

9

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

OFFICE OF THE GENERAL COUNSEL

Jeffrey S. Bromme  
General Counsel  
Tel: 301-504-0980 ext. 2299  
Fax: 301-504-0403  
E-Mail: cpsc-gc@cpsc.gov

December 15, 1997

Mr. Sean Oberle  
Editorial Director  
Washington Business Information  
1117 North 19th Street, Suite 200  
Arlington, Virginia 22209

Re: FOIA Appeal S-710113A  
Rock Shox bike forks

Dear Mr. Oberle:

By letter dated November 20, 1997, 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.

The FOI Officer has reconsidered his decision to withhold a Commission staff letter to the company's lawyer and a letter and fax coversheet from the lawyer. Copies of these documents are therefore enclosed. About three lines of the staff letter are still being withheld under FOIA Exemption 3. As to the remaining responsive information that the FOI Officer previously withheld (approximately 100 pages), I affirm his decision under FOIA Exemptions 3 and 4.

FOIA Exemption 3 provides for the withholding from disclosure of matters that are specifically exempted from disclosure by another statute. 5 U.S.C. § 552(b)(3). In applying Exemption 3 to the withheld documents, we are relying on section 6(a)(2) of the Consumer Product Safety Act (CPSA), 15 U.S.C. § 2055(a)(2). Section 6(a)(2) expressly prohibits the disclosure of information reported to or otherwise obtained by the Commission which contains or relates to trade secrets or other confidential commercial information. Section 6(a)(2) incorporates FOIA Exemption 4. 5 U.S.C. § 552(b)(4). Exemption 4 protects trade secrets and confidential commercial information obtained from a person. Commercial information is confidential

Mr. Sean Oberle  
December 15, 1997

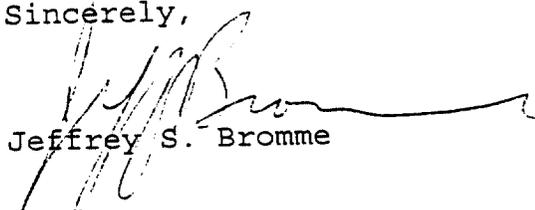
Page 2

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. Pursuant to FOIA Exemption 3, relying on CPSA section 6(a)(2), and FOIA Exemption 4, we are withholding a test report, a customer list, and engineering drawings.

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

You have the right to seek judicial review of this decision, as provided by 5 U.S.C. § 552(a)(4)(B). If you have any questions, please call me or Alan Shakin at (301) 504-0980.

Sincerely,



Jeffrey S. Bromme

Enclosures



FOR OFFICIAL USE ONLY

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

OFFICE OF COMPLIANCE  
AND ENFORCEMENT

APR 25 1995

Certified Mail/Telecopy

Michael Brown, Attorney  
1101 Pennsylvania Ave., NW  
Suite 800  
Washington, DC 20004

MFR/PRVLR NOTIFIED  
No Comments made  
Excisions/Revisions  
Firm has not requested  
further notice

Division of  
Corrective Actions  
Tel: 301-504-0608  
Fax: 301-504-0359

Re: CPSC RP950153  
Rock Shox Inc.  
" Mag 20 "

Dear Mr. Brown:

Thank you for your telephone report of April 14, 1995 under section 15(b) of the Consumer Product Safety Act, as amended (CPSA), 15 U.S.C. § 2064(b). In your report, you indicated that a portion of the Mag 20 Rock Shox manufactured in 1991 may



Enclosed for your information are the Consumer Product Safety Act and the Commission's regulation entitled, "Substantial Product Hazard Reports," 16 C.F.R. Part 1115. These documents explain the Commission's authority and policy with regard to products which may present substantial product hazards and also explain the firm's rights and obligations under the Act.

One of the responsibilities of the Compliance staff is to determine preliminarily whether a defect is present in a product and, if so, whether that defect rises to the level of a substantial product hazard as defined by section 15(a) of the Consumer Product Safety Act (CPSA), 15 U.S.C. § 2064(a).

Information Requested

For the staff to assess accurately the potential hazard associated with the firm's product, if any, it requires certain information from the manufacturer or importer of this product. Please provide the "Full Report" information specified by 16 C.F.R. § 1115.13(d) (1-14) on pages 200-201 of the enclosed Federal Register notice. In your response, please reference each



question number (1-14).

In addition to providing the information requested in 16 C.F.R. §1115.13(d) (1-14), paragraph 15 of the "Full Report" requests any additional information needed by the staff. In accordance with paragraph 15 (see page 201), please also provide the following additional information:

- 15a. Copies of all test reports, analyses, and evaluations, including premarket tests and reports of tests and any analyses related to the reported problem. Include the date and place such tests and analyses were conducted by or on behalf of the firm and the identity of the persons involved in the testing and analyses.
- 15b. Copies of all engineering drawings, engineering change notices and material specifications relevant to the identified problem.
- 15c. The identity of the person(s) who identified the potential problem, the date he/she identified the problem, any persons they notified, and the date of notification.
- 15d. Concerning the information specified by 16 C.F.R. §1115.13(d)(6), please include a copy of all safety related consumer or dealer complaints, warranty claims, reports of injury, and copies of all documents related to such complaints, claims and injuries. Please include, copies of all court complaints and related documents filed in or associated with lawsuits involving the product and a description of the resolution of those lawsuits, if any.
- 15e. Provide 4 samples of the product, including retail packaging and instructions for assembly and use. Also provide a sample of the "fix", if such has been made, with instructions to be given to consumers. If there is a cost associated with these samples, notify us prior to sending the samples.
- 15f. A copy of the firm's catalog depicting the product.
- 15g. Please provide copies of any proposed notice or warnings which you plan to send to retailers and consumers.
- 15h. Please provide a break-down of the locations of the units affected and also of those not affected and how each is identified.

If the consumer complaints and the other documents requested in Paragraph 15d above are unavailable, please indicate the reason for such unavailability, and provide a summary of the

A large, dark, handwritten signature or scribble is present in the bottom right corner of the page, with the number '21' written next to it.

requested items containing the name, address and telephone number of the claimant, or the name address and telephone number of the plaintiff's attorney.

#### Staff Assessment

After receiving the firm's response, the Commission's Compliance staff will make a preliminary determination as to whether it believes the product presents a substantial product hazard. See 16 C.F.R. § 1115.12(a). Therefore, it is of primary importance that the firm now provide all of the requested information so that the staff can make an accurate assessment of the potential safety hazard associated with the product.

#### Information Disclosure

The Commission often receives requests for information provided by firms under section 15(b) of the CPSA. Section 6(b)(5) of the CPSA, 15 U.S.C. § 2055(b)(5), prohibits the release of such information unless a remedial action plan has been accepted in writing, a complaint has been issued or a firm consents to such release. (See section 6(b) of the CPSA, as amended (enclosed)).

In addition to the above, if the firm submits any information that it considers to be a trade secret, or confidential commercial or financial information, it must mark it "confidential" in accordance with section 6(a)(3) of the CPSA, as amended, 15 U.S.C. § 2055(a)(3) and 16 C.F.R. § 1015.18. The Commission is prohibited from disclosing to the public information that is in fact trade secret or proprietary commercial or financial data. If the firm does not request confidential treatment at the time of its submission or within ten days thereafter, the staff will assume that it does not consider information in the submission to be a trade secret or otherwise exempt from disclosure under section 6(a) of the CPSA and the Freedom of Information Act, 5 U.S.C. § 552(b)(4).

#### Continuing Obligation

Please note that the firm has a continuing obligation to supplement or correct its "Full Report" as new or different information becomes known. For instance, if after filing the "Full Report" the firm receives or learns of information concerning other incidents or injuries, or information that affects the scope, prevalence or seriousness of the defect or hazard, it must report that information to this Division immediately.

The Division of Corrective Actions requests that the firm provide a response within 10 working days of your receipt of this

A large, dark, handwritten scribble or signature is located in the bottom right corner of the page. It appears to be a stylized signature or initials, possibly "JL", written in black ink.

letter. Please reference the CPSC file number in your response. If you seek assistance or if you have any questions, you may contact James A. DeMarco, Compliance Officer, Division of Corrective Actions, U.S. Consumer Product Safety Commission, 4330 East West Highway, Room 613, Washington, D.C. 20207-0001, telephone: (301) 504-0608 extension 1353. Thank you for your cooperation in reporting under section 15 of the Consumer Product Safety Act.

Sincerely,

Marc J. Schoem  
Director  
Division of Corrective Actions

Enclosures

Compilation of CPSC Statutes  
Substantial Product Hazard Regulations  
FOIA Regulations  
Information Disclosure Sheet  
Recall Handbook

cc: Consumer Product Safety Commission  
Western Regional Center  
600 Harrison Street  
Room 245  
San Francisco, CA 94107-1370

Mr. Chris Smith  
Rock Shox, Inc.  
401 Charcot Ave.  
San Jose, CA 95131

23

McCLUTCHEN, DOYLE, BROWN & ENERSEN  
COUNSELORS AT LAW

SAN FRANCISCO  
LOS ANGELES  
SAN JOSE  
WALNUT CREEK  
MENLO PARK

1101 PENNSYLVANIA AVENUE, N. W., SUITE 800  
WASHINGTON, D. C. 20004-2514  
TELEPHONE (202) 628-4900  
FACSIMILE (202) 628-4912

WASHINGTON, D. C.  
TAIPEI  
AFFILIATED OFFICES  
BANGKOK  
BEIJING  
SHANGHAI

DIRECT DIAL NUMBER

(202) 639-6321

INTERNET  
mbrown@mdbe.com

May 24, 1995

**Contains Trade Secret and  
Confidential Information**

**HAND DELIVERY**

Mr. James A. DeMarco  
Compliance Officer  
Office of Compliance  
U.S. Consumer Product Safety Commission  
4330 East-West Highway  
Bethesda, Maryland 20207

**CPSC RP950153  
Rock Shox Inc.  
Mag 20/30**

Dear Jay:

Enclosed is a sample of the crown/steerer assembly that will be provided to consumers affected by the Mag 20/30 crown recall. Please call me if you have any questions.

Sincerely yours,



Michael A. Brown

Enclosure

75

■  
McCUTCHEM, DOYLE, BROWN & ENERSEN

SAN FRANCISCO  
LOS ANGELES  
SAN JOSE  
WALNUT CREEK  
MENLO PARK

COUNSELORS AT LAW  
The Evening Star Building, Suite 800  
1101 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004  
Telephone: (202) 628-4900  
Facsimile: (202) 628-4912

WASHINGTON, D.C.  
TAIPEI

AFFILIATED OFFICES  
BANGKOK  
HONG KONG  
SHANGHAI

Date: June 1, 1995 Number of Pages (including cover page): 4  
To: Mr. James A. DeMarco  
Fax: (301) 504-00359 Voice: (301) 504-0608  
To: \_\_\_\_\_  
Fax: \_\_\_\_\_ Voice: \_\_\_\_\_  
To: \_\_\_\_\_  
Fax: \_\_\_\_\_ Voice: \_\_\_\_\_  
From: Michael A. Brown Telephone: (202) 639-6321  
Hard Copy to be Mailed: No Name of our Operator: Dennis Voice: (202) 628-4900

COMMENTS:

76

WARNING:

*This message is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential, and exempt from disclosure under applicable law. If you are not the intended recipient, you are hereby notified that any use, dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone, and return this original message to us at the above address via the U.S. Postal Service. Thank you.*



Washington Business Information, Inc. • 1117 North 19th Street, Suite 200, Arlington, VA 22209-1798 • (703)247-3434, Fax 847-3421

FOIA APPEAL (CPSC ID: S-710113A)

p. 1 of 2

Nov. 20, 1997

Jeffrey Bromme, Esq.  
General Counsel, ATTN: Office of the Secretary  
Consumer Product Safety Commission  
Washington, DC 20207

Fax to: 301/504-0127

Dear Mr. Bromme,

This is an appeal under the Freedom of Information Act, 5 U.S.C. Section 552(a)(6).

On Nov. 4, 1997, CPSC responded to a Product Safety Letter FOIA request filed Feb. 19, 1996, by then editor Maureen Cislo (CPSC ID: S-710113A) concerning the recall of Rockshox mountain bike forks. CPSC partially denied the request based on exemptions 3 and 4. (As of this writing, we have received no documents -- CPSC has informed us of the parts it denied, but remaining parts still are not cleared for disclosure. We reserve the right to appeal the denial of those remaining parts should CPSC not disclose them.)

Please reconsider the denial based on these points, addressing each in your reply:

- A. The White House changed government's policy on the Freedom of Information Act in 1993. On Oct. 4, President Clinton told federal departments and agencies the FOIA "is a vital part of the participatory system of government" and that the "existence of unnecessary bureaucratic hurdles has no place in its implementation." He insisted that agency practices with respect to FOIA requests conform to new guidelines issued by Attorney General Janet Reno favoring a presumption of disclosure.
- B. Attorney General Reno's new guidelines, also announced Oct. 4, 1993, provide that an agency should use an exemption only where "the agency reasonably foresees that disclosure would be harmful to an interest protected by that exemption." She added, "Where an item of information might technically or arguably fall within an exemption, it ought not to be withheld from a FOIA requester unless it need be." In light of the policy in favor of disclosure, the material withheld from the FOIA request does not appear to be justified. For any material for which withholding is upheld in this appeal, identify specifically the foreseeable harm that would result from disclosure.
- C. Material has been withheld pursuant to Exemptions 3 and 4 based on section 6(A)(2) of the CPSA. However, the courts have made clear that withholding of such material can be justified only when disclosure would impair the government's ability to obtain information in the future and would cause substantial harm to the competitive position of the provider of the information. See *National Parks & Conservations Assn. v. Morton*, 498 F.2d 765 (D.C. Cir. 1974). The information withheld from disclosure here does not appear to qualify for this exemption.
- D. A promise by an agency of "confidentiality" is not, by itself, sufficient to invoke exemption 4.
- E. Exemption 4 does not cover government-prepared documents based primarily on information the government generates itself.

I trust that upon reconsideration, you will reverse the decision denying us access to this material and grant the original request. However, if you deny this appeal, I intend to

FOIA APPEAL (CPSC ID: S-710113A)

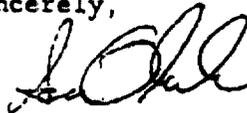
p. 2 of 2

Nov. 20, 1997

initiate a lawsuit to compel disclosure. In any case, I will expect to receive your decision within 20 working days, as required by the statute.

Thank you for your assistance.

Sincerely,



Sean Oberle, Editorial Director

cc: Jane Kirtley, Executive Director,  
Reporters Committee for Freedom of the Press  
Thomas Howlett, Esq.

2303H100.6YY

*Jim Rockshox*



*710113A*

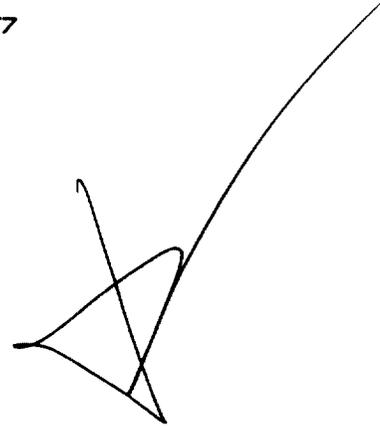
U.S. CONSUMER PRODUCT SAFETY COMMISSION

WASHINGTON, D.C. 20207

November 4, 1997

**Certified Mail**

Maureen Cislo  
Washington Business Information, Inc.  
1117 North 19th Street  
Suite 200  
Arlington, VA 22209-1798



**RE: FOIA Request S-710113A: Recall on RockShox Mountain Bike  
Forks, File Number RP950153**

Dear Ms. Cislo:

Thank you for your Freedom of Information Act (FOIA) request seeking information from the Commission, this is a **partial** response to your request.

The records responsive to your request are contained in the Commission's enforcement investigatory file RP950153. We must withhold these records pursuant to the Exemption 3 of the FOIA, 5 U.S.C. 552(b)(3) and section 6(b)(5) of the Consumer Product Safety Act, (CPSA), 15 U.S.C. 2055(b)(5). FOIA Exemption 3 provides for the withholding from disclosure of matters that are specifically exempted from disclosure by another statute. In applying FOIA Exemption 3 to these records, we are relying in part on section 6(b)(5) of the CPSA. That section prohibits the disclosure of information submitted under section 15(b) of the CPSA and relating to such an inquiry, unless the Commission has issued a complaint, accepted in writing a remedial settlement agreement, or the manufacturer agrees to the disclosure. CPSA section 15(b) requires manufacturers to report to the Commission and provide information regarding their products and potential substantial product hazards. The withheld information includes information submitted by the manufacturer pursuant to section 15(b) of the CPSA. For these particular files, the Commission has not issued a complaint or accepted a remedial settlement agreement and the firm has not consented to disclosure.

page 2

The file also contains information that is considered to be trade secrets and proprietary, confidential business 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 CPSA, 15 U.S.C. 2055(a)(2). In applying the FOIA Exemptions 3 to this information we are relying on section 6(a)(2) of the CPSA. Section 6(a)(2) prohibits the Commission from disclosing information that is exempt from disclosure under Exemption 4 of the FOIA. That exemption protects trade secrets and confidential commercial information directly related to a firm's business that the firm has not made public and whose disclosure could give a substantial commercial advantage to a competitor.

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 \$75.00. In this instance, we have decided to waive all of the charges. Thank you for your interest in consumer product safety. Should you have any questions, contact Eva M. Grady, Paralegal Specialist by letter, facsimile (301) 504-0127 or telephone (301) 504-0785.

Sincerely,

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

Enclosures



February 19, 1996

Consumer Product Safety Commission  
Freedom of Information Office  
4330 East-West Highway  
Bethesda, Md., 20207

*Took said disregard*

Dear FOI Officer,

Pursuant to the federal Freedom of Information Act, 5 U.S.C. Section 552, I request access to and copies of all information to and from CPSC and RockShox on the recall of mountain bike forks.

*J. De Marco*

*RP950153 done 2/28/96 RP963024 done 12/28*

As a member of the news media I am only required to pay for the direct cost of duplication after the first 100 pages. Please waive any additional fees. Release of the information is in public interest because it will contribute significantly to public understanding of government operations and activities.

If my request is denied in whole or part, I ask that you justify all deletions by reference to specific exemptions of the Act. I will also expect you to release all segregable portions of otherwise exempt material. I, of course, reserve the right to appeal your decision to withhold any information or to deny a waiver of fees.

As I am making this request as an editor and this information is of timely value, I would appreciate your communicating with me by phone (direct line 703/247-3423) or fax (247-3421), rather than by mail, if you have questions regarding this request. I look forward to your reply within 10 business days, as the statute requires.

Thank you for your assistance.

Sincerely,

*Maureen P. Cisto*

Maureen Cisto, Editor  
PRODUCT SAFETY LETTER

*SMM CRISTY*

*2004*

Receipt of this letter is acknowledged:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name (please print or type)

cc: PUB/SEC-rf, DIR  
(1227K074.1YY)

*5710113 A  
(A-U) 16*

4

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

OFFICE OF THE GENERAL COUNSEL

Jeffrey S. Bromme  
General Counsel  
Tel: 301-504-0980 ext. 2299  
Fax: 301-504-0403  
E-Mail: cpsc-gc@cpsc.gov

December 10, 1997

Mr. Sean Oberle  
Editorial Director  
Washington Business Information  
1117 North 19th Street, Suite 200  
Arlington, Virginia 22209

Re: FOIA Appeal S-710114  
New York Lighter Co. cigarette lighters

Dear Mr. Oberle:

By letter dated November 20, 1997, 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.

On October 29, 1997, our FOI Officer disclosed to you 254 pages of documents responsive to your request. Of those pages, approximately 75 pages had some information on them deleted. In most cases, the deletions consisted of a few lines or a few names. In addition, the FOI Officer withheld 12 full pages. As explained below, I affirm the FOI Officer's decision. The documents are being withheld pursuant to FOIA Exemptions 3, 4, 5, and 7(E). 5 U.S.C. §§ 552(b)(3), (b)(4), (b)(5), and (b)(7)(E).

FOIA Exemption 3 provides for the withholding from disclosure of matters that are specifically exempted from disclosure by another statute. In applying FOIA Exemption 3 to the withheld documents, we are relying on section 6(a)(2) of the Consumer Product Safety Act (CPSA). 15 U.S.C. § 2055(a)(2). Section 6(a)(2) expressly prohibits the disclosure of information reported to or otherwise obtained by the Commission which 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

Mr. Sean Oberle  
December 10, 1997

Page 2

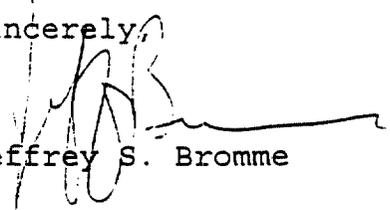
(1) to impair the government's ability to obtain the necessary information in the future or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained. Pursuant to FOIA Exemption 3, relying on CPSA section 6(a)(2), and FOIA Exemption 4, we are withholding the identities of New York Lighter Co.'s commercial customers and those customers' commercial customers.

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 advice, recommendations, and opinions in a document and not to factual information, facts are withheld here because they are inextricably intertwined with the exempt portions. The information being withheld pursuant to FOIA Exemption 5 consists of a portion (approximately a half-page) of an intra-agency memorandum, a one-page analysis of an investigation report, and two one-page safety assessment requests.

FOIA Exemption 7(E) provides for the withholding of investigatory records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law. Four intra-agency documents (a total of eight pages) meet this criterion. (All of the information being withheld under Exemption 5 is also being withheld under Exemption 7(E).)

You have the right to seek judicial review of this decision, as provided by 5 U.S.C. § 552(a)(4)(B). If you have any questions, please call me or Alan Shakin at (301) 504-0980.

Sincerely,

  
Jeffrey S. Bromme



WASHINGTON BUSINESS INFORMATION, INC. • 1117 NORTH 19TH STREET, SUITE 200, ARLINGTON, VA 22209-1798 • (703)247-3434, Fax 247-3421

FOIA APPEAL (CPSC ID: S-710114)

p. 1 of 2

Nov. 20, 1997

Jeffrey Bromme, Esq.  
 General Counsel, ATTN: Office of the Secretary  
 Consumer Product Safety Commission  
 Washington, DC 20207

Fax to: 301/504-0127

Dear Mr. Bromme,

This is an appeal under the Freedom of Information Act, 5 U.S.C. Section 552(a)(6).

On Oct. 29, 1997, CPSC responded to a *Product Safety Letter* FOIA request filed Feb. 19, 1996, by then editor Maureen Cislo (CPSC ID: S-710114) concerning the recall of "City-Lites" and "Liberty-Lites" disposable cigarette lighters by New York Lighter. CPSC denied the request based on exemptions 3, 4, 5 and 7(E).

Please reconsider the denial based on these points, addressing each in your reply:

- A. The White House changed government's policy on the Freedom of Information Act in 1993. On Oct. 4, President Clinton told federal departments and agencies the FOIA "is a vital part of the participatory system of government" and that the "existence of unnecessary bureaucratic hurdles has no place in its implementation." He insisted that agency practices with respect to FOIA requests conform to new guidelines issued by Attorney General Janet Reno favoring a presumption of disclosure.
- B. Attorney General Reno's new guidelines, also announced Oct. 4, 1993, provide that an agency should use an exemption only where "the agency reasonably foresees that disclosure would be harmful to an interest protected by that exemption." She added, "Where an item of information might technically or arguably fall within an exemption, it ought not to be withheld from a FOIA requester unless it need be." In light of the policy in favor of disclosure, the material withheld from the FOIA request does not appear to be justified. For any material for which withholding is upheld in this appeal, identify specifically the foreseeable harm that would result from disclosure.
- C. Material has been withheld pursuant to Exemptions 3 and 4 based on section 6(A)(2) of the CPSA. However, the courts have made clear that withholding of such material can be justified only when disclosure would impair the government's ability to obtain information in the future and would cause substantial harm to the competitive position of the provider of the information. See *National Parks & Conservations Assn. v. Morton*, 498 F.2d 765 (D.C. Cir. 1974). The information withheld from disclosure here does not appear to qualify for this exemption.
- D. A promise by an agency of "confidentiality" is not, by itself, sufficient to invoke exemption 4.
- E. Exemption 4 does not cover government-prepared documents based primarily on information the government generates itself.
- F. Pursuant to the government's 1993 FOIA policy, agencies should not invoke Exemption 5 unless they determine that agency personnel would have changed their expression of views if they had contemplated public disclosure. Accordingly, denial of access based on conclusory references to Exemption 5 cannot be justified.

FOIA APPEAL (CPSC ID: S-710114)

p. 2 of 2

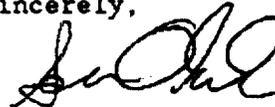
Nov. 20, 1997

- G. Exemption 5 does not cover factual portions of pre-decisional material. As a result, factual material must be disclosed even when contained in documents properly withheld under Exemption 5. The letter denying access to material based upon Exemption 5 baldy states that factual information is "inextricably intertwined with exempt materials or deliberative process." Such blanket use of this exemption cannot be justified when any information properly exempted by Exemption 5 can be redacted.
- H. Exemption 7(E) generally covers only techniques and procedures that are secret or generally not known to the public. It also does not cover routine techniques and procedures. CPSC has provided no indication that this exemption is justified here.

I trust that upon reconsideration, you will reverse the decision denying us access to this material and grant the original request. However, if you deny this appeal, I intend to initiate a lawsuit to compel disclosure. In any case, I will expect to receive your decision within 20 working days, as required by the statute.

Thank you for your assistance.

Sincerely,



Sean Oberle, Editorial Director

cc: Jane Kirtley, Executive Director,  
Reporters Committee for Freedom of the Press  
Thomas Howlett, Esq.

2303H100.6YY

Firm: 1604 New York Lighter (cig. lighter), Off(6b release), Off(Denial) Ex. 36b1&6a2, 4, 5, 7(E), Chron, spec. 3285

October 29, 1997

**CERTIFIED MAIL**

Mr. Sam Cristy  
Product Safety Letter  
Washington Business Information Inc.  
1117 North 19th Street, Suite 200  
Arlington, VA 22209-1798

**Re: FOIA Request S-710114A: CPSC Investigation of "City-Lites" and "Liberty-Lites" Disposable Cigarette Lighters manufactured by New York Lighter Co., Inc.**

Dear Mr. Cristy:

This responds to your Freedom of Information Act (FOIA request seeking information from the Consumer Product Safety Commission. The records from the Commission files responsive to your request have been processed and copies of the releasable records are enclosed.

The enclosed records represent file information generated by the Commission itself or its contractors for regulatory or enforcement purposes. These records are in file CA950156 and are identified as Inspection Reports, Laboratory Summaries, Hazard Assessment memoranda and other correspondence, notes and documents. The Commission has established management systems under which supervisors are responsible for reviewing the work of their employees or contractors. The file information materials are final and have been prepared and accepted by the Commission's staff under such review systems. The Commission believes that it has taken reasonable steps to assure the accuracy of the information. Please note that the Commission's staff, not the Commissioners themselves, made the preliminary determination that this product presented a substantial risk of injury to the public as defined by the Consumer Product Safety Act.

Portions of the files 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.

With respect to the above, the following pages are being withheld pursuant to Exemption 3 of the FOIA and section 6(b)(1) of the CPSA, 15 U.S.C. § 2055(b)(1).

Pages: 157-160.

Portions of the following pages are being 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 CPSA, 15 U.S.C. § 2055(a)(2).

Pages: 8-9, 19-28, 38, 42, 45-56, 48, 57-58, 61, 63, 67-70, 104-108, 109-113, 118, 124-125, 127, 129-130, 132, 140-143, 145-146, 150-154, 157-160, 161-162, 171, 177-178, 239, 241, 247, 252, 254-255 and 257.

Please note that information that could identify injured parties and persons treating them has been deleted from some of the records because section 25(c) of the Consumer Product Safety Act, 15 U.S.C. § 2074(c)(1), prohibits such disclosures without the consent of those individuals. In some cases the parties have denied consent or consent has not otherwise been obtained.

We must also withhold other portions of the law enforcement investigatory files pursuant to Exemptions 5 and 7 (E) of the FOIA, 5 U.S.C. §§ 552 (b) (5) and (b) (7) (E). Exemption 5 provides for the withholding from disclosure of inter-agency and intra-agency memoranda which would not be available by law to a party in litigation with the agency. FOIA Exemption 7 (E) provides for the withholding from disclosure records or information compiled for law enforcement purposes, to the extent that the production of such law enforcement records or information would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.

The records being withheld consist of internal notes and memoranda containing recommendations, opinion, suggestions and analyses of the Commission's technical and legal staffs. The records constitute both predecisional and deliberative discussion

Mr. Cristy, S710114A

Page 3

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 material because disclosure would: (1) impair the frank exchange of views necessary with respect to such matters, and (2) reveal the techniques, guidelines and strategies utilized by the investigative and legal staff in developing the information regarding this investigation and other on-going investigations, which if disclosed would significantly risk circumvention of the statutes and regulations of the Commission administrators.

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. Thank you for your interest in consumer product safety. The cost to the Commission to perform the searches and prepare this information was \$60.00. In this instance, we have decided to waive the charges. Should you have any questions, please contact Alberta Mills, Paralegal Specialist, by letter, facsimile (301) 504-0127 or telephone (301) 504-0785, ext. 1299.

Sincerely,

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

enclosures



February 19, 1996

Consumer Product Safety Commission  
Freedom of Information Office  
4330 East-West Highway  
Bethesda, Md., 20207

Dear FOI Officer,

Pursuant to the federal Freedom of Information Act, 5 U.S.C. Section 552, I request access to and copies of all information to and from CPSC and New York Lighter on the recall of non-child resistant cigarette lighters.

*CA950156 over R Rausch*

As a member of the news media I am only required to pay for the direct cost of duplication after the first 100 pages. Please waive any additional fees. Release of the information is in public interest because it will contribute significantly to public understanding of government operations and activities.

If my request is denied in whole or part, I ask that you justify all deletions by reference to specific exemptions of the Act. I will also expect you to release all segregable portions of otherwise exempt material. I, of course, reserve the right to appeal your decision to withhold any information or to deny a waiver of fees.

As I am making this request as an editor and this information is of timely value, I would appreciate your communicating with me by phone (direct line 703/247-3423) or fax (247-3421), rather than by mail, if you have questions regarding this request. I look forward to your reply within 10 business days, as the statute requires.

Thank you for your assistance.

Sincerely,

*SAM*  
*Maureen R Cisko*  
Maureen Cisko, Editor  
PRODUCT SAFETY LETTER

Receipt of this letter is acknowledged:

*AM*

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name (please print or type)

cc: PUB/SEC-rf, DIR  
(1227K074.1YY)

*5710114 A*  
*41*



February 19, 1996

Consumer Product Safety Commission  
Freedom of Information Office  
4330 East-West Highway  
Bethesda, Md., 20207

Dear FOI Officer,

Pursuant to the federal Freedom of Information Act, 5 U.S.C. Section 552, I request access to and copies of all information to and from CPSC and New York Lighter on the recall of non-child resistant cigarette lighters.

*CA950156 upon R Rauscher*

As a member of the news media I am only required to pay for the direct cost of duplication after the first 100 pages. Please waive any additional fees. Release of the information is in public interest because it will contribute significantly to public understanding of government operations and activities.

If my request is denied in whole or part, I ask that you justify all deletions by reference to specific exemptions of the Act. I will also expect you to release all segregable portions of otherwise exempt material. I, of course, reserve the right to appeal your decision to withhold any information or to deny a waiver of fees.

As I am making this request as an editor and this information is of timely value, I would appreciate your communicating with me by phone (direct line 703/247-3423) or fax (247-3421), rather than by mail, if you have questions regarding this request. I look forward to your reply within 10 business days, as the statute requires.

Thank you for your assistance.

Sincerely,

*SAM*  
*Maureen R Cisto*  
Maureen Cisto, Editor  
PRODUCT SAFETY LETTER

Receipt of this letter is acknowledged:

*AM*

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name (please print or type)

cc: PUB/SEC-rf, DIR  
(1227X074.1YY)

*5710114 A*  
*41*



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

January 22, 1998

Mr. Sean Oberle  
Editorial Director  
Washington Business Information, Inc.  
1117 North 19th Street, Suite 200  
Arlington, VA 22209-1798

**Re: FOIA Request S710112: Bemis Manufacturing Company "Waterwick" Humidifier**

Dear Mr. Oberle:

This is the final response to your appeal dated November 20, 1997, of my decision to withhold certain records or portions of records from the Commission's Office of Compliance file RP950195 regarding Bemis Manufacturing Company ("Bemis") "Waterwick" humidifier. The enclosed records include file information generated by the Commission itself for regulatory or enforcement purposes and correspondence from the representatives for Bemis. 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.

Sincerely,

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

Enclosures



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

OFFICE OF THE GENERAL COUNSEL

Jeffrey S. Bromme  
General Counsel  
Tel: 301-504-0980 ext. 2299  
Fax: 301-504-0403  
E-Mail: cpsc-gc@cpsc.gov

December 12, 1997

Sean Oberle, Editorial Director  
Washington Business Information, Inc.  
1117 North 19th Street  
Suite 200  
Arlington, Virginia 22209-1798

Re: FOIA Appeal #S710112  
Bemis Manufacturing Company "Waterwick" Humidifier

Dear Mr. Oberle:

By letter dated November 20, 1997, 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 documents.

The FOI Officer has reconsidered his decision as to one document and portions of two other documents. These documents are an internal Commission memorandum and two letters from the firm's attorney to Commission staff. Portions of the letters and two attachments to one of the letters are confidential commercial information that must be withheld under Exemptions 3 and 4 of the FOIA. 5 U.S.C. § 552(b)(3) and (4). The Commission memorandum and the remaining portions of the letters may be released in the future, but cannot be released before the Commission complies with sections 6(a) and (b) of the Consumer Product Safety Act (CPSA).

Pursuant to these sections, prior to the release of documents that identify a manufacturer, the Commission must provide the manufacturer the opportunity to mark the information as confidential and to comment upon the release of the documents. Pursuant to section 6(b)(1), the Commission must also take

Sean Oberle  
December 12, 1997

Page 2

reasonable steps to assure that the documents are accurate and that release of the documents effectuates the purposes of the CPSA and is fair in the circumstances. If the Commission decides to release information over the objections of the identified firm, the Commission must notify the firm of the proposed release 10 days prior to the release. Thus, we cannot determine whether to release the remainder of the documents until the section 6(a) and (b) review process is complete.

The Freedom of Information Officer will initiate the required review and notification processes as soon as practicable and will notify you regarding his determination regarding the release of the remaining documents when that process is complete. If he withholds any of the responsive documents, you will be given another opportunity to appeal his decision on these documents.

While the above process is taking place with respect to these documents, you may either wait for our decision or treat this letter as a denial of your FOIA request for these documents under Exemption 3, in reliance on sections 6(a) and (b).

As explained below, I affirm the FOI Officer's decision as to the remaining documents. The documents are being withheld pursuant to FOIA Exemptions 3, 4, and 7(E). 5 U.S.C. §§ 552(b)(3), (b)(4), and (7)(E).

FOIA Exemption 3 provides for the withholding from disclosure of matters that are specifically exempted from disclosure by another statute. In applying FOIA Exemption 3 to the withheld documents, we are relying on section 6(a)(2) of the CPSA. 15 U.S.C. § 2055(a)(2). Section 6(a)(2) expressly prohibits the disclosure of information reported to or otherwise obtained by the Commission that contains or relates to trade secrets or other confidential commercial information. Section 6(a)(2) incorporates Exemption 4 of the FOIA. That exemption protects trade secrets and confidential commercial information obtained from a person. Commercial information is confidential if disclosure is likely (1) to impair the government's ability to obtain the necessary information in the future or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained. The information being withheld pursuant to FOIA Exemption 3, relying on CPSA section 6(a)(2), and FOIA Exemption 4 consists of a memorandum and retailer list that the attorney for the firm provided to Commission staff. Release of this information would cause substantial competitive harm to the firm. For the same reason, we have redacted from the letters at pages 34 to 63 of the responsive documents the names and addresses of the retailers to

Sean Oberle  
December 12, 1997

Page 3

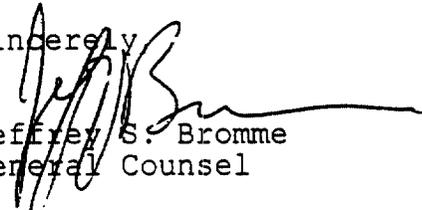
whom the firm sent the letters. The redacted letters, which were mistakenly omitted from the release package originally sent, are enclosed.

*PSS. 34-63  
return  
to  
file.*

FOIA Exemption 7(E) provides for the withholding of investigatory records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law. The information being withheld under FOIA Exemption 7(E) consists of internal Commission forms regarding Bemis' corrective action plan and the staff's preliminary determination regarding the heaters.

You have the right to seek judicial review of this decision as provided by 5 U.S.C. § 552(a)(4)(B). If you have any questions, please call me or Jayme Rizzolo Epstein, the attorney assigned to this matter, at (301) 504-0980.

Sincerely,

  
Jeffrey S. Bromme  
General Counsel

CERTIFIED MAIL -- RETURN RECEIPT REQUESTED

Thomas M. Franco, Esq.  
Cogavin and Waystack  
Two Center Plaza  
Boston, Massachusetts 02108

*Resend for  
6(a) +  
(b) review*

Re: FOIA Request S-703134; Bemis Manufacturing Company,  
"Waterwick" Whole House Humidifier

Dear Mr. Franco:

This letter concerns a Freedom of Information Act (FOIA) request for Commission records on Bemis Manufacturing Company's "Waterwick" whole house humidifier. In accordance with sections 6(a) and 6(b) of the Consumer Product Safety Act (CPSA), we provided Bemis with the opportunity to comment on disclosure of the documents responsive to the request. 15 U.S.C. § 2055(a) and (b). We then considered the comments contained in your October 28, 1997 letter and decided to withhold the documents to the disclosure of which you objected.

The FOIA requester has now appealed that decision and the General Counsel of the Commission has decided that portions of two of the documents previously withheld are not confidential commercial information under CPSA section 6(a) and FOIA Exemption 4. 15 U.S.C. § 2055(a); 5 U.S.C. § 552(b)(4). These documents are at pages 142-144 and 97-107 of the responsive documents. Copies of these pages, in the form we intend to release them, are enclosed.

This constitutes notice that we will disclose the redacted documents ten (10) working days after your receipt of this certified letter.

Also enclosed for your review is an internal Commission memorandum that we may release pursuant to the appeal of the FOIA request. You were not previously asked to comment on it. **[Todd -- insert your regular 30 day notice here.]**

If you have any questions, please contact me by letter or call (301) 504-0800.

Sincerely,

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



WASHINGTON BUSINESS INFORMATION, INC. • 1117 North 19th Street, Suite 200, Arlington, VA 22209-1798 • (703)247-3434, Fax 247-3421

FOIA APPEAL(CPSC ID: S-710112)

p. 1 of 2

Nov. 20, 1997

Jeffrey Bromme, Esq.  
 General Counsel, ATTN: Office of the Secretary  
 Consumer Product Safety Commission  
 Washington, DC 20207

Fax to: 301/504-0127

Dear Mr. Bromme,

This is an appeal under the Freedom of Information Act, 5 U.S.C. Section 552(a)(6).

On Oct. 31, 1997, CPSC responded to a *Product Safety Letter* FOIA request filed Feb. 19, 1996, by then editor Maureen Cisko (CPSC ID: S-710112) concerning the recall of "Waterwick" whole house humidifiers by Bemis. CPSC withheld parts of the responsive documents based on exemptions 3, 4, 5 and 7(E).

Please reconsider the denial based on these points, addressing each in your reply:

- A. The White House changed government's policy on the Freedom of Information Act in 1993. On Oct. 4, President Clinton told federal departments and agencies the FOIA "is a vital part of the participatory system of government" and that the "existence of unnecessary bureaucratic hurdles has no place in its implementation." He insisted that agency practices with respect to FOIA requests conform to new guidelines issued by Attorney General Janet Reno favoring a presumption of disclosure.
- B. Attorney General Reno's new guidelines, also announced Oct. 4, 1993, provide that an agency should use an exemption only where "the agency reasonably foresees that disclosure would be harmful to an interest protected by that exemption." She added, "Where an item of information might technically or arguably fall within an exemption, it ought not to be withheld from a FOIA requester unless it need be." In light of the policy in favor of disclosure, the material withheld from the FOIA request does not appear to be justified. For any material for which withholding is upheld in this appeal, identify specifically the foreseeable harm that would result from disclosure.
- C. Material has been withheld pursuant to Exemptions 3 and 4 based on section 6(A)(2) of the CPSCA. However, the courts have made clear that withholding of such material can be justified only when disclosure would impair the government's ability to obtain information in the future and would cause substantial harm to the competitive position of the provider of the information. See *National Parks & Conservations Assn. v. Morton*, 498 F.2d 765 (D.C. Cir. 1974). The information withheld from disclosure here does not appear to qualify for this exemption.
- D. A promise by an agency of "confidentiality" is not, by itself, sufficient to invoke exemption 4.
- E. Exemption 4 does not cover government-prepared documents based primarily on information the government generates itself.
- F. Pursuant to the government's 1993 FOIA policy, agencies should not invoke Exemption 5 unless they determine that agency personnel would have changed their expression of views if they had contemplated public disclosure. Accordingly, denial of access based on conclusory references to Exemption 5 cannot be justified.

Nov. 20, 1997

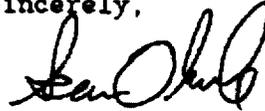
Exemption 5 does not cover factual portions of pre-decisional material. As a result, factual material must be disclosed even when contained in documents properly withheld under exemption 5. The letter denying access to material based upon Exemption 5 baldly states that factual information is "inextricably intertwined with exempt materials or deliberative process." Such blanket use of this exemption cannot be justified when any information properly exempted by Exemption 5 can be redacted.

- H. Exemption 7(E) generally covers only techniques and procedures that are secret or generally not known to the public. It also does not cover routine techniques and procedures. CPSC has provided no indication that this exemption is justified here.

I trust that upon reconsideration, you will reverse the decision denying us access to this material and grant the original request. However, if you deny this appeal, I intend to initiate a lawsuit to compel disclosure. In any case, I will expect to receive your decision within 20 working days, as required by the statute.

Thank you for your assistance.

Sincerely,



Sean Oberle, Editorial Director

cc: Jane Kirtley, Executive Director,  
Reporters Committee for Freedom of the Press  
Thomas Howlett, Esq.

2303H100.6YY

cc; <sup>SP</sup> OSFOI Denial S-710112, Neiss Code: 0304, Firm/Subject:  
Bemis Manufacturing Co., "Waterwick" Humidifier, Chron,  
Officer (Withhold part/Exemptions 3, 4, 5, 6(a)(2), 6(b)(1), 7(E)  
& 25(c)), & Specialist 3236

cc: Thomas Franco, Esq.

October 31, 1997

Mr. Sam Cristy  
Product Safety Letter  
Washington Business Information, Inc.  
1117 North 19th St., Suite 200  
Arlington, VA 22209-1798

**RE: FOIA Request S-710112; subject: Bemis Manufacturing  
Company, "Waterwick" whole house Humidifier;**

Dear Mr. Cristy:

This responds to your Freedom of Information Act (FOIA) request seeking information from the 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.

The enclosed records include file information generated by the Commission's Office of Compliance itself or its contractors for regulatory or enforcement purposes. These records are in file # RP950195 and are identified as Laboratory Summaries, Hazard Assessment memoranda, and other correspondence, notes and documents. The Commission has established management systems under which supervisors are responsible for reviewing the work of their employees or contractors. The file information materials are final and have been prepared and accepted by the Commission's staff under such review systems. The Commission believes that it has taken reasonable steps to assure the accuracy of the information.

We must withhold portions of the records pertaining to the Bemis Manufacturing Company, "Waterwick" whole house humidifier, that have been claimed as proprietary and confidential by them 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

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. We have withheld information that would reveal the firm's retailer's lists and technical safety reports and other internal business records.

The other records responsive to your request are contained in the Commission's law enforcement investigatory files. At this time, we must withhold the records pursuant to the Exemptions 5 and 7(E) of the FOIA, 5 U.S.C. §§ 552(b)(5), and (b)(7)(E). Exemption 5 provides for the withholding from disclosure of inter-agency and intra-agency memoranda which would not be available by law to a party in litigation with the agency. FOIA Exemption 7(E) provide 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 (E) would disclose techniques and procedures for law enforcement investigations or prosecutions or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.

The records being withheld consist of internal notes and memoranda containing recommendations, opinions, suggestions and analyses of the Commission's technical and legal staffs. The records constitute both predecisional and deliberative discussion that clearly falls within the attorney-client and attorney-work product privileges. Any factual materials in the records not covered by some other exemption are inextricably intertwined with exempt materials or the disclosure of the factual materials would itself expose the deliberative process. We have determined that the disclosure of these certain law enforcement investigatory records responsive to your request would be contrary to the public interest. It would not be in the public interest to disclose these materials because disclosure would (1) impair the frank exchange of views necessary with respect to such matters, and (2) reveal the techniques, guidelines and strategies utilized by the investigative and legal staff in developing the information regarding this investigation and other on-going investigations, which if disclosed would significantly risk circumvention of the statutes and regulations that the Commission administers.



February 19, 1996

Consumer Product Safety Commission  
Freedom of Information Office  
4330 East-West Highway  
Bethesda, Md., 20207

Dear FOI Officer,

*J. Hayes*

Pursuant to the federal Freedom of Information Act, 5 U.S.C. Section 552, I request access to and copies of all information to and from CPSC and Bemis Manufacturing on the recall of 4000,000 Waterwicks.

*RPAS 0195*

*[Signature]*

As a member of the news media I am only required to pay for the direct cost of duplication after the first 100 pages. Please waive any additional fees. Release of the information is in public interest because it will contribute significantly to public understanding of government operations and activities.

If my request is denied in whole or part, I ask that you justify all deletions by reference to specific exemptions of the Act. I will also expect you to release all segregable portions of otherwise exempt material. I, of course, reserve the right to appeal your decision to withhold any information or to deny a waiver of fees.

As I am making this request as an editor and this information is of timely value, I would appreciate your communicating with me by phone (direct line 703/247-3423) or fax (247-3421), rather than by mail, if you have questions regarding this request. I look forward to your reply within 10 business days, as the statute requires.

Thank you for your assistance.

Sincerely,

*Maureen R. Cisto*

Maureen Cisto, Editor  
PRODUCT SAFETY LETTER

*SAM CRISTY*

Receipt of this letter is acknowledged:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

*SAP*

\_\_\_\_\_  
Name (please print or type)

cc: PUB/SEC-rf, DIR  
(1227X074 .1YY)

*5710112*  
*[Signature]*

6 + 20



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

OFFICE OF THE GENERAL COUNSEL

Jeffrey S. Bromme  
General Counsel  
Tel: 301-504-0980 ext. 2299  
Fax: 301-504-0403  
E-Mail: cpsc-gc@cpsc.gov

January 21, 1998

Mr. Sean Oberle, Editorial Director  
Washington Business Information, Inc.  
1117 North 19th Street, Suite 200  
Arlington, VA 22209-1798

Re: FOIA Appeal S-710115C  
Cedar Chest Recall; Lane Company of Altavista, VA

Dear Mr. Oberle:

By letter dated November 20, 1997, 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 documents.

Since the FOI Officer's November 3, 1997 response to your request, a number of responsive documents that he had previously withheld under FOIA Exemptions 5 and 7(A) may now be disclosed. Copies of them, including pertinent manufacturer's comments on them, are enclosed.

In addition, the FOI Officer has tentatively reconsidered his decision as to all but one of the remaining responsive documents. However, he cannot finally decide whether to withhold or disclose them until after the Commission complies with sections 6(a) and (b) of the Consumer Product Safety Act (CPSA). 15 U.S.C. §§ 2055(a) and (b). Under these provisions, the Commission must provide the manufacturer the opportunity to mark information as confidential and to comment upon the disclosure of information that identifies a manufacturer. If the Commission decides to disclose information over the objection of the identified manufacturer, it must notify the manufacturer of the proposed disclosure at least 10 days in advance.

The FOI Officer has initiated the process of manufacturer comment, and he will notify you of his determination when it has



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

OFFICE OF THE GENERAL COUNSEL

Jeffrey S. E  
General C  
Tel: 301-504-0980 e:  
Fax: 301-5  
E-Mail: cpsc-gc@c

December 22, 1997

Mr. Sean Oberle, Editorial Director  
Washington Business Information, Inc.  
1117 North 19th Street, Suite 200  
Arlington, Virginia 22209-1798

Re: FOIA Appeal S-710113C  
Manco Products, Inc. Go-Karts

Dear Mr. Oberle:

By letter dated November 20, 1997, 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 documents.

The FOI Officer has reconsidered his decision as to all or part of the documents at the following pages: 004, 006-007, 011-12, 014-16, 035-36, 040-41, 063-64, 110-17, 148, 201-16, 217-19, 241, 256-61 (and copies at 262-67 and 268-74), 304-20, 325-416, 417-28, 458-59, and 591-92. This information may be released in the future, but cannot be released before the Commission complies with Sections 6(a) and (b) of the Consumer Product Safety Act ("CPSA"). 15 U.S.C. §§ 2055(a) and (b).

Pursuant to Sections 6(a) and (b), prior to the release of documents that identify a manufacturer, the Commission must provide the manufacturer the opportunity to mark the information as confidential and to comment upon the release of the documents. If the Commission decides to release information over the objections of the identified firm, the Commission must notify the firm of the proposed release 10 days prior to the release.

The FOI Officer previously notified the firm that the documents may be released, and the firm objected to the release on the grounds that the documents contained confidential

Mr. Sean Oberle  
December 22, 1997

Page 2

commercial or financial information. Because the FOI Officer initially decided to withhold the documents in their entirety, he did not provide the requisite 10-day notice that the above-listed documents and portions of documents would be released over the firm's objections. Thus, we cannot release these portions until the 10-day notice is given.

The FOI Officer will initiate the required process and will notify you regarding his determination when that process is complete. If he withholds any of the responsive documents, you will be given another opportunity to appeal his decision on those documents. While the above process is taking place, you may either wait for our decision or treat this letter as a denial of your FOIA request for responsive documents under Exemption 3, in reliance on sections 6(a) and (b).

As explained below, I affirm the FOI Officer's decision as to the non-releasable portions of the documents described above and the remaining documents. These documents and portions of documents are being withheld pursuant to FOIA Exemptions 3 and 4. 5 U.S.C. §§ 552(b)(3) and (b)(4).<sup>1</sup>

FOIA Exemption 3 provides for withholding information that is specifically exempted from disclosure by another statute. In applying FOIA Exemption 3 to the withheld documents, we are 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 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. The information being withheld pursuant to FOIA Exemption 3, relying on CPSA section 6(a)(2), and FOIA Exemption 4 consists of test reports prepared by or for the firm and information regarding product design and distribution. Based on

---

<sup>1</sup> The FOI Officer's November 4, 1997 letter responding to your FOIA request stated that the Commission was withholding documents under Exemptions 5 and 7(E) of the FOIA. We have determined that that statement was included in error, and that the FOI Officer did not withhold any documents under those exemptions.

Mr. Sean Oberle  
December 22, 1997

Page 3

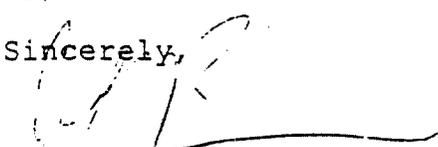
our review of pertinent factors, including the claims of Manco, it is our judgment that release of this information would likely cause substantial competitive harm to the firm.

Section 6(b)(1) requires the Commission to take reasonable steps to assure that the documents are accurate and that the release of the documents would be fair in the circumstances. Since the Commission is unable to take the necessary reasonable steps to assure the accuracy and fairness of some of the responsive information, it is being withheld. The information being withheld pursuant to FOIA Exemption 3, relying on CPSA section 6(b)(1), consists of draft recall documents and press releases, correspondence to and from the firm to facilitate prompt remedial action, notes of meetings and of telephone conversations between Commission staff and the firm to facilitate prompt remedial action and negotiate settlement, documents prepared by counsel for the firm that are privileged attorney work-product information, complaints and discovery documents filed in private lawsuits, expert reports prepared for private litigation, and a newspaper article regarding a go-cart accident.

The information withheld under section 6(b)(1) also includes one unconfirmed consumer product complaint to the Commission. 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 the information as accurate to the best of their knowledge and belief. We also send a franked return envelope for mailing back the confirmation. This process, which is strictly voluntary on the part of the submitter, has been in place since 1983 and was applied to the complaint being withheld. However, because the submitter of the complaint did not respond to the Commission's request for confirmation, the Commission may not disclose the complaint under the FOIA.

You have the right to seek judicial review of this decision as provided by 5 U.S.C. § 552(a)(4)(B). If you have any questions, please call me or Jayme Rizzolo Epstein, the attorney assigned to this matter, at (301) 504-0980.

Sincerely,



Jeffrey S. Bromme



WASHINGTON BUSINESS INFORMATION, INC. • 1117 North 19th Street, Suite 200, Arlington, VA 22209-1798 • (703) 247-3424, Fax 247-3421

FOIA APPEAL (CPSC ID: S-710113C)

p. 1 of 2

Nov. 20, 1997

Jeffrey Bromme, Esq.  
General Counsel, ATTN: Office of the Secretary  
Consumer Product Safety Commission  
Washington, DC 20207

Fax to: 301/504-0127

Dear Mr. Bromme,

This is an appeal under the Freedom of Information Act, 5 U.S.C. Section 552(a)(6).

On Nov. 4, 1997, CPSC responded to a *Product Safety Letter* FOIA request filed July 29, 1996, by then editor Maureen Cislo (CPSC ID: S-710113C) concerning the recall of go-karts by Manco Products. CPSC partially denied the request based on exemptions 3, 4, 5 and 7(E).

Please reconsider the denial based on these points, addressing each in your reply:

- A. The White House changed government's policy on the Freedom of Information Act in 1993. On Oct. 4, President Clinton told federal departments and agencies the FOIA "is a vital part of the participatory system of government" and that the "existence of unnecessary bureaucratic hurdles has no place in its implementation." He insisted that agency practices with respect to FOIA requests conform to new guidelines issued by Attorney General Janet Reno favoring a presumption of disclosure.
- B. Attorney General Reno's new guidelines, also announced Oct. 4, 1993, provide that an agency should use an exemption only where "the agency reasonably foresees that disclosure would be harmful to an interest protected by that exemption." She added, "Where an item of information might technically or arguably fall within an exemption, it ought not to be withheld from a FOIA requester unless it need be." In light of the policy in favor of disclosure, the material withheld from the FOIA request does not appear to be justified. For any material for which withholding is upheld in this appeal, identify specifically the foreseeable harm that would result from disclosure.
- C. Exemption 3 has been invoked based on the purported applicability of section 6(B)(1) of the CPSA. The letter states that "[m]any of the documents withheld would reveal information about the negotiations to settle the matter and it would not be fair under the circumstances to release these negotiation records." Application of this exemption with respect to such documents is not justified.
- D. Material has been withheld pursuant to Exemptions 3 and 4 based on section 6(A)(2) of the CPSA. However, the courts have made clear that withholding of such material can be justified only when disclosure would impair the government's ability to obtain information in the future and would cause substantial harm to the competitive position of the provider of the information. See *National Parks & Conservations Assn. v. Morton*, 498 F.2d 765 (D.C. Cir. 1974). The information withheld from disclosure here does not appear to qualify for this exemption.
- E. A promise by an agency of "confidentiality" is not, by itself, sufficient to invoke exemption 4.
- F. Exemption 4 does not cover government-prepared documents based primarily on information the government generates itself.

FOIA APPEAL (CPSC ID: S-710113C)

p. 2 of 2

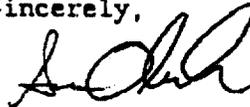
Nov. 20, 1997

- G. Pursuant to the government's 1993 FOIA policy, agencies should not invoke Exemption 5 unless they determine that agency personnel would have changed their expression of views if they had contemplated public disclosure. Accordingly, denial of access based on conclusory references to Exemption 5 cannot be justified.
- H. Exemption 5 does not cover factual portions of pre-decisional material. As a result, factual material must be disclosed even when contained in documents properly withheld under Exemption 5. The letter denying access to material based upon Exemption 5 baldly states that factual information is "inextricably intertwined with exempt materials or deliberative process." Such blanket use of this exemption cannot be justified when any information properly exempted by Exemption 5 can be redacted.
- I. Exemption 7(E) generally covers only techniques and procedures that are secret or generally not known to the public. It also does not cover routine techniques and procedures. CPSC has provided no indication that this exemption is justified here.

I trust that upon reconsideration, you will reverse the decision denying us access to this material and grant the original request. However, if you deny this appeal, I intend to initiate a lawsuit to compel disclosure. In any case, I will expect to receive your decision within 20 working days, as required by the statute.

Thank you for your assistance.

Sincerely,



Sean Oberle, Editorial Director

cc: Jane Kirtley, Executive Director,  
Reporters Committee for Freedom of the Press  
Thomas Howlett, Esq.

2303H100.6YY

✓  
code 3259: firm Manco, chron, officer, sp/eg

November 4, 1997

**Certified Mail**

Maureen Cislo  
Washington Business Information, Inc.  
1117 North 19th Street  
Suite 200  
Arlington, VA 22209-1798

**RE: FOIA Request S-710113C: Go-Karts, Mfrd by Manco Products, Inc.**

Dear Ms. Cislo:

Thank you for your Freedom of Information Act (FOIA) request seeking information from the Commission, this is a **partial** response to your request. 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 include file information generated by the Commission itself or its contractors for regulatory or enforcement purposes. These records are in file CA960046 and are identified as Hazard Assessment memoranda and other correspondence, notes and documents. The Commission has established management systems under which supervisors are responsible for reviewing the work of their employees or contractors. The file information materials are final and have been prepared and accepted by the Commission's staff under such review systems. The Commission believes that it has taken reasonable steps to assure the accuracy of the information. Please note that the Commission's staff, not the Commissioners themselves, made the preliminary determination that this product presented a substantial risk of injury to the public as defined by the Consumer Product Safety Act.

The enclosed records include three (3) Epidemiologic Investigation Reports with the underlying and supporting documentation and related product complaints or reported incidents where available and Medical Examiner and Coroner Alert Project Reports. The Commission has received this information from its formal investigation systems. Through these systems the Commission hopes to learn when specific products are associated with illness, injury or death. The Commission believes that it has taken reasonable steps to assure the accuracy of this information. While conducting the interviews for the investigation reports, Commission staff or contractors have spoken with the individuals involved or with others who witnessed or are familiar with the incidents. Where possible, Commission staff have examined the products reportedly involved in the incidents. Although the Commission has investigated the incidents described in the investigation reports, the Commission has not necessarily determined the cause of the incidents.

Also enclosed are records pertaining to one product complaint and reported incident submitted to the Commission by a consumer or his or her attorney or others. 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 corroborate the substance of the information contained in the complaint and reported incident. In this case, we have removed the identity of the complainant at his or her request.

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

Other records from the Commission law enforcement investigation files responsive to your request are being 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) and 6(b)(1) of the CPSA, 15 U.S.C. § 2055(a)(2) and (b)(1). In applying FOIA Exemption 3 to these records, we are relying in part 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 and 1101.33. Many of the documents withheld would reveal information about the negotiations to settle the matter and it would not be fair under the circumstances to release these negotiation records. For these reasons we are withholding pages: 004, 006-007, 009, 010, 011-012, 013, 017, 019, 020-021, 022-024, 025-027, 028-029, 030-032, 033-034, 035, 036, 037-039, 040, 041, 042-044, 045, 053-055, 046-052, 056-058, 059-062, 063-064, 065, 066-069, 070, 071-074, 075-077, 078, 081, 082-085, 086-089, 094-095, 096-098, 099-101, 102-103, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 152, 153, 154-155, 158-161, 162-164, 165-166, 167-175, 176-181, 182-191, 192-200, 201-216, 217-243, 244-253, 254, 255, 256-261, 262-267, 268-274, 279-281, 284, 285, 293-295, 304-320, 321-324, 325-428, 458-459 and 485-510. Also we are withholding a portion of pages 001, 005, 144, 275, 286 and 287.

These records also contain proprietary and confidential information that we must withhold pursuant to Exemptions 3 and 4 and section 6(a)(2) of the CPUSA. 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. The pages withheld are: 014-016, 132, 148, 156-157, 296, 297, 511-609 and 657-683.

We must withhold other internal staff memoranda pursuant to the Exemptions 5 and 7(E) of the FOIA, 5 U.S.C. §§ 552(b)(5) and (b)(7)(E). Exemption 5 provides for the withholding from disclosure of inter-agency and intra-agency memoranda which would not be available by law to a party in litigation with the agency. FOIA Exemption 7(E) provides for the withholding from disclosure records or information compiled for law enforcement purposes, to the extent that the production of such law enforcement records or information would disclose techniques and procedures for law enforcement investigations or prosecutions or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.

page 4

The records being withheld consist of internal notes and memoranda containing recommendations, opinions, suggestions and analyses of the Commission's technical and legal staffs. The records constitute both predecisional and deliberative discussion that clearly falls within the attorney-client and attorney-work product privileges. Any factual materials in the records not covered by some other exemption are inextricably intertwined with exempt materials or the disclosure of the factual materials would itself expose the deliberative process. We have determined that the disclosure of these certain law enforcement investigatory records responsive to your request would be contrary to the public interest. It would not be in the public interest to disclose these materials because disclosure would (1) impair the frank exchange of views necessary with respect to such matters, and (2) reveal the techniques, guidelines and strategies utilized by the investigative and legal staff in developing the information regarding this investigation and other on-going investigations, which if disclosed would significantly risk circumvention of the statutes and regulations that the Commission administers.

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 \$120.00. In this instance, we have decided to waive all of the charges. Thank you for your interest in consumer product safety. Should you have any questions, contact Eva M. Grady, Paralegal Specialist by letter, facsimile (301) 504-0127 or telephone (301) 504-0785.

Sincerely,

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

Enclosures



Washington Business Information, Inc. • 1117 North 19th Street, Suite 200, Arlington, VA 22209-1798 • (703)247-3434, Fax 247-3421

July 29, 1996

PSL CODE -- Recall -- 121

Consumer Product Safety Commission  
Freedom of Information Office  
4330 East-West Highway  
Bethesda, Md. 20207  
Fax: 301/504-0127

Dear FOI Officer,

Pursuant to the federal Freedom of Information Act, 5 U.S.C. Section 552, I request access to and copies of all information to and from CPSC and Manco Products Inc. Fort Wayne, Ind. on the recall of go-karts (CPSC release #96-167.) I would also like copies of all inter-agency memos staff may have written to each other regarding this recall.

As a member of the news media I am only required to pay for the direct cost of duplication after the first 100 pages. Please waive any additional fees. Release of the information is in public interest because it will contribute significantly to public understanding of government operations and activities.

If my request is denied in whole or part, I ask that you justify all deletions by reference to specific exemptions of the Act. I will also expect you to release all segregable portions of otherwise exempt material. I, of course, reserve the right to appeal your decision to withhold any information or to deny a waiver of fees.

As I am making this request as an editor and this information is of timely value, I would appreciate your communicating with me by phone (direct line 703/247-3423) or fax (247-3421), rather than by mail, if you have questions regarding this request. I look forward to your reply within 10 business days, as the statute requires.

Thank you for your assistance.

Sincerely,

*Maureen R. Cislo*

Maureen Cislo, Editor  
PRODUCT SAFETY LETTER

Receipt of this letter is acknowledged:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name (please print or type)

5710113C  
127

cc: PUB/SEC-rf, DIR  
(1227K074.1R2)

PRODUCT SAFETY LETTER®  
WASHINGTON DRUG LETTER®  
REGULATORY WATCHDOG SERVICE®  
HAZARDOUS MATERIALS TRANSPORTATION®

EUROPE DRUG & DEVICE REPORT®  
DEVICES & DIAGNOSTICS LETTER®  
THE FOOD & DRUG LETTER®

MOR WATCH®  
THE GMP LETTER®  
DRUG GMP REPORT™  
DIOGENES™ DATABASE

Row#	Sec15 #	Opened	PD	CAP	Closed	Priority	Total Involved	Accession #	Box #
------	---------	--------	----	-----	--------	----------	----------------	-------------	-------

1	CA960046	02/09/96	07/15/96	07/15/96		Y			
---	----------	----------	----------	----------	--	---	--	--	--

Comp Off: Carol J. Cave

Company: Manco Products, Inc.  
4404 Engle Ridge Road  
Fort Wayne, IN 46804

Type: Manufacturer

ProdCode: 3259

Product: Go Kart

Brand: Manco

Model: ALL MODELS WITH LIVE AXLES

Hazard: entrapment

2	RP970222	08/27/97				x			
---	----------	----------	--	--	--	---	--	--	--

Comp Off: Katherine H. Wallace

Company: Manco Products, Inc.  
4404 Engle Ridge Road  
Fort Wayne, IN 46804

Type: Manufacturer

ProdCode: 3259

Product: Go-cart, brakes

Brand: Tolomatic

Model:

Hazard: Total loss of braking



WASHINGTON BUSINESS INFORMATION, INC. • 1117 NORTH 19TH STREET, SUITE 200, ARLINGTON, VA 22209-1798 • (703)247-3434, FAX 247-3421

July 29, 1996

PSL CODE -- Recall -- 121

Consumer Product Safety Commission  
Freedom of Information Office  
4330 East-West Highway  
Bethesda, Md. 20207  
Fax: 301/504-0127

Dear FOI Officer,

Pursuant to the federal Freedom of Information Act, 5 U.S.C. Section 552, I request access to and copies of all information to and from CPSC and Manco Products Inc. Fort Wayne, Ind. on the recall of go-karts (CPSC release #96-167.) I would also like copies of all inter-agency memos staff may have written to each other regarding this recall.

As a member of the news media I am only required to pay for the direct cost of duplication after the first 100 pages. Please waive any additional fees. Release of the information is in public interest because it will contribute significantly to public understanding of government operations and activities.

If my request is denied in whole or part, I ask that you justify all deletions by reference to specific exemptions of the Act. I will also expect you to release all segregable portions of otherwise exempt material. I, of course, reserve the right to appeal your decision to withhold any information or to deny a waiver of fees.

As I am making this request as an editor and this information is of timely value, I would appreciate your communicating with me by phone (direct line 703/247-3423) or fax (247-3421), rather than by mail, if you have questions regarding this request. I look forward to your reply within 10 business days, as the statute requires.

Thank you for your assistance.

Sincerely,

Maureen Cislo, Editor  
PRODUCT SAFETY LETTER

Receipt of this letter is acknowledged:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name (please print or type)

5710113C  
127

cc: PUB/SEC-rf, DIR  
(1227K974.1XX)

Row#	Sec15 #	Opened	PD	CAP	Closed	Priority	Total Involved	Accession #	Box #
1	CA960046	02/09/96	07/15/96	07/15/96		Y			
	Comp Off: Carol J. Cave								
	Company: Manco Products, Inc.		4404 Engle Ridge Road		Fort Wayne, IN 46804		Type: Manufacturer		
	ProdCode: 3259								
	Product: Go Kart								
	Brand: Manco								
	Model: ALL MODELS WITH LIVE AXLES								
	Hazard: entrapment								
2	RP970222	08/27/97				x			
	Comp Off: Katherine H. Wallace								
	Company: Manco Products, Inc.		4404 Engle Ridge Road		Fort Wayne, IN 46804		Type: Manufacturer		
	ProdCode: 3259								
	Product: Go-cart, brakes								
	Brand: Tolomatic								
	Model:								
	Hazard: Total loss of braking								

11  
Officer (appeal response), chron,

✓ S703091

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

December 4, 1997

Mr. Hugh K. Sherron  
4152 Camellia Drive  
Spring Hill, Florida 34607

**RE: FOIA S-703091: Appeal from Denial of Freedom of Information Request**

Dear Mr. Sherron:

Dear Mr. Sherron:

This acknowledges receipt of your letter dated October 25, 1997, appealing the U. S. Consumer Product Safety Commission's failure to respond to your request in a timely manner.

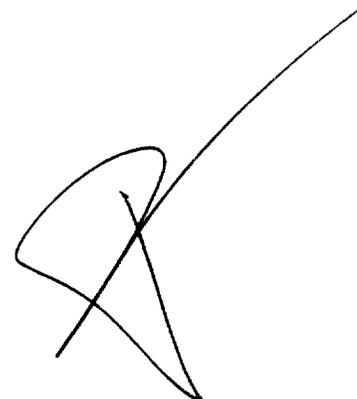
Our response to you is dated October 23, 1997. Because our letters crossed in the mail, and your request has been completed and granted fully, we consider your appeal moot. We are administratively closing the matter.

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

Sincerely,



Sandra K. Bradshaw  
Sr. FOIA Specialist  
Freedom of Information Division  
Office of the Secretary



September 19, 1997

Hugh K. Sherron  
4152 Camelia Dr.  
Spring Hill, FL 34607  
352-596-7058

Todd Stevenson  
US Consumer Product Safety Commission  
4330 East West Highway  
Bethesda , MD 20814-4408

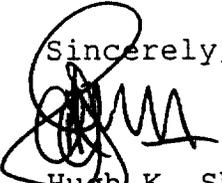
Re: Freedom of Information Request No. S-703091

Dear Mr. Stevenson:

The above referenced request dated March 13, 1997, has not been answered. I wish to be updated on the status of this request.

Please contact me at the above address if you have any questions regarding this request. Thank you for your prompt attention to this matter.

Sincerely,



Hugh K. Sherron

1997 SEP 24 11 A 10: 37  
FEDERAL BUREAU OF INVESTIGATION  
U.S. DEPARTMENT OF JUSTICE

chron, 2618

**GRANTED 703091**

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

October 23, 1997

Mr. Hugh K. Sherron  
4152 Camelia Drive  
Spring Hill, Florida 34607

**RE: FOIA Request Number S-703091: GS 1801 Product Safety Investigator**

Dear Mr. Sherron:

This responds to your Freedom of Information Act request to the U. S. Consumer Product Safety Commission (Commission) for information concerning your application for the above position.

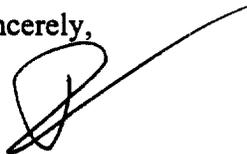
We are informed by staff of the Commission's Office of Human Resource Management that the following procedures were taken during the selection process for the job for which you applied.

As part of the evaluation and selection process, your application was forwarded to Lee Baxter, Commission Regional Director for the Western Region for consideration. Additionally, you were interviewed by Mr. Ralph Morgan of the Commission's Dallas Office. The final step of the evaluation and selection process usually involves the verification of employment, conversations with previous supervisors and reference checks.

Someone else was selected for the position. The only file information we have concerning your non-selection is a memorandum for the record, initiated by Mr. Baxter after your telephone conversation on March 17, 1997. We have enclosed a copy of the memorandum.

This completes the processing of your request. If you have questions, contact us by letter, telephone (301) 504-0785 or facsimile (301) 504-0127. The cost to the Commission to prepare this response was \$50.00. In this instance we have decided to waive the costs.

Sincerely,



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

Enclosure

CPSC/OFC OF THE SECRETARY  
FREEDOM OF INFORMATION

Hugh K. Sherron  
PO Box 3158  
Spring, TX 77383  
April 5, 1997

1997 APR 11 A 10:15

See FL address

Todd Stevenson  
US Consumer Product Safety Commission  
4330 East West Highway  
Bethesda , MD 20814-4408

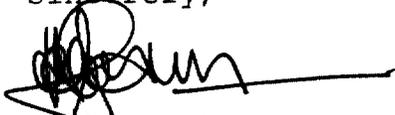
Re: Freedom of Information Request No. S-703091

Dear Mr. Stevenson:

The purpose of this letter is to amend the above referenced request dated March 13, 1997. I wish request number S-703091 to be considered under the Privacy Act, as well as the Freedom of Information Act. Please modify your response accordingly.

Please contact me at the above address if you have any questions regarding this request. Thank you for your prompt attention to this matter.

Sincerely,



Hugh K. Sherron

CPSC/OFC OF THE SECRETARY  
FREEDOM OF INFORMATION  
Hugh K. Sherron  
PO Box 3158  
Spring, TX 77383  
March 13, 1997

1997 MAR 17 A 11:53

Todd Stevenson  
US Consumer Product Safety Commission  
4330 East West Highway  
Bethesda, MD 20814-4408

Re: Freedom of Information Request

Dear Sir:

The purpose of this letter is to request information pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. section 552. If this information is not available from your agency, please forward this request to the appropriate agency or advise me of the other agencies that might have this information.

ds

Please provide a copy of the items listed below.

All information in regard to any and all inquiries concerning me regarding my recent application for employment as an Investigator with the US CPSC, along with all other information contained in any agency files.

9595

I request documentation showing how any investigative and/or background information was obtained by the US CPSC or released from the US CPSC, to whom it was obtained/released, for what purpose it was obtained/released, the authority under which the information was accessed and/or released, and what authority or reason to access to the information did the receiving agency or agencies have. I request that a disclosure of information record regarding these documents be provided to me.

EXRM/C  
DIF 3

I am particularly interested in documents showing how determination of suitability for employment was arrived at, who was contacted, and who made such determination.

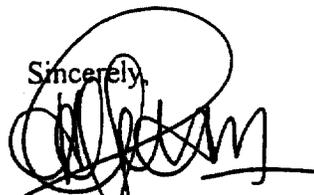
If any or all of the materials are held under an FOIA exemption, please provide a list of withheld information and mark any deleted sections. Please list the specific exemptions that form the basis of any deletion from a document or complete withholding of a document.

Please contact me at the above address if you have any questions regarding this request.

4-703091

As provided for by Section 552(a)(6)(i) of the Freedom of Information Act, please provide your reply within ten (10) business days. Thank you for your prompt attention to this matter.

Sincerely,



Hugh K. Sherron

12

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

OFFICE OF THE GENERAL COUNSEL

Jeffrey S. Bromme  
General Counsel  
Tel: 301-504-0980 ext. 2299  
Fax: 301-504-0403

December 17, 1997

Teri K. Phillips, Esq.  
Bailey Law Firm  
705 Prince Street  
Post Office Box 1437  
Beaufort, South Carolina 29901

Re: FOIA Appeal 706090 on KOMPAN/Big Toys, Inc.  
playground equipment

Dear Ms. Phillips:

On November 10, 1997, 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 nine unconfirmed consumer complaints, based on FOIA Exemption 3. 5 U.S.C. § 552(b)(3). I also affirm his decision, under Exemption 3, to withhold the names of injured persons and persons who treated them.

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 nine

Teri K. Phillips, Esq.  
December 17, 1997

Page 2

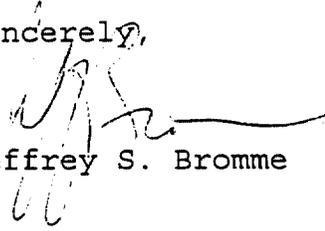
unconfirmed consumer complaints. The Commission's regulations require that this information be confirmed as a reasonable step to assure the accuracy of the information. 16 C.F.R. § 1101.32(a)(3).

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

As to the names of injured persons and the persons who treated them, I am applying Exemption 3 and relying on section 25(c) of the CPSA, 15 U.S.C. § 2074(c). This provision prohibits the Commission from releasing the identities of such persons absent their consent.

You have the right to seek judicial review of this decision, as provided by 5 U.S.C. § 552(a)(4)(B). If you have any questions, please call Alan Shakin, the attorney assigned to this matter, at 301-504-0980, ext. 2211.

Sincerely,



Jeffrey S. Bromme

THE  
BAILEY LAW FIRM

1997 NOV 20 A 4 31  
706 PRINCE STREET  
POST OFFICE BOX 1437  
BEAUFORT, SOUTH CAROLINA 29901-1437

JOEL D. BAILEY  
TERI KIMBALL PHILLIPS  
ROBERTS J. BRADFORD, JR. (SC & FL)

November 10, 1997

803-525-6090  
FAX: 803-525-6070

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

RE: FOIA Request S-706090; Playground Equipment manufactured by KOMPAN/BigToys, Inc.

Dear Sir or Madam:

Please let this letter serve as timely written notice of appeal from the partial denial of access to records responsive to the above-referenced FOIA Request.

Thank you for your consideration in this matter. If I may assist in this appeal in any way, please do not hesitate to contact me.

With kindest regards, I am

Very truly yours,

BAILEY LAW FIRM, P.A.



Teri K. Phillips

TKP/tkp

OSFOI Firm: 1242' Big Toys Inc.  
(playground equip.) Off(6b  
release), Off(part. denial) Ex.3  
chron, spec. 3285



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

October 6, 1997

Ms. Teri K. Phillips  
Law Offices of Joe D. Bailey  
P.O. Box 1437  
Beaufort, SC 29901-1437

RE: FOIA Request S-706090: Playground Equipment manufactured by KOMFAM/Big Toys Inc.

Dear Ms. Phillips:

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 records are enclosed. As you are aware, we provided a partial response to your request on September 4, 1997. The enclosed documents represent a final response to your request.

The enclosed records include five (5) Epidemiologic (In-Depth) Investigation Reports with the underlying and supporting documentation. The Commission has received this information from its formal investigation systems. Through these systems the Commission hopes to learn when specific products are associated with illness, injury or death. The Commission believes that it has taken reasonable steps to assure the accuracy of this information. While conducting the interviews for the investigation reports, Commission staff or contractors have spoken with the individuals involved or with others who witnessed or are familiar with the incidents. Although the Commission has investigated the incident described in the investigation reports, the Commission has not necessarily determined the cause of the incidents.

Also enclosed are records pertaining to one (1) product complaint and reported incident submitted to the Commission by a consumer or other. The 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 corroborate the substance of the information contained in the complaint and reported incident.

You will note that information which could identify injured parties and persons treating them has been deleted from some of the records because section 25(c) of the Consumer Product Safety Act, 15 U.S.C. § 2074(c)(1), prohibits such disclosures without the consent of those individuals.

We must also withhold nine (9) product complaints and reported incidents that the Commission has obtained from consumers, attorneys for a consumers or others. The Commission has not received confirmation of the accuracy of the information in the complaint and reported incident. Pursuant to Exemption 3 of the FOIA, 5 U.S.C. § 552(b)(3) and section 6(b)(1) of the Consumer Product Safety Act (CPSA), 15 U.S.C. § 2055(b)(1), and our regulations, 16 C.F.R. § 1101.32, we must withhold the unconfirmed product complaints and reported incidents.

FOIA Exemption 3 provides for the withholding from disclosure of matters that are specifically exempted from disclosure by another statute. In applying FOIA Exemption 3, we are relying on section 6(b)(1) of the CPSA. That section prohibits the Commission from disclosing information about a consumer product that identifies a manufacturer or private labeler unless the Commission has taken "reasonable steps" to assure that the information is accurate, that disclosure is fair in the circumstances, and that disclosure will be reasonably related to effectuating the purposes of the laws that the Commission administers. See Commission regulation, 16 C.F.R. § 1101.32.

The Commission's policy is to withhold each consumer complaint and reported incident unless: (1) the Commission has conducted an investigation of the complaint and reported incident, and the investigation corroborates the substance of the complaint and reported incident; (2) the Commission has conducted or obtained a technical, scientific, or other evaluation of the product that is the subject of the complaint and reported incident, and evaluation corroborates the substance of the information contained in the complaint and reported incident; or (3) the consumer or person reporting or submitting the incident confirms the accuracy of the information. The Commission did not take any of these steps with regard to these certain consumer complaints and reported incidents responsive to your request. While it has been Commission practice since June 1983 to seek confirmation of incoming consumer complaints and incidents, the Commission does not have the resources to seek confirmation of the complaints and incidents where a consumer has not responded to our request for confirmation of the information.

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

Ms. Phillips, S706090  
Page 3

Processing this request, performing the file searches and preparing the information, cost the Commission \$70.00. In this instance, we have decided to waive all of the charges. Thank you for your interest in consumer product safety. Should you have any questions, please contact Alberta Mills, Paralegal Specialist, by letter, facsimile (301) 504-0127 or telephone (301) 504-0785 ext. 1299.

Sincerely,

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

Enclosure

**Law Offices of Joel D. Bailey**

705 PRINCE STREET  
BEAUFORT, SC 29902

MAILING ADDRESS  
POST OFFICE BOX 1437  
BEAUFORT, SC 29901-1437  
(803) 525-6090  
FACSIMILE (803) 525-6070  
e-mail: www.tkphillips@ISLC.net

*tkp*

**FACSIMILE COVER SHEET**

DATE: April 24, 1997  
ORIGINATOR: Teri K. Phillips  
SEND TO: Todd Stevenson, FOI Office  
FAX NO. 301-504-0127  
CASE FILE:  
CASE NUMBER: 96B10021  
NO OF PAGES INCLUDING COVER SHEET: 1  
MESSAGE:

*A/1*

Please let this fax serve as a formal written request under the Freedom of Information Act for any and all documents or materials, including but not limited to complaints to the CPSC, relating to the following:

1. Playground Equipment manufactured by KOMPAN/BigToys known as "Early Works Moving Tunnels" a/k/a Structure Model #EC110 or #EC625; and
2. Playground Equipment manufactured by KOMPAN/BigToys - any make or model.

*IF-4*

Please return the information to the address above. If there are any charges for this service, please forward invoice. If you have any questions or if you require any further information for this request, please do not hesitate to contact me. With warmest regards, I remain,

Very truly yours,  
*Teri K. Phillips*  
Teri K. Phillips

**CONFIDENTIALITY NOTICE**

Unless otherwise indicated or obvious from the nature of this transmittal, the information contained in this fax message is attorney-client privileged and confidential, intended for the use of the intended recipient named above. If the reader of this message is not the intended recipient (or the employee or agent responsible to deliver it to the intended recipient), you are hereby notified that any dissemination, distribution or copying of this communication is prohibited. If you have received this communication in error, please immediately notify us by telephone and return the original message to us at the above address.

*5-70 6090*

*ack dtw  
5/2/97*

17

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

OFFICE OF THE GENERAL COUNSEL

Jeffrey S. Bromme  
General Counsel  
Tel: 301-504-0980 ext. 2299  
Fax: 301-504-0403

December 24, 1997

Adam M. Slater, Esq.  
Nagel, Rice & Dreifuss  
301 S. Livingston Avenue, suite 201  
Livingston, New Jersey 07039

Re: FOIA Appeal 707121 on Unarco shopping carts

Dear Mr. Slater:

On December 9, 1997, 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 two unconfirmed consumer complaints, based on FOIA Exemption 3. 5 U.S.C. § 552(b)(3).

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 two 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).

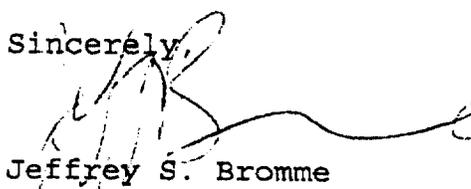
Adam M. Slater, Esq.  
December 24, 1997

Page 2

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

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

Sincerely,



Jeffrey S. Bromme

NAGEL RICE & DREIFUSS

COUNSELLORS AT LAW  
301 S. LIVINGSTON AVENUE  
SUITE 201  
LIVINGSTON, NEW JERSEY 07039-3331  
(201) 535-3100

CPSC/SEC OF THE SECRETARY  
FREEDOM OF INFORMATION

DEC 12 P 1:20

BRUCE H. NAGEL\*  
JAY J. RICE\*  
DAVID C. DREIFUSS  
CATHLEEN G. MCDONOUGH  
DAVID A. MAZIE\*  
HOWARD A. KANTROWITZ

FAX: (201) 535-3373

NEW YORK OFFICE  
237 PARK AVENUE  
21ST FLOOR  
NEW YORK, NEW YORK 10017  
(212) 551-1465

ELLEN LEWIS RICE  
OF COUNSEL

LORI I. MAYER\*  
RANDEE M. MATLOFF  
DIANE E. SAMMONS\*  
LISA KAPLAN\*  
LAURI J. SLAVITT\*  
ROBERT G. LAVITT\*  
DAVID M. FREEMAN\*  
SUSAN FETTEN CONNORS  
JOANNE M. BONACCIA  
ROBERT H. SOLOMON  
LAURENCE J. BRAVMAN\*  
APRIL L. KATZ\*  
ADAM M. SLATER\*  
VINCENT C. MISEO,\* A.I.A.  
CHRISTY L. GIBNEY

PLEASE REPLY TO  
LIVINGSTON OFFICE

\* CERTIFIED CIVIL TRIAL ATTORNEY  
\* MEMBER OF N.J. & N.Y. BARS  
\* MEMBER OF N.J. & PA. BARS  
\* MEMBER OF N.Y., D.C. & CO BARS

December 9, 1997

F.O.I.A. Appeal General Counsel  
Office of Secretary  
U.S. Consumer Products Safety Commission  
Washington, DC 20207

Re: F.O.I.A. Request S707121: Unarco shopping  
carts/complaints, incidents and investigation  
reports/file search 1980 to present

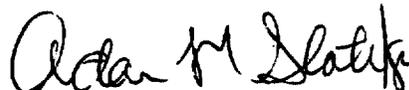
Dear Sir/Madam:

Enclosed herewith is the November 25, 1997 letter from Todd  
Stevenson at the U.S. Consumer Products Safety Commission.

We hereby appeal the decision by the CPSC to withhold the  
production of two (2) reports of incidents from consumers, as  
referenced on page 2 of the letter. There is no legitimate reason  
to withhold production of this information especially since the  
CPSC takes no position as to the causation of the incidents at  
issue.

Please advise us of your decision.

Very truly yours,

  
Adam M. Slater

AMS/gc  
c:\wp51data\vaccaro\corresp\1205(3).9



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

1679  
UNA  
/

CERTIFIED MAIL

NOV 25 1997

Mr. Adam M. Slater  
Nagel, Rice & Dreifuss  
301 S. Livingston Avenue, Suite 201  
Livingston, NJ 07039-3991

**RE: FOIA Request S707121: UNARCO Shopping Carts / Complaints, Incidents and Investigation Reports / File Search 1980 to Present**

Dear Mr. Slater:

This further responds to your Freedom of Information Act (FOIA) request for Commission records on Unarco shopping carts. Three Epidemiologic Investigation Reports (EIRs) and two Consumer Product Incident Reports (CPIRs) are enclosed.

Please note that the Commission has received these documents through formal investigation systems designed to identify specific products that are associated with illness, injury or death. To assure the accuracy of the information, the Commission staff or contractors may have interviewed victims, witnesses, and others familiar with the product-related incidents and examined the products involved. However, the Commission has made no determination about any causes of the incidents.

The identities of the injured party and the doctors who treated her have been deleted from EIR No. 930201CCC3178. Absent consent by such individuals, section 25(c) of the Consumer Product Safety Act (CPSA) prohibits the disclosure of their identities. 15 U.S.C. § 2074(c). See also 5 U.S.C. § 552(b)(3) and (6).

EIR No. 930201CCC3178 also contains confidential commercial information, which can not be released pursuant to both § 6(a) of the CPSA and FOIA exemption 4. See 15 U.S.C. § 2055(a)(2) and 5 U.S.C. § 552(b)(4). The confidential commercial information includes the type of hardware used by Unarco and its supplier, a price list, and the deposition transcript of a Unarco vice president.

EIR No. 930201CCC3178 also contains two standards published by Underwriters Laboratories, numbers 1678 and 1439, and an excerpt from "The Management of Pain" by John Bonica, second edition, volume one, published by Lea & Febiger. Because these materials are copyrighted we have not enclosed copies, but they should be publically available.

There are two reports of incidents from consumers which are being withheld. Pursuant to Exemption 3 of the FOIA, 5 U.S.C. § 552(b)(3), and section 6(b)(1) of the CPSA, 15 U.S.C. 2055(b)(1), we must withhold uncorroborated product complaints and reported incidents. Since the consumers have not responded to our requests to confirm the information, we can not release it.

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

This completes the processing of your request. Should you have any questions, please contact me.

Sincerely,

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

Enclosures

NAGEL RICE & DREIFUSS

COUNSELLORS AT LAW

301 S. LIVINGSTON AVENUE  
SUITE 201  
LIVINGSTON, NEW JERSEY 07039-3991  
(973) 535-3100

FAX: (973) 535-3373

NEW YORK OFFICE  
237 PARK AVENUE  
21ST FLOOR  
NEW YORK, NEW YORK 10017  
(212) 551-1465

BRUCE H. NAGEL\*  
JAY J. RICE\*  
DAVID C. DREIFUSS  
CATHLEEN G. MCDONOUGH  
DAVID A. MAZIE\*  
HOWARD A. KANTROWITZ

ELLEN LEWIS RICE  
OF COUNSEL

LORI I. MAYER\*  
RANDEE M. MATLOFF  
DIANE E. SAMMONS\*  
LISA KAPLAN\*  
LAURI J. SLAVITT\*  
ROBERT G. LAVITT\*  
DAVID M. FREEMAN\*  
SUSAN FETTEN CONNORS  
JOANNE M. BONACCI\*  
ROBERT H. SOLOMON  
LAURENCE J. BRAVMAN\*  
APRIL L. KATZ\*  
ADAM M. SLATER\*  
VINCENT C. MISEO,\* A.I.A.

PLEASE REPLY TO  
LIVINGSTON OFFICE

\* CERTIFIED CIVIL TRIAL ATTORNEY  
\* MEMBER OF N.J. & N.Y. BARS  
\* MEMBER OF N.Y. & PA. BARS  
\* MEMBER OF N.J., N.Y., D.C. & CO BARS

July 18, 1997

Freedom of Information Act  
Consumer Product Safety Commission  
East West Towers  
4340 East West Highway  
Bethesda, MD 20814

Ali

Re: Shopping Carts

Dear Sir/Madam:

We hereby request any and all reports, memoranda, documentation, brochures and the like in connection with any studies performed on the safety of shopping carts. 1679

In particular, we would like said information pertaining to any and all UNARCO shopping carts from the years 1950 to the present.

Please advise as to the cost for same.

Very truly yours,

*Adam Slater*  
ADAM M. SLATER

EG 3004

AMS:

4707121

REC'D/REC OF THE SECRETARY  
FREEDOM OF INFORMATION  
1977 JUL 23 A 11:50