLC

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

Michael S. Solender
General Counsel

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

Office of the General Counsel

July 27, 2001

Carl A. Taylor Lopez, Esq.
Lopez & Fantel
1510 14th Avenue
Seattle, Washington 98122

Re: FOIA Appeal S1050122
Emerson Electric Company/Sears Craftsman Radial Arm Saws
Commission Compliance Corrective Action and Recall File CA990090

Dear Mr. Lopez:

By letter dated June 29, 2001, 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. Since the FOI Officer denied your request for the compliance file, he has located investigation reports and reported incidents from the Commission's Information Clearinghouse and other documents and is processing them for disclosure. He has sent those documents to the manufacturer for comment pursuant to Consumer Product Safety Act (CPSA) section 6(b)(1) (see discussion on CPSA section 6(b)(1) below). Thereafter, those documents may be disclosed. Concerning the remainder of the responsive documents, as explained below, I affirm the FOI Officer's decision to withhold the information pursuant to FOIA Exemptions 3, 4, 5, and 7(A) with one exception. 5 U.S.C. §§ 552(b)(3), (b)(4), (b)(5), and (b)(7)(A). That exception is the pleadings relating to civil suits against the company. With regard to those pleadings, the FOI Officer has reconsidered his decision. Therefore, he will be processing those documents in the same manner as the investigation reports cited above. Thereafter, they may be disclosed.

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) and 6(b)(1) of the CPSA. 15 U.S.C. §§ 2055(a)(2) and (b)(1).

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

Carl A. Taylor Lopez, Esq.
July 27, 2001

Page 3

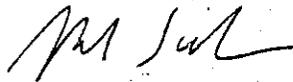
reasonably be expected to interfere with these enforcement proceedings. The records being withheld under this exemption consist of those records already being withheld pursuant to the other exemptions, as well as the correspondence between the company and the Commission.

In response to the comments in your appeal letter, it appears that your initial comment concerns a lack of particularity in the FOI Officer's letter with respect to the description of the records that are being withheld. We believe that we have remedied that problem. In this letter, we have described the various records that are being withheld with the requisite degree of specificity that will enable you to determine why each record is exempt from the FOIA. Your comments and the case you cite, Wiener v. FBI, 943 F.2d 972, 977-78 (9th Cir. 1991), discuss "detailed affidavits" and Vaughn indices. However, the agency must provide such materials during litigation, not during this administrative stage of the FOIA process. With regard to the timing of the creation of a Vaughn Index, it is well settled that a requester is not entitled to receive one during the administrative process. See, Edmond v. United States Attorney, 959 F.Supp. 1, 5 (D.D.C. 1997)(rejecting, as premature, request for Vaughn Index when agency had not processed plaintiff's request).

With respect to the remainder of your comments, we believe that the description of the withheld information and the reasons for such withholding, as expressed in this letter, meet the necessary requirements of the FOIA. Moreover, we are bound by the FOIA as well as the CPSA concerning the disclosure of the requested information. Accordingly, we have exercised the proper degree of narrowness in our construction of the FOIA exemptions with respect to the responsive records.

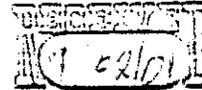
You have the right to seek judicial review of this decision as provided by 5 U.S.C § 552(a)(4)(B).

Sincerely,



Michael S. Solender

CARL A. TAYLOR LOPEZ
JANE I. FANTEL



ATTORNEYS AT LAW

June 29, 2001

VIA OVERNIGHT DELIVERY

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

Re: **APPEAL of Denial of Freedom of Information Act Request for
Materials Regarding Radial Arm Saws**

Your FOIA Request No. S1050122

Dear General Counsel:

On May 11, 2001, we wrote to request documents concerning radial arm saws pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and the regulations promulgated thereunder. A copy of our request is attached as Exhibit 1 to this letter. On June 8, we received a letter from Mr. Todd A. Stevenson, the CPSC's Freedom of Information Officer, denying our request. A copy of that letter is attached as Exhibit 2 to this letter. We are now writing to appeal that decision, pursuant to 5 U.S.C. § 552(a)(6). We expect a reply within the 20 working-day time limit.

In denying our FOIA request, Mr. Stevenson relied on the exemptions set out in 5 U.S.C. § 552(b)(3), (4), (5), and (7)(A). His explanations are wholly inadequate to show that the withheld documents fall within the claimed exemptions.

As you are aware, should it be necessary to litigate this matter, the CPSC will have the burden of proving the applicability of any claimed exemption. See 5 U.S.C. § 552(a)(4)(B); Wiener v. FBI, 943 F.2d 972, 977-78 (9th Cir. 1991). It may meet this burden by submitting detailed affidavits "identifying each document withheld, the statutory exemption claimed, and a particularized explanation of how disclosure of the particular document would damage the interest protected by the claimed exemption." Wiener, 943 F.2d at 977. **Boilerplate affidavits are inadequate to sustain the agency's burden.** Id. at 978-79. As the Eighth Circuit has remarked, FOIA "would stand as a universal bar against disclosure" if boilerplate, conclusory affidavits were enough. Miller v.

LOPEZ & FANTEL
ATTORNEYS AT LAW
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1510 14TH AVENUE
SEATTLE, WASHINGTON
98122

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E-MAIL: LAWYERS@LOPEZFANTEL.COM

General Counsel

June 29, 2001

Page 2

U.S. Dep't of Agric., 13 F.3d 260, 263 (8th Cir. 1993). Further, "FOIA exemptions are to be interpreted narrowly." Ryan v. Department of Justice, 617 F.2d 781, 790 (D.C. Cir. 1980).

Here, Mr. Stevenson's denial fails entirely to satisfy these standards. First, the description of the withheld documents is inadequate. Mr. Stevenson's denial states that "[t]he records being withheld consist of internal staff memoranda and correspondence" See Exhibit 2. That broadly stated description of the withheld documents fails to provide any guidance in determining what individual documents have been withheld and whether or not the exemptions have been properly claimed as to each withheld document. At a minimum, the CPSC must identify the documents being withheld and explain with some particularity why they fall within the claimed exemptions. See Wiener, 943 F.2d at 977.

Second, Mr. Stevenson's attempted reliance on Exemption 7A is without merit. First, Mr. Stevenson fails to explain with any particularity why that exemption is met here. See Campbell v. Department of Health and Human Servs., 682 F.2d 256, 259 (D.C. Cir. 1982) (agency must demonstrate the ways in which disclosure could reasonably be expected to interfere with a particular proceeding). It appears unlikely at best that all of the CPSC's documents concerning Craftsman radial arm saws are part of the CPSC's litigation file on this matter. Nor does Mr. Stevenson indicate whether the targets of the alleged enforcement proceeding (presumably Emerson Electric and Sears) are already in possession of any or all of the requested documents. If they are, then the exemption does not apply. See id.

Further, Mr. Stevenson fails to note that we specifically stated, in regard to items 4-6 of our request, that we were seeking "all documents concerning all radial arm saws, regardless of the identity of the manufacturer." Mr. Stevenson references only a recall of Sears Craftsman radial arm saws. Obviously, documents concerning radial arm saws manufactured by other entities would not be covered by this exemption. Further, general documents concerning radial arm saws (e.g., studies prepared by the CPSC or other entities) would not affect any planned enforcement action. In any event, without a complete list of withheld documents, it is impossible to determine the validity of this claimed exemption, even in regard to the Craftsman radial arm saws currently being recalled.

Third, Mr. Stevenson's reliance on the "deliberative process" Exemption 5 is insufficient. To qualify for the deliberative process privilege, a document must be both "predecisional" and "deliberative." See Renegotiation Bd. v. Grumman Aircraft Eng'g Corp., 421 U.S. 168, 184 (1975); Hookins v. U.S. Dep't of Housing

& Urban Dev., 929 F.2d 81, 84 (2d Cir. 1991). A document is predecisional when it is "prepared in order to assist an agency decisionmaker in arriving at his decision." Hopkins, 929 F.2d at 84 (internal quotation marks and citation omitted). It is "deliberative" when it is "actually ... related to the process by which policies are formulated." Id. (internal quotation marks and citation omitted). As a general matter, the "deliberative process" exemption does not cover "purely factual" material. See id. at 85. Even if a predecisional document contains opinions or recommendations, the privilege applies only to the "opinion" or "recommendatory" portion of the document and not to the factual portions within it. Coastal States Gas Corp. v. Department of Energy, 617 F.2d 854, 867 (D.C. Cir. 1980). Facts in a predecisional document must be segregated and disclosed unless they are "inextricably intertwined" with exempt portions. 5 U.S.C. § 552(a)(4)(B); Ryan, 617 F.2d at 790.

Here, much of the material that we requested simply could not reveal the opinions or recommendations of the CPSC in regard to any planned enforcement action. For example, we believe that the documents responsive to our request would include (among other things) CPSC studies, In-Depth Investigation reports ("IDIs"), fact sheets, communications from consumers or representatives of consumers (including attorneys for injured persons), and communications from non-governmental entities, including the National Safety Council, manufacturers, and others. Those documents do not reflect the opinions or recommendations of the CPSC and thus do not fall within the category identified by Mr. Stevenson. Consequently, they should be produced.

Fourth, Mr. Stevenson's attempt to draw underlying factual documents into Exemption 5 is without merit. Mr. Stevenson's letter suggests that all other documents not covered by that exemption "are inextricably intertwined with exempt materials or the factual materials would itself expose the deliberative process." That blanket "explanation" cannot suffice. As noted, the "deliberative process" exemption applies only to documents that may expose the opinions or recommendations of the CPSC. See Hopkins, 929 F.2d at 84. Here, it is beyond belief that all of the CPSC's documents would fall within this category. As indicated above, we are aware that the CPSC has been studying power saws (including radial arm saws) for more than 25 years, has published a number of reports regarding its investigations, and has conducted numerous investigations of accidents involving radial arm saws. Disclosure of those documents could not be "intertwined with exempt materials," nor is it credible that disclosure of those documents would "expose the deliberative process" in regard to any action against any manufacturer. The CPSC should therefore disclose those documents. See Coastal States, 617 F.2d at 867-68 (factual materials are

exempt only to the extent that they reveal the mental process of decision makers).

Fifth, Mr. Stevenson's invocation of the attorney-client privilege also fails to sustain the CPSC's complete failure to produce any documents. To claim the attorney-client privilege, the CPSC must show (1) that the document was between the CPSC and its attorney(s); (2) that the communication was necessary to obtaining informed legal advice; and (3) that the document was disclosed only to persons authorized to speak or act for the agency. See Coastal States, 617 F.2d at 862-64. Because Mr. Stevenson completely fails to identify any documents, it is impossible to determine whether in fact those documents were created by the CPSC's attorneys.

Moreover, it is obvious that not all of the documents that the CPSC has compiled over its more than 25 years of studying radial arm saws were communications between the CPSC and its attorneys. Further, we are aware that the CPSC has produced documents specifically relating to Sears Craftsman radial arms saws—and, in particular, In-Depth Investigation reports—to other plaintiffs' law firms involved in product liability actions. Because those documents have previously been disclosed to other persons, the CPSC cannot claim any privilege in those documents. The same analysis applies to item number 6, which requested "[a]ll documents received by the CPSC from any person, partnership, corporation, firm, association, agency, or other entity, private or public, related to hazards or risks posed by radial arm saws or defects in radial arm saws." Because those documents were received from persons other than the CPSC's attorneys, they cannot be withheld under a claim of attorney-client privilege.

Sixth, Mr. Stevenson fails to demonstrate that the attorney work-product doctrine applies here. To claim that exemption, the CPSC must show that the documents at issue (1) were prepared by an attorney; (2) reveal the theory of the attorney's litigation strategy; and (3) were prepared in anticipation of litigation. See Coastal States, 617 F.2d at 864-65. Again, the complete failure to identify any documents makes it impossible to determine whether any of those documents fall within that exemption. Further, it is (again) beyond dispute that many, if not most, of the documents responsive to our request were not prepared by an attorney, would not reveal the attorney's litigation strategy, and were not prepared in anticipation of litigation. All of those documents should be disclosed.

Seventh, Mr. Stevenson's reliance on FOIA exemptions 3 and 4 is also misplaced. The CPSC's prior publications presumably do not contain any trade secrets or confidential commercial information. Similarly, the IDIs presumably do

General Counsel

June 29, 2001

Page 5

not contain any trade secrets or confidential commercial information. In any event, without a list of withheld documents, it is impossible to determine whether those two exemptions were properly claimed.

Eighth, the CPSC has made no effort to produce segregable portions of its records. See 5 U.S.C. § 552(b). "The segregability requirement applies to all documents and all exemptions in the FOIA." Krikorian v. Department of State, 984 F.2d 461, 466 (D.C. Cir. 1993) (emphasis added) (internal quotation marks and citation omitted). Further, an agency that withholds documents must supply "a relatively detailed justification, specifically identifying the reasons why a particular exemption is relevant and correlating those claims with the particular part of a withheld document to which they apply." Id. (emphasis in original) (internal quotation marks and citation omitted). Here, Mr. Stevenson made no attempt to show that the documents cannot be segregated. It is beyond belief that each page, each line, and each word of all of the documents fall within the exemptions claimed by the CPSC. Thus, the CPSC must make an effort to segregate those documents and portions of documents that are not exempt and produce those to us.

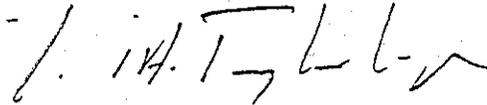
In light of the reasons set forth above, **we request that you reverse Mr. Stevenson's decision and disclose the documents identified in the categories set out in our letter of May 11, 2001.** To the extent that you claim that any individual documents or parts of documents are exempt, we request that you identify those documents or portions of documents, the exemptions claimed, and the reasons for claiming those exemptions with enough specificity so that we can determine whether or not the exemptions are fairly claimed.

Please note that, should this appeal be denied, or should the CPSC fail to respond within the 20 working-day time limit, we will file a complaint seeking disclosure of the requested documents and attorneys' fees. **Should you deny the appeal, we request a comprehensive list of the individual documents being withheld, along with an explanation as to which exemptions are being claimed for the individual documents.**

General Counsel
June 29, 2001
Page 6

Thank you for your consideration of this appeal.

Sincerely,

A handwritten signature in black ink, appearing to read "C. A. Taylor". The signature is written in a cursive style with a large initial "C" and a long horizontal stroke at the end.

CARL A. TAYLOR Lopez & Fantel

CATL:pas
Enclosures

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May 11, 2001

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

Re: Freedom of Information Act Request for Materials Regarding Radial Arm Saws

Dear Freedom of Information Officer:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and the regulations promulgated thereunder, we hereby request copies of the documents identified below. We agree to pay reasonable copying charges associated with obtaining these documents.

Specifically, we request that the CPSC provide us with copies of the following documents:

1. All documents relating to the recall of Craftsman radial arm saws announced by the CPSC and Emerson Tool Co. on November 14, 2000 (see the attached recall notice, printed from the CPSC website);
2. All documents relating to hazards or risks posed by radial arm saws or defects in radial arm saws manufactured by Emerson Tool Co., Emerson Electric Co., or any division, subsidiary, corporate parent, or corporate sibling of either Emerson Tool Co. or Emerson Electric Co.;
3. All documents relating to hazards or risks posed by radial arm saws or defects in Craftsman radial arm saws sold by Sears, Roebuck & Company;
4. All documents relating to injuries suffered by any person while using any radial arm saw, including but not limited to all In-Depth Investigation reports;
5. All documents relating to hazards or risks posed by radial arm saws or defects in radial arm saws, including but not limited to all documents authored by the Consumer Product Safety Commission ("CPSC") or by any employee, director, officer, or agent of the CPSC;

Freedom of Information Officer

May 11, 2001

Page Two

6. All documents received by the CPSC from any person, partnership, corporation, firm, association, agency, or other entity, private or public, related to hazards or risks posed by radial arm saws or defects in radial arm saws.

Please note that, in requests 4-6, we wish to obtain all documents concerning all radial arm saws, regardless of the identity of the manufacturer.

Thank you in advance for your assistance.

Sincerely,



CARL A. TAYLOR LOPEZ

CATL:hwm

010511FOIA

NEWS from CPSC

U.S. Consumer Product Safety Commission

Office of Information and Public Affairs

Washington, DC 20207

FOR IMMEDIATE RELEASE

November 14, 2000

Release # 01-031

Emerson Recall Hotline: (800) 511-2628

CPSC CONTACT: Ken Giles

(301) 504-0580 Ext. 1184

Emerson Tool Co. Contact: Walt Sharp

(314) 982-0567

CPSC, Emerson Tool Co. Announce Recall of Craftsman® Radial Arm Saws Sold by Sears, Roebuck and Co.

WASHINGTON, D.C. - In cooperation with the U.S. Consumer Product Safety Commission (CPSC), Emerson Tool Co., of St. Louis, Mo., is recalling about 3.7 million Craftsman® radial arm saws for repair. These radial arm saws were sold without a guard that covers the entire blade. Consumers have come into contact with the blade or have been hit by pieces of wood kicked back by the saws, resulting in severe injuries.

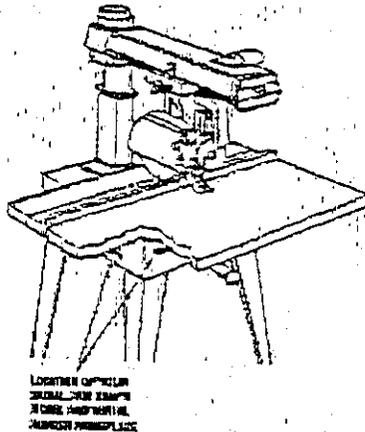
CPSC and Emerson have received about 300 reports of injuries while using these saws. Injuries include hand and finger amputations; lacerated hands, arms and fingers; fractured hands and fingers; and facial injuries.

Emerson is offering a free repair kit that provides a complete blade guard. Consumers should stop using their Craftsman® radial arm saws immediately and call Emerson Tool Co. to determine if their saw is recalled and to ensure that they have proper safety and use instructions. Consumers should have the model and serial numbers of their saw available when they call.

The recalled Craftsman® 8-, 8¼-, 9- and 10-inch radial arm saws have a model number beginning with 113, usually located on the base of the saw. The brand name "Craftsman®" and store name "Sears" are written on the saws.

Sears stores and catalogs sold the 8-, 9- and 10-inch saws from 1953 through 1992. The 8¼-inch saws were sold from 1990 through 1995. The saws sold for between \$100 and \$700, depending on the model, year purchased and accessories.

For older model saws and others that cannot accept the new guard, Emerson will provide \$100 for the return of the saw carriage. Consumers must contact Emerson to receive a free repair kit or to return their saw carriage. Saws should not be returned to Sears.



The new guarding system provides a substantial safety improvement over guarding systems manufactured before 1993. Even if consumers have purchased a lower guard for their saw, they should still replace it with the new guard system.

For more information, call Emerson at (800) 511-2628 anytime, or visit the firm's web site at www.radialarmsawrecall.com.

 Consumers can also view a video clip about this recall (transcript). This is in "streaming video" format.

The U.S. Consumer Product Safety Commission protects the public from unreasonable risks 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, call CPSC's hotline at (800) 633-2772 or CPSC's teletypewriter at (300) 633-3270, or visit CPSC's web site at <http://www.cpsc.gov/talk.html>. For information on CPSC's fax-on-demand service, call the above numbers or visit the web site at <http://www.cpsc.gov/cpscpub/gubs/103.html>. 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 at CPSC's web site at <http://www.cpsc.gov>.



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

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

Tel: 301-504-0735X1239
Fax: 301-504-0127
Email: tstevenson@cpsc.gov

RECEIVED

June 5, 2001

JUN 08 2001

LOPEZ & FANTEL

CERTIFIED MAIL

Carl A. Taylor Lopez
Lopez & Fantel
1510 14th Avenue
Seattle, WA 98122

Re: FOIA Request S1050122: Emerson Electric Company / Sears Craftsman 8-, 8¼-, 9-, and 10-inch Radial Arm Saws / Commission Compliance Corrective Action and Recall File CA990090

Dear Mr. Lopez:

Thank you for your Freedom of Information Act (FOIA) request to the U.S. Consumer Product Safety Commission (Commission). We must withhold the records responsive to your request, specifically, the records from the Commission's Office of Compliance's active litigation and law enforcement investigatory file referenced above, 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 pre-decisional 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

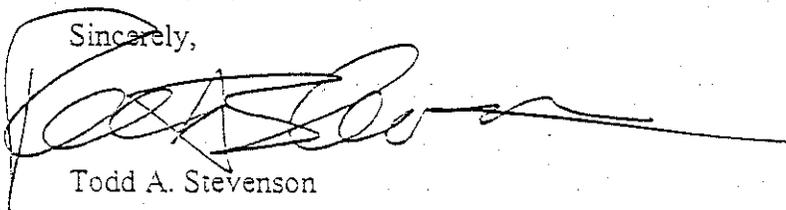
records responsive to your request would be contrary to the public interest. It would not be in the public interest to disclose these materials because disclosure would (1) impair the frank exchange of views necessary with respect to such matters, and (2) prematurely reveal information used in the investigation,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

The file also contains proprietary and confidential information submitted by the company, manufacturer monthly progress reports, that we must withhold 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). 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.

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.

The file information may be subject to disclosure once the case is closed. You may want to resubmit your request in a few months. Processing this request, performing the file searches and reviewing the information, cost the Commission \$60.00. 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", with a long horizontal line extending to the right.

Todd A. Stevenson



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

DEN 1050122

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

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

June 5, 2001

CERTIFIED MAIL

Carl A. Taylor Lopez
Lopez & Fantel
1510 14th Avenue
Seattle, WA 98122

Re: FOIA Request S1050122: Emerson Electric Company / Sears Craftsman 8-, 8 1/4 - 9-, and 10-inch Radial Arm Saws / Commission Compliance Corrective Action and Recall File CA990090

Dear Mr. Lopez:

Thank you for your Freedom of Information Act (FOIA) request to the U.S. Consumer Product Safety Commission (Commission). We must withhold the records responsive to your request, specifically, the records from the Commission's Office of Compliance's active litigation and law enforcement investigatory file referenced above, 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 pre-decisional 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.

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The file information may be subject to disclosure once the case is closed. You may want to resubmit your request in a few months. Processing this request, performing the file searches and reviewing the information, cost the Commission \$60.00. In this instance, we have decided to waive all of the charges.

Sincerely,

Todd A. Stevenson

CARL A. TAYLOR LOPEZ
JANE I. PANTEL

RECEIVED BY THE SECRETARY
MAY 15 10 57 AM '01

ATTORNEYS AT LAW

May 11, 2001

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

11A

Re: Freedom of Information Act Request for Materials Regarding Radial Arm Saws

0841
0843

Dear Freedom of Information Officer:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and the regulations promulgated thereunder, we hereby request copies of the documents identified below. We agree to pay reasonable copying charges associated with obtaining these documents.

Specifically, we request that the CPSC provide us with copies of the following documents:

1. All documents relating to the recall of Craftsman radial arm saws announced by the CPSC and Emerson Tool Co. on November 14, 2000 (see the attached recall notice, printed from the CPSC website);
2. All documents relating to hazards or risks posed by radial arm saws or defects in radial arm saws manufactured by Emerson Tool Co., Emerson Electric Co., or any division, subsidiary, corporate parent, or corporate sibling of either Emerson Tool Co. or Emerson Electric Co.;
3. All documents relating to hazards or risks posed by radial arm saws or defects in Craftsman radial arm saws sold by Sears, Roebuck & Company;
4. All documents relating to injuries suffered by any person while using any radial arm saw, including but not limited to all In-Depth Investigation reports;
5. All documents relating to hazards or risks posed by radial arm saws or defects in radial arm saws, including but not limited to all documents authored by the Consumer Product Safety Commission ("CPSC") or by any employee, director, officer, or agent of the CPSC;

ERL/S

10/12

~~ERL/S~~

D-69

LOPEZ & PANTEL
ATTORNEYS AT LAW
A PROFESSIONAL
SERVICES CORPORATION
1610 14TH AVENUE
SEATTLE, WASHINGTON
98122

206 322 3200
FAX 206 322 1979

5/1050/22

NEWS from CPSC

U.S. Consumer Product Safety Commission

Office of Information and Public Affairs

Washington, DC 20207

FOR IMMEDIATE RELEASE

November 14, 2000

Release # 01-031

Emerson Recall Hotline: (800) 511-2623

CPSC CONTACT: Ken Giles

(301) 504-0580 Ext. 1184

Emerson Tool Co. Contact: Walt Sharp

(314) 982-0567

CPSC, Emerson Tool Co. Announce Recall of Craftsman® Radial Arm Saws Sold by Sears, Roebuck and Co.

WASHINGTON, D.C. - In cooperation with the U.S. Consumer Product Safety Commission (CPSC), Emerson Tool Co., of St. Louis, Mo., is recalling about 3.7 million Craftsman® radial arm saws for repair. These radial arm saws were sold without a guard that covers the entire blade. Consumers have come into contact with the blade or have been hit by pieces of wood kicked back by the saws, resulting in severe injuries.

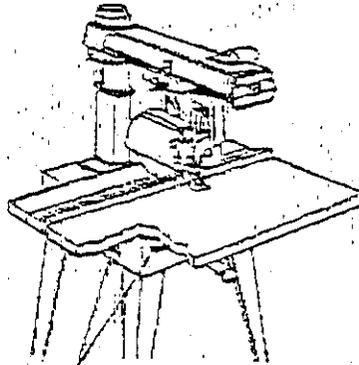
CPSC and Emerson have received about 300 reports of injuries while using these saws. Injuries include hand and finger amputations; lacerated hands, arms and fingers; fractured hands and fingers; and facial injuries.

Emerson is offering a free repair kit that provides a complete blade guard. Consumers should stop using their Craftsman® radial arm saws immediately and call Emerson Tool Co. to determine if their saw is recalled and to ensure that they have proper safety and use instructions. Consumers should have the model and serial numbers of their saw available when they call.

The recalled Craftsman® 8-, 8¼-, 9- and 10-inch radial arm saws have a model number beginning with 113, usually located on the base of the saw. The brand name "Craftsman®" and store name "Sears" are written on the saws.

Sears stores and catalogs sold the 8-, 9- and 10-inch saws from 1953 through 1992. The 8¼-inch saws were sold from 1990 through 1995. The saws sold for between \$100 and \$700, depending on the model, year purchased and accessories.

For older model saws and others that cannot accept the new guard, Emerson will provide \$100 for the return of the saw carriage. Consumers must contact Emerson to receive a free repair kit or to return their saw carriage. Saws should not be returned to Sears.



LOOKING FOR THE
SERIAL, THE DATE
OF PURCHASE, OR
ANY OTHER INFO

The new guarding system provides a substantial safety improvement over guarding systems manufactured before 1993. Even if consumers have purchased a lower guard for their saw, they should still replace it with the new guard system.

For more information, call Emerson at (800) 511-2628 anytime, or visit the firm's web site at www.radialarmsawrecall.com.



Consumers can also view a video clip about this recall (transcript). This is in "streaming video" format.

The U.S. Consumer Product Safety Commission protects the public from unreasonable risks 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, call CPSC's hotline at (800) 633-2772 or CPSC's teletypewriter at (800) 633-3270, or visit CPSC's web site at <http://www.cpsc.gov/talk.html>. For information on CPSC's fax-on-demand service, call the above numbers or visit the web site at <http://www.cpsc.gov/cpsc/pub/pubs/103.html>. 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 at CPSC's web site at <http://www.cpsc.gov>.



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

Michael S. Solender
General Counsel

Office of the General Counsel

27
Tel: (301) 504-0880
Fax: (301) 504-0403
Email: cpssc-gc@cpssc.gov

August 17, 2001

Jeff Stachewicz, Esq.
FOIA Group, Inc.
101 S. Whiting Street, 16th Floor
Alexandria, VA 22304

Re: FOIA Appeal S1050131
Government Credit Card Holders

Dear Mr. Stachewicz:

By letter dated June 15, 2001, 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.

In your FOIA request dated April 24, 2001, you requested "Annual report(s) (most recent) showing the detailed purchasing of the Smart Pay, Impact, or other gov't credit card holders for your agency." You indicated that you wanted "this information only in electronic format MS ACCESS or EXCELL." [emphasis added] In his letter dated June 4, 2001, the FOI Officer informed you that "the requested information is not available in the format requested (MS ACCESS or EXCELL)." [emphasis added] However, the FOI Officer sent you a list of the credit card holders along with their addresses and telephone numbers. He did not withhold any responsive information since your FOIA request required the information to be in the MS ACCESS or EXCELL format only.

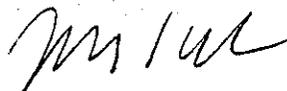
The Commission's Division of Financial Services has custody of the information that you requested, but not in the requested format or in any electronic format. It can be retrieved in "hard copy form." However, a fee would have to be charged because this process would be labor intensive. If you are interested in obtaining the information in this form, please contact the FOI Officer at (301) 504-0800, Ext. 1239.

Jeff Stachewicz, Esq.
August 17, 2001

Page 2

If you do not agree with the actions taken by the Commission, 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