



UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, DC 20207

Memorandum

Date: November 15, 2002

TO : File

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

SUBJECT : FY 2002 FOIA Appeals

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

- (1) S1050013 Reeves / Kaeske Reeves / Milton Bradley Fibro Clay Modeling compound 1983 recall
FOIA Exs. 3, and 4, CPSA 6(a)(2) and 6(b)(1)
8/27, 9/27, 10/1, DUE Nov. 1
Affirmed October 23, 2001 GC Michael Solender
- (2) S1090037 Nelson Seeking active compliance file RP000185 on Polaris ATVs
FOIA Exs. 5 and 7(A)
11/1 11/5 DUE 12/3
11/26/01 Affirmed by Acting General Counsel Alan Shakin
- (3) S1070105 Leathers / Greer & Pipkin Seeking Compliance Field file FC920021 on TPI Corporation electric wall heaters
FOIA Exs. 3, and 4, and CPSA 6(a)(2), 6(b)(1) and 6(b)(5)
1/12 2/26 DUE 3/28
Affirmed March 13, 2002, Acting GC Alan Shakin
- (4) S1080141 and S1090103 Gallagher / Greenebaum, Doll Seeking Baseball Bat Petition Draft Materials
FOIA Ex. 5
2/8 2/22 3/11 DUE 4/8
Reconsidered and released April 5, 2002

- (5) S2010203 Brooks / Peterson Seeking active compliance files on Glowmaster Portable Gas Fired Cook Stoves
FOIA Exs. 5 and 7(A)
2/8 3/6 3/25 DUE 4/24
Affirmed 5/10/02 by Acting GC Melissa Hampshire
- (6) S1120110 Statler Seeking Compliance file RP950027 on Brinkman Smoker Grills
FOIA Exs. 3, and 4, and CPSA 6(a)(2), and 6(b)(5)
2/7, 3/5, 3/21 DUE 4/22
Affirmed April 23, 2002 Acting GC Stephen Lemberg
- (7) S1100143 Frost Seeking draft PSA from compliance file on Diary Queen playground equipment file RP980059
FOIA Exs. 5 and 7(E)
1/3 2/9 3/15 DUE 4/15
Affirmed April 23, 2002 Acting GC Stephen Lemberg
- (8) S2010140 Kent / Clark Wilson Seeking active compliance file CA970033 on Peg Perego Ride-on toy vehicles
FOIA Exs. 5 and 7(A)
2/26 3/11 4/9 DUE 5/7
Affirmed 4/30/02 by Acting GC Melissa Hampshire
- (9) S2030120 Brown / Brown Freeston Seeking Fisher Price Power Wheels testing from the Compliance file
FOIA Exs. 5 and 7(E) *NOT COMPLETE 10/1/02*
, 4/18, 4/22, DUE 5/22
- (10) S2030157 Eiben / The McDonald Group Seeking active compliance file CA990090 on Sears/Emerson radial arim saws
FOIA Exs. 5 and 7(A)
5/9 6/7 6/17 7/16
Affirmed 6/21/02 Acting GC Melissa Hampshire
- (11) S2040093 Wise Seeking Records on Baby Monitors
FOIA Ex. 3, and CPSA 6(b)(1), and 25(c)
6/18, 7/1 DUE 7/30
Affirmed 7/26/02 Acting GC Melissa Hampshire
- (12) S2060074 and S2070031 Hall / Dunaway and Cross Seeking active compliance materials on Weed Wizard
FOIA Exs. 5 and 7(A)
7/10 8/9 8/9 DUE
Affirmed September 6, 2002, Acting GC Alan Shakin

(13)S2030039 Komyatte/Gilbert, Frank Seeking withheld portions of Compliance Files on
Pressure Washers
FOIA Exs. 3, 4, 5, and 7(E), and CPSA 6(a)(2)
7/26, 8/20, 8/27 DUE 9/25
Affirmed-in-part and reconsidered-in-part, September 11, 2002, Acting GC Melissa
Hampshire



(1)

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

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October 23, 2001

Kay Gunderson Reeves, Esq.
Kaeske & Reeves LLP
6301 Gaston Avenue, Suite 735
Dallas, Texas 75214

Re: FOIA Appeal No. S-1050013: Milton Bradley Company
Fibro-Clay Modeling Compound; 1983 Recall/Corrective Action File ID830037

Dear Ms. Reeves:

By letter dated September 27, 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. I understand, from your appeal letter, that your FOIA appeal is limited to pages 3, 4, 6A, 7, 9, 10, 12-14, 21, 22-25, 44, 54, 203, 254, 256, 257, 259-261, 269, 273, 275, 301-309, 434, and 436-438. Under authority delegated to me by the Commission, 16 C.F.R. § 1015.7, I have reviewed your appeal and the responsive information. As explained below, I affirm the FOI Officer's decision to withhold the responsive information pursuant to FOIA Exemptions 3 and 4. 5 U.S.C. §§ 552(b)(3) and (b)(4).

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

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 obtained. The information being withheld pursuant to FOIA Exemption 3, relying on CPSA section 6(a)(2), and FOIA Exemption 4, consists of product formulas, production and sales figures, customer lists, and information pertaining to the company's method of recalling the production as well as distribution.

Kay Gunderson Reeves, Esq.
October 23, 2001

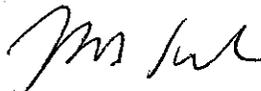
Page 2

In response to your comments, page 54 contains information relating to the company's method of recall. On appeal, it is only being withheld pursuant to FOIA Exemption 3, relying on CPSA section 6(a)(2), and FOIA Exemption 4, since that information is confidential. Although pages 22-25 are a Commission document, it contains information concerning the Commission's acceptance of the company's corrective action plan. It is being withheld under the same exemption because it also contains information about the company's methods of recall. The remainder of the pages withheld (and the portions redacted) are also confidential. All of the information on these pages is confidential because its release would be likely to impair the government's ability to obtain such information in the future as well as being likely to cause substantial harm to the competitive position of this company.

Concerning your comment that the Commission "can mandate that the names and addresses of all distributors be submitted when a company learns . . . that its product poses a significant hazard," I agree that we can. However, the Commission is unable to release all information that we receive into our custody because of the restrictions placed on us by the FOIA and section 6 of CPSA. Moreover, neither the fact that Milton Bradley was acquired by Hasbro nor the fact that Hasbro no longer does business in school supplies changes the Commission's responsibilities with respect to the release of 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

KAESKE • REEVES L.L.P.

ATTORNEYS AT LAW

September 27, 2001

FOIA APPEAL

General Counsel

ATTN: Office of the Secretary

U.S. Consumer Product Safety Commission

Washington, D.C. 20207

RE: FOIA Request #1050013: Milton Bradley Company "Fibro-Clay" Modeling Compound 1983 Recall/Corrective Action File ID 830037

To Whom It May Concern:

On July 19, 2001, I sent the Consumer Product Safety Commission a Freedom of Information Act Request seeking documents relevant to the recall of Milton Bradley's "Fibro-Clay" modeling clay. The Commission responded by Certified Mail dated August 27, 2001; that response was not received in our office before August 31, 2001. Therefore, this appeal is timely.

The Commission withheld several responsive pages of documents. The undersigned would like to appeal the non-disclosure of certain of those pages. The pages that are the subject of this appeal, as well as the grounds for this appeal, are stated below.

Page 54 Page 54 is the seventh page of what appears to be an eight-page document generated by the Commission to facilitate data entry; it is entitled "ID Input." The eight pages (including the blank seventh page stating the exemptions claimed) are attached herein as Exhibit A. This ID Input document clearly identifies the manufacturer, Milton Bradley, on its first page. It reveals that the Commission received notice of an asbestos hazard (page 3) in Milton Bradley's "Fibro Clay" product (page 2) from a media report (page 1). It states that Milton Bradley intends to recall and dispose of the "Fibro Clay," and that both Milton Bradley and the CPSC would issue a joint release on March 18, 1983 (page 5-6). Page seven is blank except for the information revealing the exemptions claimed.

This document was withheld pursuant to Exemptions 3 and 4 of the FOIA, and Section 6(b)(1) of the Consumer Product Safety Act (CPSA). Your August 27 letter (attached herein as Exhibit B for your easy reference) indicates that the Commission withheld these records according to CPSA §6(b)(1), Exemption 3 of the FOIA, and 16 C.F.R. §1101.33, which prohibit the Commission from disclosing certain consumer product information unless the Commission has taken "reasonable steps" to assure that the information is accurate, that disclosure is fair in the circumstances, and that

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disclosure will be reasonably related to effectuating the purposes of the laws that the Commission administers.

As a threshold matter, Section 6(b)(1) of the CPSA does not provide a basis for the non-disclosure of this document. Thus, the document's disclosure is not "specifically exempted by statute" under Exemption 3 [5 U.S.C. §552(b)(3)]. There being no other stated basis for the non-disclosure of the document, it must be provided to me.

Section 6 of the CPSA, and the regulations that implement it (including 16 C.F.R. 1101.33) permit the Commission to limit its disclosures in two ways. First, it makes clear that trade secrets that would not be disclosed under Exemption 4 of FOIA cannot be disclosed under the CPSA. [15 U.S.C.A. §2055(a)(2)].¹ Second, the section limits disclosure where the information sought will "permit the public to ascertain readily the identity of a manufacturer or private labeler of a consumer product...." [15 U.S.C.A. §2055(a)(3)]. As to this category of information, the Commission must take certain verification and balancing steps. Specifically, Section 6(b)(1) dictates that the Commission take reasonable steps to assure that information *from which the identity of [a] manufacturer or private labeler may be readily ascertained* is accurate. The entire section is, by its express terms, intended to ensure that the Commission take special pains to ensure the accuracy of consumer product safety information which identifies a particular manufacturer or labeler—pains designed to protect against a case of "mistaken identity."² Having taken reasonable steps to assure accuracy, the Commission is then required to determine that disclosure is fair under the circumstances, and to determine that disclosure furthers the policy goals underlying the Act. These verification and balancing requirements (and the implementing regulations in 16 C.F.R. 1101.33) are called into play, however, *only* if the information in question is of the sort that would permit the public to ascertain the identity of a manufacturer or private labeler. If the information is *not* of that type, the Commission is not permitted to engage in such balancing because FOIA itself does *not* authorize it.

The concerns about mistaken identity cannot be at issue with this FOIA request.

¹ I do not understand the Commission to have withheld page 54, the seventh page of this "ID Input" document, because it believes it contains trade secret information. The basis for this conclusion is that the withheld page references Section 6(b)(1) of the CPSA and not Section 6(b)(2). To the extent this is incorrect, the arguments supporting my contention that none of these documents can accurately be characterized as trade secret documents are stated below.

² See H.R.Rep. No. 1153, 92d Cong., 2d Sess. 32 (1972); Statement of Congressman Crane, 118 Cong.Rec. 31389 (Sept. 20, 1972)(In enacting Section 6(b)(1), Congress was concerned that the Commission might unfairly publicize inaccurate information that might harm the reputation of a particular product or business); *Pierce & Stevens Chemical Corp. v. U. S. Consumer Product Safety Commission*, 585 F.2d 1382, 1387 (2nd Cir. 1978), overruled other grounds (same).

Milton Bradley, the manufacturer of the "Fibro-Clay," has been clearly identified in many of the other documents disclosed by the Commission, including particularly the first page of the ID Input document at issue here!³ Indeed, this ID Input document reveals that the CPSC and the Milton Bradley Company jointly issued a press release concerning the recall of this Fibro-Clay product. Thus, Milton Bradley is clearly implicated as the manufacturer/private labeler in other documents, mooting any concern that might be raised by one more mention of the firm's name. Nothing I have learned from the documents produced to me, or elsewhere, reveals that there was ever a "private labeler" of the product,⁴ so this ID Input document just does not fall within the exception claimed.

Furthermore, the Commission's letter, which describes the reasons that certain pages were withheld under Section 6(b)(1)/16 C.F.R. 1101.33, does not describe documents like this "ID Input" data entry form withheld as page 54. Your letter states that the pages withheld under Section 6(b)(1) and Exemptions 3 and 4--pages like page 54-- were withheld because "It would not be fair in the circumstances to disclose a firm's notes, drafts or minutes of meetings to discuss and negotiate settlements [sic] agreements, when the company has requested confidentiality and such records are protected from disclosure pursuant to 16 C.F.R. 1101.33."⁵ This ID Input form is not, on its face, Milton Bradley's "notes, drafts or meetings of minutes." It is a data entry input form apparently developed by the Commission. It appears that reliance on Section 6(b)(1) was a mistake in this instance. Because this page would not appear to fall within the scope of Section 6(b)(1), 16 C.F.R. 1101.33 would have no application.

That the Commission's view of Section 6(b)(1) of the CPSA is overbroad can be seen by the fact that it chose to withhold Milton Bradley's own press release when it disclosed documents to me on August 27. Obviously, a press release is a publicly available document in which the manufacturer, Milton Bradley, informed the *world* of its relationship to "Fibro-Clay." It is also a document that the Commission tendered to me last year, in response to an earlier FOIA request about "Fibro-Clay."⁶ There is simply no justification under Section 6(b)(1) or any other provision of the CPSA or FOIA to withhold a press release. Exhibit H is evidence of an overbroad interpretation of the reach of Section 6(b)(1) by document reviewers at the Commission.

In the event that the Commission determines that the withheld page *does* fall within the scope of Section 6(b)(1), I would submit that the requirements of that section

³ Exhibit A, page 1

⁴ The mere fact that a party may distribute a product does not mean that party is a "private labeler." See, e.g. 16 C.F.R. 1115.13(d)(9), 16 C.F.R. 1118.1(a)(3).

⁵ See Exhibit B at 2.

⁶ See Exhibit H. The first page is blank except for a notation of the exemptions claimed for withholding page 439. This was received in September, 2001. The second page of Exhibit H is page 439, as disclosed to me last year; it is the Milton Bradley press release of March 17, 1983.

have been satisfied. The first element of the 16 C.F.R. 1101.33 test, as described in your August 27 letter, requires that the Commission take reasonable steps to insure the accuracy of the information. The Commission's letter of August 27 expressly states that it has done so: "The Commission believes that it has taken reasonable steps to assure the accuracy of the information,"⁷ Given this express admission, it would appear that the first element has been satisfied.

This conclusion is bolstered by the nature of the document itself. It is an eight-page document apparently used by the Commission to maintain its internal data base. Given that the entries on this "ID Input" form will form the Commission's database, the Commission obviously has a high degree of interest in ensuring the integrity of its data, and undoubtedly has internal quality control measures in place to ensure such accuracy. I would argue that the Commission's letter and the document itself reveal that the Commission has taken reasonable steps to assure the accuracy of page seven of this eight page data entry form.

It would not be unfair to further disclose the identification of the manufacturer in this case because dozens of other documents tendered do so. Further, Milton Bradley publicly admitted its status as manufacturer of "Fibro-Clay" in 1983. Thus, the concerns about "mistaken identity"—the concerns protected by Section 6(b)(1)—would not come into play. The reasons stated in the Commission's August 27 letter for Section 6(b)(1) non-disclosures—that it would be unfair to "disclose a firm's notes, drafts or minutes of meetings to discuss and negotiate settlements [sic] agreements, when the company has requested confidentiality and such records are protected from disclosure pursuant to 16 C.F.R. 1101.33—are inapplicable to this document, which does not contain such information. As stated above, this data entry form is a Commission form which appears to support its internal data base functions; it is not "notes, drafts or minutes" of meetings prepared by *anyone* concerning settlement.

Page 54, the seventh page of an eight page data entry form, should be disclosed. I appeal the non-disclosure of that document for the grounds stated above. To the extent the Commission has withheld page 54 on trade secret grounds, my appeal is also based upon my argument that none of the requested documents can constitute a trade secret or "confidential commercial information," an argument set forth below. With respect to the latter argument, however, I would add that page 54, having been generated by the Commission, cannot constitute "confidential commercial information" for the grounds stated below *and* because it was not submitted to the Commission "by a person."⁸

Pages 22-25

It is not clear why these pages were withheld, or what sort of document is

⁷ Exhibit B, page 1.

⁸ *National Parks I*, 498 F.2d 765, 766 (D.C.Cir.1974)(test for second prong of Exemption 4).

contained at pages 22-25. To the extent they were withheld under Section 6(b)(1), the above-stated arguments apply.

Information about quantity of Fibro-Clay sold is not protected by Section 6(b)(1)

Numerous pages produced to me reveal that information concerning the volume of "Fibro-Clay" sold has been redacted based on Section 6(b)(1).⁹ Such information is clearly *not* protected by Section 6(b)(1), which protects information about the identity of a manufacturer. Further, information concerning volumes of product for which a significant hazard may exist is information that must be tendered to the Commission when a significant product hazard exists.¹⁰

None of the information requested is neither a trade secret nor "confidential commercial information"

Pages 302-309 and portions of numerous other pages¹¹ have been withheld or redacted on the ground that they are protected from discovery under Section 6(a)(2) of the CPSA, and Exemption 3 and 4 of FOIA. As I understand it, this information is, by and large, information that identifies some of the distributors used by Milton Bradley to sell and distribute its Fibro-Clay product, as well as facts about the volume of Fibro-Clay distributed. This information was withheld on the basis that such information constitutes either a "trade secret" or "confidential commercial information" under CPSA Section 6(a)(2) and FOIA, Exemption 4:

"Section 6(a)(2) prohibits the Commission from disclosing information that is exempt from disclosure under Exemption 4 of the FOIA. That exemption protects trade secrets and confidential commercial information. Confidential commercial information is information directly related to a firm's business that the firm has not made public and whose disclosure could give a substantial commercial advantage to a competitor. *Specifically, we are withholding portions that if disclosed would reveal confidential financial business relationships, sales figures, customers and proprietary testing.*"¹²

Information about the volumes of "Fibro-Clay" sold, and about the identity of distributors are not trade secrets. Trade secrets are limited to a "secret, commercially valuable plan, formula, process, or device that is used for the making, preparing, compounding, or

⁹ See, e.g., page 3, 4, 7, 9, 10, 12, 203, 254, 256, 257, 259, 260, 261, 269, 273, 275.

¹⁰ 16 C.F.R. 1115.13(d)(7), (d)(9).

¹¹ Exhibit C to this appeal is a list of the specific pages which have been withheld or partially redacted on the basis of the trade secret exemptions. These pages or parts of pages are intended to be covered in this appeal.

¹² Exhibit A at 1-2

processing of trade commodities and that can be said to be the end product of either innovation or substantial effort.”¹³ In other words, information only qualifies as a trade secret if it relates to the productive process itself.¹⁴ Customer lists, pricing information, etc. do not fall within this definition; indeed, the *Public Citizen* court expressly declined to adopt a broader definition of “trade secret” that would have included such information:

“Under the restrictive definition, trade secret status is reserved for information involving ‘the productive process itself, as opposed to collateral matters of business confidentiality such as pricing and sales volume data, sources of supply and customer lists....In our opinion, the term ‘trade secrets’ in Exemption 4 of the FOIA should be defined in its narrower common law sense, which incorporates a direct relationship between the information at issue and the productive process.”¹⁵

It is clear that under applicable law, the information withheld here does not come within the ‘trade secret’ prong of Exemption 4.

To the extent that information about asbestos content was withheld,¹⁶ that

Nor should the information be considered “confidential commercial information.” In seeking to withhold information under the “confidential commercial information” prong of Exemption 4, the Commission bears the burden of establishing that the information withheld is commercial or financial, that it was obtained from a person, and that it is privileged or confidential.¹⁷

I do not dispute that the Commission obtained the information about “Fibro-Clay” sales volumes and distributor identities from a person, or that the information may be considered commercial or financial information. However, the information the Commission withholds—sales volume data, distributorship information—is not privileged or confidential.

The applicable test is that stated in *National Parks & Conservation Ass’n v.*

¹³ *Center for Auto Safety v. National Highway Traffic Safety Admin.*, 244 F.3d 144, 150-51 (D.C. Cir. 2001)(following *Public Citizen Health Research Group v. FDA*, 704 F.2d 1280, 1288 (D.C. Cir. 1983).

¹⁴ *Id.* at 151.

¹⁵ *Public Citizen Health Research Group v. FDA*, 704 F.2d at 1286-7, 1288, emphasis added.

¹⁶ See, e.g., redactions at pages 12-13.

¹⁷ *GC Micro Corp. v. Defense Logistics Agency*, 33 F.3d 1109, (9th Cir. 1994) (agency bears burden of establishing that withheld information falls within a claimed exemption); *Public Citizen*, 704 F.2d at 1290, citing *National Parks I*, 498 F.2d 765, 766 (D.C. Cir. 1974)(test for second prong of Exemption 4).

Morton.¹⁸ Under that test, information only constitutes confidential information if disclosure would either impair the Government's ability to obtain necessary information in the future, or if it would cause substantial harm to the competitive position of the person from whom the information was obtained.¹⁹ Disclosing information about the names and addresses of persons or entities that distributed Milton Bradley's "Fibro-Clay" product almost 20 years ago would not impair the Commission's ability to obtain such information in the future. First, the distributors themselves have a reporting obligation when it is learned that a product poses a significant hazard.²⁰ It cannot be the case that a list of distributors is confidential, but the identity of the distributors when submitted to the Commission individually, which is required by the CPSA when a substantial product hazard exists, is not.

Further, the Commission can mandate that the names and addresses of all distributors be submitted when a company learns—as Milton Bradley learned—that its product poses a significant hazard.²¹ The Commission also requires that companies disclose information about the volume of potentially hazardous products in existence.²² The Commission holds the power to impose both civil and criminal penalties upon those who refuse to submit such information.²³ The Commission has held these powers since at least 1978, five years before the information at issue here was tendered to the Commission, pursuant to its request.²⁴ Thus, disclosure here will not impair the Commission's considerable powers to continue to demand that companies learning that their products pose significant health risks inform the Commission of all persons known

¹⁸ *National Parks I*, 498 F.2d 765, 766 (D.C.Cir.1974); *United Technologies Corp. by Pratt & Whitney v. F.A.A.*, 102 F.3d 688, 692 (2nd Cir. 1996)(following *National Parks*); *Frazee v. U.S. Forest Service*, 97 F.3d 367, 370-71 (9th Cir. 1996)(same); *GC Micro Corp. v. Defense Logistics Agency*, 33 F.3d 1109, 1113 (9th Cir. 1994)(same); *Nadler v. FDIC*, 92 F.3d 93, 95 (2nd Cir. 1996)(same); *Critical Mass Energy Project v. Nuclear Regulatory Commission*, 975 F.2d 871, 879 (D.C. Cir. 1992)(reaffirming *National Parks* test where information sought must be disclosed to the government.); The *National Parks* test applies even if one concedes—which I do not—that *Critical Mass* sets forth the appropriate analysis when a company submits information to the government on a voluntary basis. The information sought here is information that must be submitted when a company determines its product may pose a significant risk of hazard. The Consumer Product Safety Commission regulations and policies mandates that the information at issue here—particularly the names and addresses of those distributing "Fibro-Clay;"—be submitted. See, e.g., 16 C.F.R. 1115.13(c)(2).

¹⁹ *Id.*

²⁰ 15 U.S.C. Section 2064(b); 16 C.F.R. 1115.13(b), (c)(2).

²¹ 16 C.F.R. 1115.13(c)(2), (d)(14). The Commission and Milton Bradley would surely not have recalled the product in 1983 if there was no risk of a significant hazard. From a scientific standpoint, there is no dispute that exposure to asbestos poses a significant hazard at even the lowest doses; Fibro-Clay was found to contain approximately 50% asbestos.

²² 16 C.F.R. 1115.13(d)(7), (d)(9).

²³ 16 C.F.R. 1115.22.

²⁴ See 43 Fed. Reg. 34988, 35002, 35005 (August 7, 1978).

to distribute that potentially dangerous product, and of the volume of product available for distribution.

Nor will the information pose substantial harm to Milton Bradley. First, Milton Bradley is no longer a business entity. In 1984, it was acquired by Hasbro, Inc., and has been operated as a division of Hasbro for almost a decade.²⁵ Thus, Milton Bradley itself *has* no competitors since it no longer exists. Further, existing distributors of *any* products bearing the Milton Bradley brand name are likely to be Hasbro's distributors, not the former Milton Bradley's distributors.

Second, it is undisputed that Milton Bradley withdrew from the "Fibro-Clay" product line in 1983; neither it nor Hasbro sells that product or *any* product bearing that brand name. Indeed, according to Milton Bradley's own press release,²⁶ Milton Bradley claims it stopped manufacturing the Fibro-Clay product more than 25 years ago, in 1975. Because there is no Fibro-Clay, there can be no actual competition for market share with respect to that product, and there can obviously be no competitive injury inflicted by disclosing the distributors of Fibro-Clay.²⁷ Thus, there can be no competitive harm to the company by disclosing the identities of persons distributing that product 20-30 years ago. And again, since Milton Bradley itself does not exist as a business entity, it cannot suffer competitive injury.

Not only does Milton Bradley not sell Fibro-Clay anymore, but Hasbro, its successor, is not in the business of selling school art supplies like Fibro-Clay. Milton Bradley was always best known for its games, including Life, Chutes and Ladders, Candyland, Twister, and Yahtzee, as well as its childrens toys, marketed under the Playskool brand.²⁸ School art supplies were never a major product line for Milton Bradley, and they are not a major product line for its successor, Hasbro, Inc., which is in

²⁵ See Exhibit D, Dun & Bradstreet Report.

²⁶ Exhibit E.

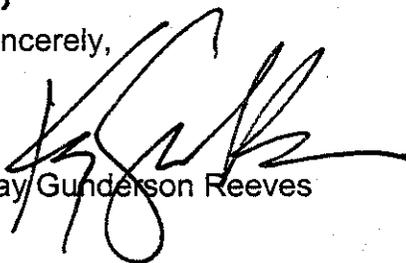
²⁷ *CNA Financial Corp. v. Donovan*, 830 F.2d 1132, 1155 (D.C. Cir. 1987)(agency or party seeking to withhold documents must demonstrate that disclosure would cause "harm flowing from the affirmative use of proprietary information by competitors."), emphasis added; *Public Citizen*, 704 F.2d at 1291, n. 30 (Competitive harm does not include any injury to competitive position, as might flow from customer or employee disgruntlement or from the embarrassing publicity attendant upon public revelations concerning, for example, illegal or unethical payments to government officials or violations of civil rights, environmental or safety laws); *National Parks & Cons. Ass'n v. Kleppe*, 547 F.2d 673, 679 (D.C. Cir. 1976)(party seeking to withhold documents must show they face actual competition and that disclosure would inflict substantial competitive injury); *Contract Freighters, Inc. v. Secretary of U.S. Dept. OfTransp.*, 260 F.2d 858, 861 (8th Cir. 2001)(harm to competitive position must be substantial).

²⁸ See Exhibit F, Milton Bradley Company History, www.hasbro.com/default.asp?x=corp_history_mb.

the business of selling toys, games, puzzles and interactive software.²⁹ Even if it could be shown that some residual bad publicity would surround the Milton Bradley name, this is not the sort of significant competitive injury contemplated by FOIA, so the information should be disclosed.³⁰

In short, there can be no competitive injury here because there is no trade to protect. Neither asbestos-containing "Fibro-Clay," nor any product bearing that or a similar name is currently being sold in the market place. Milton Bradley does not exist as a competitive business entity. Even when it did, Milton Bradley never focused its business on school art supplies like "Fibro-Clay." Its successor, Hasbro, does not sell school art supplies. Disclosure jeopardizes no market, no product, no product line, and no profits. Therefore, Exemption 4 does not permit the withholding of this information.

Sincerely,



Kay Gunderson Reeves

²⁹ See Exhibit G-1, Discover the World of Hasbro (list of Hasbro brands), www.hasbro.com/default.asp?x=brands, Exhibit G-2, Excerpt from Hasbro, Inc.'s 2000 Annual Report at 32 ("Segment Reporting. Hasbro is a worldwide marketer and distributor of children's and family entertainment products, principally engaged in the design, manufacture and marketing of games and toys ranging from traditional to high-tech. The Company's reportable segments are U.S. Toys, Games, International and Global Operations. In the United States, the U.S. Toy segment includes the design, marketing and selling of boys action figures, vehicles and playsets, girls toys, preschool toys and infant products and creative play products. The Games segment includes the development, marketing and selling of traditional board games and puzzles, handheld electronic games, electronic interactive products, children's consumer electronics, electronic learning aids, trading card and role-playing games and interactive software games based on the Company's owned and licensed brands.")

³⁰ *National Parks & Cons. Ass'n v. Kleppe*, 547 F.2d at 679 (injury must be substantial competitive injury).

EXHIBIT A

1 OCT 1987

ID INPUT

*ID NUMBER: 830037 *FILE NUMBER: RP830057
 *STATUS: OPEN *FILE OPENED: 83-03-28 03-28-83 invalid file mail
 *TYPE OF NOTIFICATION: Voluntary *CPSC CONTACT: Teri Rogers
 *REGIONAL OFFICE INVOLVED: NERO

HOW DISCOVERED:

01: Media report
 *COMPANY NAME: Milton Bradley Company
 STREET:
 CITY: Springfield
 STATE: MA ZIP 01101
 *PHONE: 413-525-6411

* = MANDATORY FIELD

48

I D INPUT

0564

*NEISS PRODUCT CODE:

*PRODUCT DESCRIPTION:

01: School art compound to make paper mache

02:

BRAND NAME:

01: Fibroclay

MODEL:

01:

SERIAL NUMBER:

01:

UNIT RETAIL PRICE:

01:

* - MANDATORY FIELD

49

I D I N P U T

SAMPLES COLLECTED:

01:

NATURE OF POTENTIAL HAZARD:

01: *Asbestos*

02:

03:

INJURIES EXPERIENCED:

01:

02:

* = MANDATORY FIELD

Handwritten signature

ID INPUT

MANUFACTURER NAME: Milton Bradley Company

STREET: Springfield,

CITY: Springfield,

STATE: MA ZIP: 01101

REP: Arnon Lockw, Esq. PHONE: 212-594-7000

DATES PRODUCED: 1967-~~1975~~ 1975

DATES DISTRIBUTED: 1967-1975

GEOGRAPHIC DISTRIBUTION: National

* = MANDATORY FIELD

5

ID INPUT

CORRECTIVE ACTION: *Voluntary*
01: *Recall & disposal*

02: *Joint news release with CPSC 3/18/83*

03:

ENGINEERING CHANGES:

01: *None*

02:

NEW QUALITY CONTROLS:

01: *None*

* = MANDATORY FIELD

52

1 D I N P U T

REFUND-REPLACE-REPAIR ACTION:

01: Firm is arranging for disposal

02: Furnishing kits for proper packaging and shipping

*NOTIFICATION TO MANUFACTURERS-DISTRIBUTORS-RETAILERS:

01: Letters to all potential distributors

02: _____

03: _____

*NOTIFICATION TO CONSUMERS:

01: News Release 3/18/83

02: _____

*PUBLIC NOTICE:

01: News release 3/18/83

* = MANDATORY FIELD

15/3

Withheld page 54
Exemption 3, 4, 6b1

ID INPUT

*COMMISSION ACTION:

01: *News Release 3/18/83*

02:

COMMENTS:

01:

02:

RESTRICTED DATA:

01:

02:

* = MANDATORY FIELD

55

EXHIBIT B



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

August 27, 2001

CERTIFIED MAIL

Ms. Kay Gunderson Reeves
Kaeske, Reeves LLP
6301 Gaston Avenue, Ste 735
Dallas, Texas 75214

Re: FOIA Request S1050013: Milton Bradley Company "Fibro-Clay" Modeling Compound
1983 Recall/Corrective Action File ID830037

Dear Ms. Reeves:

Thank you for your Freedom of Information Act (FOIA) request seeking information from the Commission. The records from the Commission files responsive to your request have been processed and copies of the releasable responsive records are enclosed.

The enclosed records constitutes file information generated by the Commission itself or its contractors for regulatory or enforcement purposes. These records are in file ID830037 (Milton Bradley Company "Fibro-Clay") and are identified as Establishment Inspection Reports, Laboratory Summaries, Hazard Assessment memoranda, Preliminary Determination (page 37) and other correspondence, notes and documents. The Commission has established management systems under which supervisors are responsible for reviewing the work of their employees or contractors. The file information materials are final and have been prepared and accepted by the Commission's staff under such review systems. The Commission believes that it has taken reasonable steps to assure the accuracy of the information. Please note that the Commission's staff, not the Commissioners themselves, made the preliminary determination that this product presented a substantial risk of injury to the public as defined by the Consumer Product Safety Act.

Portion of the file identified as CPSC ID 83-037 where the manufacturer has requested confidentiality must be withheld pursuant to Exemptions 3 and 4 of the FOIA, 5 U.S.C. 552(b)(3) and (b)(4), and section 6(a)(2), of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2055(a)(2). FOIA Exemption 3 provides for the withholding from disclosure of matters that are specifically exempted from disclosure by another statute. In applying FOIA Exemption 3 in this instance we are applying in part section 6(a)(2) of the CPSA. Section 6(a)(2) prohibits the Commission from disclosing information that is exempt from disclosure under Exemption 4 of the FOIA. That exemption protects trade secrets and confidential commercial information.

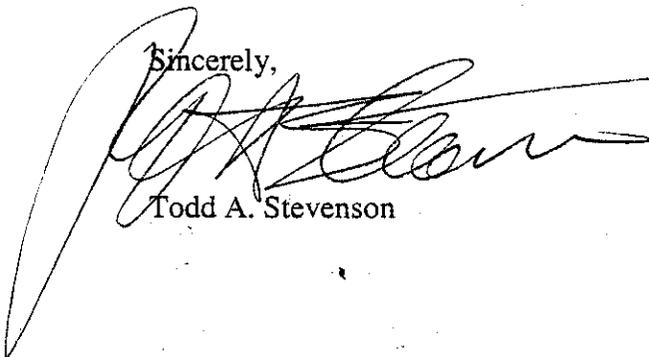
Confidential commercial information is information directly related to a firm's business that the firm has not made public and whose disclosure could give a substantial commercial advantage to a competitor. Specifically, we are withholding portions that if disclosed would reveal confidential financial and business relationships, sales figures, customers and proprietary testing data.

Finally, we are withholding records from the files according to the Commission regulations at 16 C.F.R. 1101.33. We must withhold these records pursuant to Exemption 3 of the FOIA and section 6(b)(1) of the CPSA, 15 U.S.C. 2055(b)(1). In applying FOIA Exemption 3 to this material, we are relying on section 6(b)(1) of the CPSA. That section prohibits the Commission from disclosing information about a consumer product that identifies a manufacturer or private labeler unless the Commission has taken "reasonable steps" to assure that the information is accurate, that disclosure is fair in the circumstances, and that disclosure will be reasonably related to effectuating the purposes of the laws that the Commission administers. See Commission regulation, 16 C.F.R. 1101.32. It would not be fair in the circumstances to disclose a firm's notes, drafts or minutes of meetings to discuss and negotiate settlements agreements, when the company has requested confidentiality and such records are protected from disclosure pursuant to 16 C.F.R. 1101.33.

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.

This completes the processing of your request. The cost to the Commission to prepare this document for release was \$150.00. At this time, we have decided to waive the charges for the file. If you have questions, contact us by letter, telephone (301) 504-0785 or facsimile (301) 504-0127.

Sincerely,



Todd A. Stevenson

Enclosure

EXHIBIT C

EXHIBIT C

Pages on which information about "Fibro-Clay" asbestos content, product volume or distributor identity was withheld on the basis of CPSA Section 6(b)(1) or Section 6(b)(2)/FOIA Exemption 4:

3
4
6A
7
9
10
12-13
14
21
44
203
254
256
257
259
260
261
269
273
275
301-309
434
436-438

My arguments concerning the inapplicability of either the trade secret prong of Exemption 4 or the confidential commercial information prong of Exemption 4 apply to these pages. To the extent that Section 6(b)(1) was noted as the exemption claimed for the refusal to disclose product content, volume or distributor information, my arguments with respect to page 54 apply.

EXHIBIT D

COPYRIGHT 2001 DUN & BRADSTREET INC.

DUNS: 00-111-3067	DATE PRINTED		
MILTON BRADLEY COMPANY (INC)	SEP 27 2001	RATING	NQ
(SUBSIDIARY OF HASBRO INC, PAWTUCKET, RI)	MFG GAMES & PUZZLES	STARTED	1984
	SIC NO.	EMPLOYS	2,300
443 SHAKER RD	39 44	HISTORY	INCOMPLETE
AND BRANCH(ES) OR DIVISION(S)			
EAST LONGMEADOW MA 01028			
TEL: 413 525-6411			

CHIEF EXECUTIVE: E DAVID WILSON, PRES

SPECIAL EVENTS

12/27/99 Effective Dec 31 1990 Milton Bradley Company (Inc) was dissolved and now operates as a division of Hasbro Inc. On December 27, 1999, outside sources verified that Milton Bradley is a division of Hasbro Inc.

* * * CUSTOMER SERVICE * * *

If you need any additional information or have any questions, please call the D&B Online Customer Service Center at 1-800-223-1026.

PUBLIC FILINGS

The following data is for information purposes only and is not the official record. Certified copies can only be obtained from the official source.

* * * UCC FILING(S) * * *

COLLATERAL: Leased Computer equipment and proceeds - Leased Equipment and proceeds

FILING NO: 565220	DATE FILED: 12/21/1989
TYPE: Original	LATEST INFO RECEIVED: 10/02/1990
SEC. PARTY: INTEGRATED EQUIPMENT HOLDING	FILED WITH: SECRETARY OF
CORP, NEW YORK, NY	STATE/UCC DIVISION,
ASSIGNEE: NATIONAL LEASE INCOME FUND 3,	RI

NEW YORK, NY
DEBTOR: MILTON BRADLEY CO

The public record items contained in this report may have been paid, terminated, vacated or released prior to the date this report was printed.

09-27(877 /877) 00000 001200443 005069069 H

FULL DISPLAY COMPLETE

END OF DOCUMENT

EXHIBIT E

NEWS RELEASE

FROM THE MILTON BRADLEY COMPANY

CONTACT:

Charles V. Ryan
Milton Bradley Company
Springfield, MA 01101
(413)525-6411**MB**FOR IMMEDIATE RELEASE
March 17, 1983

Springfield, MA . . . The Milton Bradley Company has been advised that a product it stopped manufacturing in 1975 may have a potential hazard. The product is known as Fibro-Clay.

The company is presently investigating the matter and has stated that no asbestos has been in the formula for Fibro-Clay since 1972 and the quantities sold by its Educational Division were relatively small.

Milton Bradley has contacted the Consumer Product Safety Commission to indicate the company will begin recall procedures and will cooperate fully with the Commission.

* * * * *

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NEWS from CPSC

U.S. Consumer Product Safety Commission

FOR IMMEDIATE RELEASE

CPSC AND MILTON BRADLEY CO.
RECALL "FIBRO-CLAY"

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

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

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

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

-more-

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1115th Street NW
Washington D.C. 20207

Call
(202) 634
7780

Office of Media Relations

possible, and cleaning any areas contacted by the Fibro-Clay with water.

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

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

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

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EXHIBIT F



...Making the World Smile



History of Hasbro

See how we've adapted our toys and games to entertain generations of kids.

- Browse**
Toys & Games
- Age 0-3
- Age 4-8
- Age 9-12
- Age 13-17
- Age 18 & Up
- Where to Buy**
- Register**

The History of Hasbro

Hasbro, Inc.

Hasbro Companies

Milton Bradley
Parker Brothers

Hasbro Games

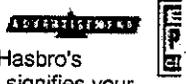
Clue
The Game of Life
Monopoly
Scrabble
Yahtzee

Hasbro Toys

Easy-Bake Oven
Mr. Potato Head
Play-Doh
Tinkertoy



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...Making the World Smile



History of Hasbro

See how we've adapted our toys and games to entertain over eight generations of kids.



Browse

Toys & Games

Ages 0-5

Ages 6-8

Ages 9-12

Ages 13-17

Ages 18 & Up

Where to Buy

Register

Milton Bradley Company History

In 1860, Mr. Milton Bradley started a lithography business in Springfield, Massachusetts. One of the first lithographic works turned out by Milton Bradley was a portrait of Abraham Lincoln without his beard. Lincoln had just been nominated for the Presidency of the United States. The sale of this picture was extremely encouraging to the young printer until it was found that Lincoln had grown a beard. The sale of Bradley's beardless lithograph dropped off drastically.

In seeking ways to keep his business afloat, Mr. Bradley began producing a game he had previously invented called, "The Checkered Game of Life." His game was so successful, he sold as many as he could produce.

In 1880, Mr. Milton Bradley expanded his business and began making jigsaw puzzles. His company is the number one maker of games and puzzles in the world.

In 1911, Milton Bradley died, but the business he started continued to grow and prosper. It saw the development of new games, new educational materials and continued expansion of the company. Then, in 1962, ground was broken for the present multi-million dollar plant facility in East Longmeadow, Massachusetts, which covers 20 acres and employs approximately 1,800 people.

Milton Bradley produces, sells and markets a broad line of popular games, puzzles, and toys. Some of the classics include: The Game of Life® (1960), Chutes and Ladders® (1949), Candyland® (1949), Twister® (1966), Yahtzee® (1956), Big Ben® Puzzles (1941), and Brand Crossword Game (1938).

In September 1984, Milton Bradley Company and its subsidiary, Playskool, Inc., a manufacturer of toys for infant, toddlers, preschool and primary grade children, were acquired by Hasbro, Pawtucket, Rhode Island. In 1989, Hasbro Inc. purchased the major assets of Coleco Inc., which enabled several classic games such as Scrabble® and Parcheesi® to join the Milton Bradley line.

In 1991, Tonka®, Kenner® Toys and Parker Brothers® Games also joined Hasbro. In 1991, production for Parker Brothers games had moved to East Longmeadow where now both Parker Brothers and Milton Bradley games are manufactured.

In the fall of 1998, a dedicated Hasbro Games Campus will open in Beverly, Massachusetts (former headquarters of Parker Brothers.) Located on the campus will be the Research and Development staffs of Milton Bradley, Parker Brothers and Hasbro Interactive.

Milton Bradley does not release an annual income figure, rather it is incorporated with the parent company.

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EXHIBIT G-1



...Making the World Smile



Discover the World of Hasbro

Hasbro offers a wide variety of toys, games, puzzles and infant products.

Hasbro
Tiger Electronics
Wizards of the Coast



- Browse**
Toys & Games
- Ages 0-5
- Ages 6-8
- Ages 9-12
- Ages 13-17
- Ages 18 & Up
- Where to Buy**
- Register**



Acquire
Action Man
Ants in the Pants
Axis & Allies
Baby Einstein
Barrel of Monkeys
Battle Cry
BeyBlade
Beyond Balderdash
Bob the Builder
Boggle
Boggle Jr.
The Botster
Butt Ugly Martians
Candy Land
Chutes and Ladders
Clue
Cootie
Cosmic Encounter
d20 System
Diplomacy
Don't Break the Ice
Dungeons & Dragons
Easy-Bake
e-kara
eSpecially My Barney
Family Game Night
Furby
Get Together Games
GI Joe

Guesstures
Harry Potter
Hi-Ho! Cherry-O
History of the World
Hungry Hippos
i-Cybie
Jenga
Jurassic Park
Life
Lite-Brite
Magic: The Gathering
MAGS
Medabot
MLB Showdown
Monopoly
Mr. Potato Head
Mutsu
My First Games
Nemesis Factor
Nutty Elephant
Original Memory Game
Otto Bot
Payday
Penguin Pat's Fishy Business
Petal-Chi
Pictionary
Planet of the Apes
Play-Doh
Playskool
Pokémon

Poo-Chi
POX
Risk 2210
Robo-Baby
Scattergories
Scrabble
Shelby
Shoezies
Silly 6 Pins
Sorry
Spin the Beetle
Spirograph
Star Wars
Starting Lineup
Stratego Legends
Taboo
Tinkertoy
Tonka
Trivial Pursuit
Ultimate Outburst
Wheels on the Bus
Who Wants to Be a Millionaire Hand Held
Who Wants to Be a Millionaire Table Top
Winner's Circle
Yahtzee
Zoids

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EXHIBIT G-2

Hasbro



H A S B R O I N C . 2 0 0 0 A N N U A L R E P O R T

Financial Highlights

(Thousands of Dollars and Shares Except Per Share Data)

	2000	1999	1998	1997	1996
FOR THE YEAR					
Net revenues	\$3,787,215	4,232,263	3,304,454	3,188,559	3,002,370
Operating profit (loss)	\$ (104,277)	327,569	324,882	235,108	332,267
Earnings (loss) before income taxes	\$ (225,986)	273,845	303,478	204,525	306,893
Net earnings (loss)	\$ (144,631)	188,953	206,365	134,986	199,912
Cash provided by operating activities	\$ 162,556	391,512	126,587	543,841	279,993
Cash utilized by investing activities	\$ 180,710	429,092	792,700	269,277	127,286
Weighted average number of common shares outstanding					
Basic	176,437	194,917	197,927	193,089	195,061
Diluted	176,437	202,103	205,420	206,353	209,283
EBITDA (1)	\$ 267,860	668,125	514,081	541,692	470,532
PER COMMON SHARE					
Net earnings (loss)					
Basic	\$ (82)	97	1.04	.70	1.02
Diluted	\$ (82)	.93	1.00	.68	.98
Cash dividends declared	\$.21	.24	.21	.21	.18
Shareholders' equity	\$ 7.70	9.74	9.91	9.18	8.55
AT YEAR END					
Shareholders' equity	\$1,327,406	1,878,975	1,944,795	1,838,117	1,652,046
Total assets	\$3,828,459	4,463,348	3,793,845	2,899,717	2,701,509
Long-term debt	\$167,838	420,654	407,180	—	149,382
Debt to capitalization ratio	.51	.38	.29	.06	.14

(1) EBITDA (earnings before interest, taxes, depreciation and amortization) represents operating profit plus acquired in-process research and development, restructuring and loss on sale of business units and depreciation and amortization. EBITDA is not adjusted for all noncash expenses or for working capital, capital expenditures or other investment requirements and, accordingly, is not necessarily indicative of amounts that may be available for discretionary uses. Thus, EBITDA should not be considered in isolation or as a substitute for net earnings or cash provided by operating activities, each prepared in accordance with generally accepted accounting principles, when measuring Hasbro's profitability or liquidity as more fully discussed in Management's Review.



To Our Shareholders

We all know that 2000 was a very disappointing year for Hasbro. A host of factors contributed to a loss year that we view as an aberration when you look at our results over the long term. We are confident that we now have the right strategy, a strong management team led by experienced toy and game people to execute that strategy, and are developing a product mix of core and non-core businesses that will help us better leverage our revenue and earnings stream going forward.

Before looking ahead, a look back is warranted. The strong performance of our traditional board and trading card games and International divisions, could not overcome the poor performance of our Interactive software line and U.S. toy group. We have made dramatic changes in both, including the sale of Hasbro Interactive and Games.com and the consolidation of our U.S. toy business.

What is Different from 2000?

Specifically, we announced in the fourth quarter of 2000, a series of initiatives that increases our focus on the Company's core businesses while reducing costs and lowering our breakevens.

Some of the important moves included:

- The sale of Hasbro Interactive and Games.com to Infogrames Entertainment SA. We have eliminated businesses that, including charges, lost over \$100 million in each of the past two years and built in an on-going revenue stream through a long-term licensing agreement with Infogrames.
- The consolidation of our U.S. toy group into one focused, cohesive group based in Rhode Island. Having virtually all of our teams under one roof has already simplified the communications process and will increase the creative output of our core teams. As part of this consolidation, we have closed our Cincinnati, Napa and San Francisco offices, thereby reducing duplication and costs.
- A head count reduction program of approximately 850 people, including the U.S. toy group but not counting Hasbro Interactive and Games.com. In addition to these consolidation initiatives, we are moving forward with a strategy that will focus more on our Hasbro owned or controlled core intellectual properties. While we value our relationships with our key entertainment partners and recognize that they will always be important, we must put a higher emphasis on growing our core brands.

Growing Our Core Brands — To be specific, our core business is derived from revenues produced from a comprehensive portfolio of evergreen-owned or controlled brands that has proven over time to produce reliable revenue and earnings streams. Some of the brands that we define as core include TONKA, TRANSFORMERS, G.I. JOE and ACTION MAN in boys; TINKERTOY, PLAY-DOH, LITE-BRITE, KOOSH, and EASY BAKE in creative play and girls; PLAYSKOOL and MR. POTATO HEAD in preschool; and in games such as MAGIC: THE GATHERING and our "Hasbro 30," which is comprised of our most popular game brands, including MONOPOLY, CANDYLAND, RISK, SORRY and SCRABBLE. These examples provide just a glimpse into Hasbro's powerful portfolio of brands upon which we intend to increase our focus going forward.

This core business will be supplemented by revenues that we can reasonably expect to generate annually from strategic licenses. Some examples of strategic licenses include STAR WARS, JURASSIC PARK and BATMAN. Other contributions this year will come from HARRY POTTER and BOB THE BUILDER, as well as our partnership with Disney. In addition, the Company will continue to derive varying, incremental revenues each year — as we have in the past — from new product launches and opportunistic, "non-strategic" licensing initiatives.

Our plan is to be a smaller, more profitable company in 2001, with a balanced and diversified product line. The moves we have taken have set a solid foundation for sustainable, profitable growth. We have plenty to be optimistic about going forward, including:

Experienced Management Team — In addition to the two of us, we have the deepest and most knowledgeable toy and game management team in Hasbro's history. The key words are toy and game management team. Today we have people like George Volanakis, formerly the chief executive officer of Ertl and a 32-year industry veteran who helped streamline our International group, overseeing U.S. toy in addition to International. Brian Goldner, in charge of U.S. toy, is a highly respected and energetic executive who we promoted in August after joining us earlier in 2000 from Bandai, where he served as chief operating officer of their U.S. subsidiary.

Our board game team, led by the highly knowledgeable and experienced Dave Wilson, has done very well in managing and growing our amazing portfolio of game brands. Roger Shiffman's stewardship continues to result in the innovation and creativity we have come to expect from the Tiger line. Vince Caluori and his team at Wizards of the Coast are continuing to spread the "Magic" of trading card games and role playing games. Simon Gardner leads our International toy and game business which is number one or number two in all of Europe's major markets. Willa Perlman heads the Hasbro Properties Group in its mission to leverage Hasbro's intellectual properties beyond traditional toys and games through out-licensing and other forms of entertainment.

An important part of strong management in our industry is the ability to build brands, identify trends, develop hot product and leverage strong intellectual properties. Going forward, we are confident that we will be successful in all of these areas. Tiger's ability to consistently produce hit products — staking claim to the number one toy and game product for the past two years, including POO-CHI in 2000 — proves that we have the ability and track record to be successful.

The-Right Strategic Partners — As we said earlier, while we are structuring ourselves to be less reliant on licensed properties going forward, we will continue to embrace the right partners, at the right terms. For 2001, we are very excited about HARRY POTTER, JURASSIC PARK III, BOB THE BUILDER and the Disney/Pixar release of MONSTERS, INC.

We are thrilled with the strategic corporate alliance we formed with Disney last fall, enabling us to develop and market toys and games associated with upcoming Disney-branded film properties. Hasbro is also the Official Toy and Game Company for Walt Disney World Resort, Disneyland Resort and Disneyland Paris Resort. Our ability to win these rights under mutually beneficial terms gives us incredible opportunities, and we couldn't be more pleased with this win-win situation.

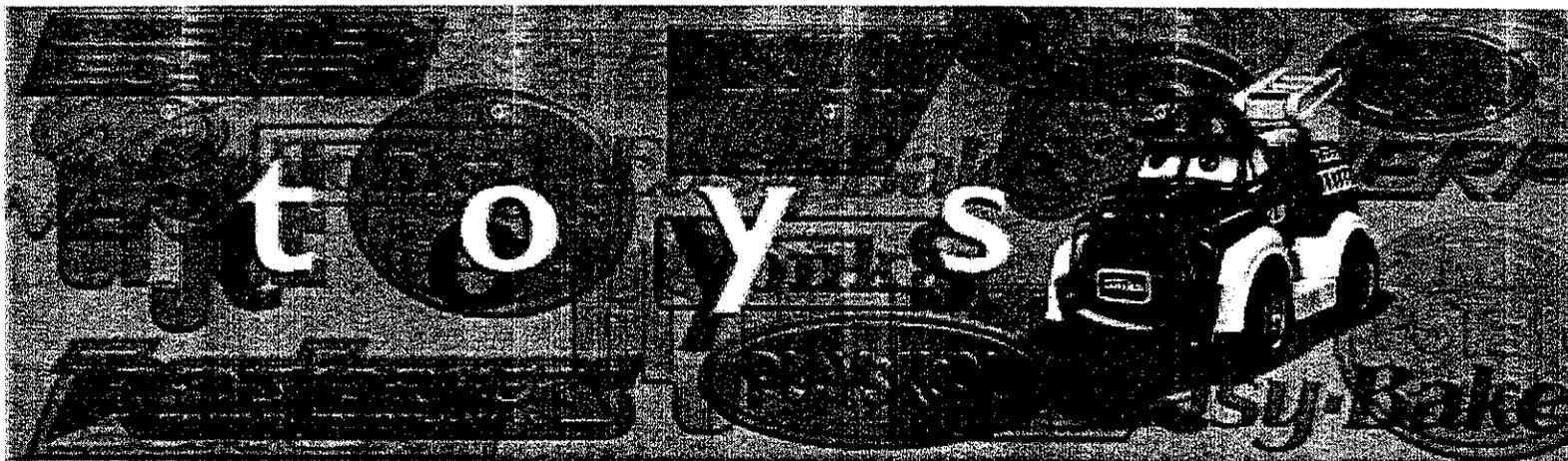
Our goals are simple. We must grow our core brands, improve our cash flow, lower our debt levels and be selective in choosing licensing partners as we strive for long term, sustainable growth and profitability. We will do that by focusing on what we do best — making great toys, games and lifestyle products.

Looking ahead, we expect to make significant progress in 2001, however, we realize that we will not enjoy all of the benefits overnight. We are confident that the moves we are making throughout our organization will bear fruit over time, and benefit our shareholders. In closing, we understand what we need to do, and we can assure you that we will stay disciplined and focused on executing our strategy.



Alan G. Hassenfeld
Chairman and Chief Executive Officer

Alfred J. Verrecchia
President and Chief Operating Officer



Hasbro's toy group is focused on a new paradigm. It centers on the ability to develop and drive Hasbro's core brands to their fullest potential. This is a key facet in generating sustainable revenue and earnings growth in all areas of the Company. However, this doesn't mean we won't seek out opportunities outside of the Hasbro toy chest. We will continue to selectively align ourselves with the right licenses, without being overly reliant on them.

We intend to move quickly in acting as trendsetters, scouring all corners of the globe for the next great entertainment and play concepts. This is also part of the toy group's new paradigm.

Hasbro's core brands within toys are a "Who's Who" in play: MR. POTATO HEAD, TINKERTOY, PLAY-DOH, TONKA, PLAYSKOOL, EASY BAKE, KOOSH, NERF, SUPER SOAKER, ACTION MAN, G.I. JOE, and TRANSFORMERS, among others.

We will stay focused in driving these brands through exciting new products consistent with each brand's core essence. In 2001, Tonka will build upon its recent successes with products like DUSTY MY TALKING TOOLBENCH, while Playskool's FIRST STARTS line will continue to delight infants and toddlers. B.I.O. BUGS — the next stage in robotic entertainment from our Wow Wee group — mimic real insect behavior, showcasing Wow Wee's ability to link creativity with breakthrough technology.

Our 2001 lineup of licensed offerings — highlighted in the toy area by MONSTERS, INC., JURASSIC PARK III and BOB THE BUILDER — provides an excellent example of how we are working with blue-chip partners beyond our own core brands.

Our U.S. toy group is now essentially housed under one roof in Rhode Island as we place a new emphasis on agility and speed to market. This consolidation will make us more efficient and creative, allowing us to identify trends and produce products that hit the right audience at the right time.

The opportunities may be local, or they may come from what is seemingly a world away. Regardless, we are now prepared to make decisions more quickly than in the past, part of the new paradigm that we believe will make us successful over the long term.

contracts, which hedge future purchases of inventory and other cross-border currency requirements, are primarily denominated in United States and Hong Kong dollars and Irish punts and entered into with counterparties who are major financial institutions with which Hasbro also has other financial relationships. The Company believes any risk related to default by a counterparty to be remote.

The Company had the equivalent of approximately \$166,500 and \$85,000 of foreign currency forwards outstanding, and approximately \$89,500 and \$132,000 of foreign currency options outstanding at December 31, 2000 and December 26, 1999, respectively. Gains and losses deferred under hedge accounting provisions are subsequently included in the measurement of the related foreign currency transaction. Gains and losses on contracts not meeting hedge accounting provisions are included currently in earnings. The aggregate amount of gains and losses resulting from all foreign currency transactions was not material.

(15) Commitments and Contingencies

Hasbro had unused open letters of credit of approximately \$40,000 and \$15,000 at December 31, 2000 and December 26, 1999, respectively.

The Company routinely enters into license agreements with inventors, designers and others for the use of intellectual properties in its products. Certain of these agreements contain provisions for the payment of guaranteed or minimum royalty amounts. Under terms of currently existing agreements, in certain circumstances the Company may become liable for remaining guaranteed minimum royalties of up to \$741,000 between 2001 and 2008. Of this amount, approximately \$238,000 has been paid. Approximately \$58,000 is included in the \$66,509 of prepaid royalties which are a component of prepaid expenses and other current assets in the balance sheet. Included in other assets is \$180,000 representing the long-term portion of amounts paid. Of the remaining unpaid minimum guaranties, Hasbro may be required to pay amounts as follows:

2001	\$ 44,000
2002	193,000
2003	89,000
2004	56,000
2005	121,000
	<u>\$503,000</u>

Such payments are related to royalties which are expected to be incurred on anticipated revenues in the years 2001 through 2008.

Hasbro is party to certain legal proceedings, substantially involving routine litigation incidental to the Company's business, none of which, individually or in the aggregate, is deemed to be material to the financial condition of the Company.

(16) Segment Reporting

Segment and Geographic Information

Hasbro is a worldwide marketer and distributor of children's and family entertainment products, principally engaged in the design, manufacture and marketing of games and toys ranging from traditional to high-tech. The Company's reportable segments are U.S. Toys, Games, International and Global Operations.

In the United States, the U.S. Toy segment includes the design, marketing and selling of boys action figures, vehicles and playsets, girls toys, preschool toys and infant products and creative play products. The Games segment includes the development, marketing and selling of traditional board games and puzzles, handheld electronic games, electronic interactive products, children's consumer electronics, electronic learning aids, trading card and role-playing games and interactive software games based on the Company's owned and licensed brands. Within the International segment, the Company develops, markets and sells both toy and certain game products in non-U.S. markets. Global Operations manufactures and sources product for the majority of the Company's segments. The Company also has other segments which license certain toy properties and which develop and market non-traditional toy and game based product realizing more than half of their revenues and the majority of their operating profit in the first half of the year, which is contra-seasonal to the rest of the Company's business. These other segments do not meet the quantitative thresholds for reportable segments and have been combined for reporting purposes.

EXHIBIT H

Withheld page 439
Exemption 3, 4, 6b1

NEWS RELEASE

FROM THE MILTON BRADLEY COMPANY

CONTACT:

Charles V. Ryan
Milton Bradley Company
Springfield, MA 01101
(413)525-6411

MB

FOR IMMEDIATE RELEASE
March 17, 1983

Springfield, MA . . . The Milton Bradley Company has been advised that a product it stopped manufacturing in 1975 may have a potential hazard. The product is known as Fibro-Clay.

The company is presently investigating the matter and has stated that no asbestos has been in the formula for Fibro-Clay since 1972 and the quantities sold by its Educational Division were relatively small.

Milton Bradley has contacted the Consumer Product Safety Commission to indicate the company will begin recall procedures and will cooperate fully with the Commission.

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E.I.R. Exhibit MILTON BRADLEY CO.
Mfr. MILTON BRADLEY CO.
DATE 3/17/83
Inspectors JD



Off (6a6b rel), chron,
2618,
Cc: MB

0564 Milton Bradley

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

August 27, 2001
CERTIFIED MAIL

Ms. Kay Gunderson Reeves
Kaeske, Reeves LLP
6301 Gaston Avenue, Ste 735
Dallas, Texas 75214

Re: FOIA Request S1050013: Milton Bradley Company "Fibro-Clay" Modeling Compound
1983 Recall/Corrective Action File ID830037

Dear Ms. Reeves:

Thank you for your Freedom of Information Act (FOIA) request seeking information from the Commission. The records from the Commission files responsive to your request have been processed and copies of the releasable responsive records are enclosed.

The enclosed records constitutes file information generated by the Commission itself or its contractors for regulatory or enforcement purposes. These records are in file ID830037 (Milton Bradley Company "Fibro-Clay") and are identified as Establishment Inspection Reports, Laboratory Summaries, Hazard Assessment memoranda, Preliminary Determination (page 37) and other correspondence, notes and documents. The Commission has established management systems under which supervisors are responsible for reviewing the work of their employees or contractors. The file information materials are final and have been prepared and accepted by the Commission's staff under such review systems. The Commission believes that it has taken reasonable steps to assure the accuracy of the information. Please note that the Commission's staff, not the Commissioners themselves, made the preliminary determination that this product presented a substantial risk of injury to the public as defined by the Consumer Product Safety Act.

Portion of the file identified as CPSC ID 83-037 where the manufacturer has requested confidentiality must be withheld pursuant to Exemptions 3 and 4 of the FOIA, 5 U.S.C. 552(b)(3) and (b)(4), and section 6(a)(2), of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2055(a)(2). FOIA Exemption 3 provides for the withholding from disclosure of matters that are specifically exempted from disclosure by another statute. In applying FOIA Exemption 3 in this instance we are applying in part section 6(a)(2) of the CPSA. Section 6(a)(2) prohibits the Commission from disclosing information that is exempt from disclosure under Exemption 4 of the FOIA. That exemption protects trade secrets and confidential commercial information.

Confidential commercial information is information directly related to a firm's business that the firm has not made public and whose disclosure could give a substantial commercial advantage to a competitor. Specifically, we are withholding portions that if disclosed would reveal confidential financial and business relationships, sales figures, customers and proprietary testing data.

Finally, we are withholding records from the files according to the Commission regulations at 16 C.F.R. 1101.33. We must withhold these records pursuant to Exemption 3 of the FOIA and section 6(b)(1) of the CPSA, 15 U.S.C. 2055(b)(1). In applying FOIA Exemption 3 to this material, we are relying on section 6(b)(1) of the CPSA. That section prohibits the Commission from disclosing information about a consumer product that identifies a manufacturer or private labeler unless the Commission has taken "reasonable steps" to assure that the information is accurate, that disclosure is fair in the circumstances, and that disclosure will be reasonably related to effectuating the purposes of the laws that the Commission administers. See Commission regulation, 16 C.F.R. 1101.32. It would not be fair in the circumstances to disclose a firm's notes, drafts or minutes of meetings to discuss and negotiate settlements agreements, when the company has requested confidentiality and such records are protected from disclosure pursuant to 16 C.F.R. 1101.33.

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.

This completes the processing of your request. The cost to the Commission to prepare this document for release was \$150.00. At this time, we have decided to waive the charges for the file. If you have questions, contact us by letter, telephone (301) 504-0785 or facsimile (301) 504-0127.

Sincerely,

Todd A. Stevenson

Enclosure

April 23, 2001

2001 MAY -1 A 10

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

VIA CERTIFIED MAIL

TA

RE: Freedom of Information Act request.

Dear Mr. Stevenson:

I would like to make a request for copies of records relating to the Consumer Product Safety Commission's recall of a consumer product called "Fibro Clay," manufactured by the Milton Bradley Company. These records are found in a file bearing the identification number "ID83037," and include memoranda, correspondence, notes and documents. Specifically, I would like to request copies of documents which discuss the volume of Fibro-Clay products sales experienced by Milton Bradley, as well as the identity of Fibro-Clay product distributors and any documents reflecting Milton Bradley's product distribution procedures.

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Based upon documents already provided to me by your agency, I believe that the documents I am now requesting can be found, at a minimum, at pages 15, 34, 44-45, 56-60, 262, 305-309, and 448-452 of the relevant file, #ID83037.

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D. Y

I am happy to pay the cost of copying and providing these documents.

Sincerely,


Kay Gunderson Reeves

S-1050013





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(2)

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

Alan Shakin
Acting General Counsel

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

November 26, 2001

Richard C. Nelson, Esq.
800 Fifth Avenue; Suite 4100
Seattle, WA 98104

Re: FOIA Appeal S1090037
Polaris ATVs; Investigatory File RP000185

Dear Mr. Nelson:

By letter dated November 1, 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. I affirm the FOI Officer's decision to withhold the information pursuant to FOIA Exemptions 3, 4, 5, and 7(A). 5 U.S.C. §§ 552(b)(3), (b)(4), (b)(5), and (b)(7)(A).

FOIA Exemption 3 provides for withholding information that is specifically exempted from disclosure by another statute. In applying FOIA Exemption 3 to the withheld information, I am relying on sections 6(a)(2) and (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 exemption protects trade secrets and confidential commercial information obtained from a person. Commercial information is confidential if disclosure is likely (1) to impair the government's ability to obtain the necessary information in the future or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained. In addition, voluntarily-submitted information is confidential provided it is not customarily disclosed to the public by the submitter. 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 engineering drawings, customer lists and the manufacturer's test reports. We believe that the release of this information is likely to impair the government's ability to obtain the necessary information in the future since companies would be reluctant to submit this information if there is a fear of disclosure.

Richard C. Nelson, Esq.
November 26, 2001

Page 2

Moreover, since the information is proprietary, the disclosure of this information is likely to cause substantial harm to the competitive position of the company.

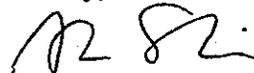
In applying Exemption 3, we are also relying on section 6(b)(1). Section 6(b)(1) requires the Commission to take reasonable steps to assure that product-specific information is accurate and that its release would be fair in the circumstances and reasonably related to effectuating the purposes of the CPSA. The information being withheld under this exemption consists of all product-specific documents. Ordinarily, such information would be sent to the manufacturer for comment before release. However, since this information is being withheld under other exemptions, we have not done this. Therefore, it would not be fair in these circumstances to disclose such documents. See 16 C.F.R. § 1101.33(b).

FOIA Exemption 5 provides for the withholding of certain inter-agency and intra-agency documents and incorporates the deliberative process privilege. This privilege protects advice, recommendations, and opinions that are part of the deliberative, consultative, and decision-making processes of the agency. Although this privilege applies only to the opinions or recommendations in a document and not to factual information, facts are withheld here because they are inextricably intertwined with the exempt portions. Exemption 5 also incorporates the attorney work-product doctrine, which protects documents prepared by an attorney, or someone supervised by an attorney, in anticipation of litigation. The information being withheld pursuant to FOIA Exemption 5 consists of intra-agency memoranda, attorneys' notes, Commission scientific records, and internal staff notes relating to these compliance matters. Each of these documents was either prepared by or under the supervision of an attorney in our compliance office in anticipation of future litigation. They also constitute advice, recommendations, and opinions that are part of the deliberative, consultative, and decision-making processes of the Commission.

FOIA Exemption 7(A) provides for the withholding of investigatory information compiled for law enforcement purposes to the extent that the production of such information could reasonably be expected to interfere with enforcement proceedings. The information being withheld under this exemption is a part of an investigatory file. The Commission is conducting this investigation to determine whether the company has violated any of its laws and regulations. The release of any of this information prior to the conclusion of this investigation could 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.

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

Sincerely,



Alan C. Shakin

NELSON & ASSOCIATES, P.S.
ATTORNEYS AT LAW

RICHARD C. NELSON

November 1, 2001

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

Re: FOIA Request S 1090037: Polaris 1999 and 2000, Scrambler, Sport, and
Xplorer 400 ATVs And Sticking Throttles/1999 to present.

Dear Sir or Madam:

Enclosed is a copy of the decision of Todd A. Stevenson on my FOIA request that denies almost the entire file, including materials that are clearly required to be produced under current law. This "partial" denial of records is, in substance, a total denial of records.

Please be advised that pursuant to C.F.R. 1515.7 I appeal Mr. Stevenson's decision. Would you kindly review and reconsider the same.

Very truly yours,

NELSON & ASSOCIATES, P.S.

By: 
Richard C. Nelson

800 Fifth Avenue, Suite 4100
Seattle, WA 98104
Phone: 206 447 1420
Fax: 206 447 1421

**Nelson & Associates,
P.S., Attorneys**

Fax

To: General Counsel CPSC

From: Richard C. Nelson

Fax: 301 504 0403

Date: November 1, 2001

Phone: 0980

Pages: 3

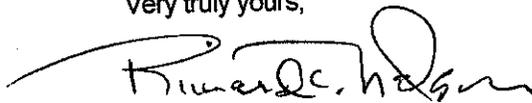
Re: FOIA S 1090037 - Polaris

CC:

Dear Sir or Madam:

Faxed herewith is my appeal, together with the decision being appealed. Although the decision letter states "CERTIFIED MAIL", I did not receive it in the mail. I received it only because I telephoned to determine the cause of the delay in response. A member of the staff faxed me the decision today. This is my first notice of the decision. I will follow up with a hard copy of my appeal by mail or Fed-Ex.

Very truly yours,



Richard C. Nelson



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

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POL
[Signature]

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

October 3, 2001

CERTIFIED MAIL

Richard C. Nelson
800 Fifth Avenue, Suite 4100
Seattle, WA 98104

Re: FOIA Request S1090037: Polaris 1999 and 2000, Scrambler, Sport, and Xplorer 400 ATVs
And Sticking Throttles / File Search 1999 to Present

Dear Mr. Nelson:

Thank you for your Freedom of Information Act (FOIA) request seeking information from the U.S. Consumer Product Safety Commission (Commission). The records from the Commission files responsive to your request have been processed and copies of the releasable responsive records are enclosed. Enclosed are records pertaining to one product complaint and reported incident submitted to the Commission by a consumer or his or her attorney. The consumer or submitter has confirmed the accuracy of the information in the complaint and reported incident. The Commission has neither investigated the incident nor conducted or obtained any evaluations of the product that corroborates the substance of the information contained in the complaint and reported incident.

We must withhold other records responsive to your request, specifically, the records from the Commission's Office of Compliance's active litigation and law enforcement investigatory file, RP000185, Polaris Industries, Inc., All Terrain Vehicles, Scrambler, Sport, Xplorer 400s, 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

Richard C. Nelson
Page 2

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 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 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.

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 \$80.00. In this instance, we have decided to waive all of the charges.

Sincerely,

Todd A. Stevenson

Enclosures

FREEDOM OF INFORMATION ACT DIVISION,
 OFFICE OF THE SECRETARY
 Fax number 301 504 0127 Telephone number 301 504 0785 x1224



To: Richard Nelson

From: Sandy Bradshaw, FOIA

Goldbert Segalla, L.L.P.

Fax: 206 447 1421

Pages: 3

Phone: 206 447 1420

Date: 11/01/01

Re: S1090037 Polaris Release

CC:

- Urgent**
 For Review
 Please Comment
 Please Reply
 Please Recycle

● **Comments:**

As noted during our conversation today, the release documents will be sent by mail.



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

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[Signature]

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

October 3, 2001

*no-remt
11/1/01*

CERTIFIED MAIL

Richard C. Nelson
800 Fifth Avenue, Suite 4100
Seattle, WA 98104

Re: FOIA Request S1090037: Polaris 1999 and 2000, Scrambler, Sport, and Xplorer 400 ATVs
And Sticking Throttles / File Search 1999 to Present

Dear Mr. Nelson:

Thank you for your Freedom of Information Act (FOIA) request seeking information from the U.S. Consumer Product Safety Commission (Commission). The records from the Commission files responsive to your request have been processed and copies of the releasable responsive records are enclosed. Enclosed are records pertaining to one product complaint and reported incident submitted to the Commission by a consumer or his or her attorney. The consumer or submitter has confirmed the accuracy of the information in the complaint and reported incident. The Commission has neither investigated the incident nor conducted or obtained any evaluations of the product that corroborates the substance of the information contained in the complaint and reported incident.

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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 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 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.

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 \$80.00. In this instance, we have decided to waive all of the charges.

Sincerely,

Todd A. Stevenson

Enclosures

Stevenson, Todd A.

From: rccna [rcnaps@email.msn.com]
Sent: Wednesday, September 05, 2001 7:55 PM
To: cpsc-os@cpsc.gov
Subject: FOIA request re Polaris All Terrain Vehicles

Dear Sir or Madam: The following is a request for documents under the Freedom Of Information Act. The product is manufactured by Polaris Industries, Inc. 2100 Highway 55, Medina, Minnesota 55340-9770, Telephone 763 542 0500. The documents requested cover the time period of January 1, 1999 to present. The documents requested pertain to the following products: 1999 and 2000 model Polaris Scrambler, Sport and Xplorer 400 ATVs. The safety problem is a sticking throttle. The documents are described as follows: All incident reports regarding the safety problem. All correspondence, communications and reports from Polaris or any representative or expert on behalf of Polaris regarding the safety problem. All injury reports regarding the safety problem. All recall notices regarding the safety problem. All communications from CPSC to Polaris regarding the safety problem. All communications or reports from independent experts or others regarding the safety problem. All documents or reports by CPSC regarding the safety problem. All documents relating to the cause of the safety problem. All other communications, documents and reports regarding the safety problem. The requester is an attorney at law who represents a person injured by such a vehicle as the result of the above safety problem. I am willing to pay a reasonable fee for the documents requested. Please notify me at 206 447 1420, or fax 206 447 1421, if the fees exceed \$300.00, or for any other reason you wish to contact the requester. Please ask for Richard C. Nelson first, and Eric S. Nelson if I am not available. Thank you for your prompt attention to this request. Richard C. Nelson

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