UNARCO SHOPPING CARTS

REPORTED IN
U.S. CONSUMER PRODUCT
NATIONAL INJURY INFORM

unconfirmed

C45000234 ISSUE : -1
CONFIRMED : DATE RECEIVED : 950711
DATE ENTERED : 950717
STATE : TX CITY : SAN ANTONIO
SOURCE : 000 TYPE OF CONTACT: OTHER
PRODUCT(S) : 1679 GROCERY OR SHOPPING CARTS
: 0000 0
DATE INJURED: 950420 WORK RELATED : N
AGE : 000 SEX : F
DISPOSITION : DTH HAZARD : FALLS
MANUFACTURER: UNARCO

MODEL : 0

NARRATIVE :
A 2 YEAR OLD FELL FROM A SHOPPING CART THAT TIPPED
HE WAS IN TIPPED OVER.

unconfirmed

C45000266A ISSUE : 1
CONFIRMED : DATE RECEIVED : 970117
DATE ENTERED : 970220
STATE : NY CITY : NEWBURGH
SOURCE : 000 TYPE OF CONTACT: OTHER
PRODUCT(S) : 1679 GROCERY OR SHOPPING CARTS
: 0000 0
DATE INJURED: 951221 WORK RELATED : N
AGE : 000 SEX : F
DISPOSITION : DTH HAZARD : FALLS
MANUFACTURER: UNARCO

MODEL : 0

NARRATIVE :
A 60Y/ PSE 3/ SUFFERED A BROKEN LEG WHEN SHE LEANED FORWARD IN
SHOPPING CART THAT TIPPED OVER AT A STORE.

todd-C5

14

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: jbromme@cpsc.gov

March 9, 1998

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

Re: FOIA Appeal S710115A
Brinkmann Charcoal Smoker Compliance File

Dear Mr. Oberle:

By letter dated January 15, 1998, 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 December 9, 1997 response to your request, a number of responsive documents that he had previously withheld under FOIA Exemptions 3 and 4 may now be disclosed. These documents are a cover letter from the Commission to Brinkmann's attorney, a cover letter from Brinkmann's attorney to the Commission, two fax coversheets, and three distribution sheets. Copies of them are enclosed.

As discussed below, I affirm the decision of the FOI Officer to withhold the remainder of the responsive information. It is 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 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 (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 business relationship information, sales figures, and other commercial or financial information.

We are also withholding some of the responsive documents pursuant to FOIA Exemption 3 relying on CPSA section 6(b). 15 U.S.C. § 2055(b). Section 6(b) requires that, before disclosing information that would enable the public to identify the manufacturer or private labeler of a consumer product, the Commission must notify and provide a summary of the information to each manufacturer or private labeler to which the information pertains and provide a reasonable opportunity for comment. The Commission must also take reasonable steps to assure, prior to its disclosure, that such information is accurate, and that disclosure is fair in the circumstances and reasonably related to effectuating the purposes of the CPSA. Since the Commission is unable to take the necessary 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 the firm's notes, drafts and minutes of meetings to discuss and negotiate a settlement agreement, information furnished by the firm to facilitate prompt remedial action, and consumer complaints from the firm's files.

Finally, with respect to FOIA Exemption 3, we are relying on CPSA section 25(c). 15 U.S.C. § 2074(c). This section prohibits the identification of any injured person or any person treating him/her, without the consent of the person so identified. The information being withheld pursuant to FOIA Exemption 3, relying on CPSA section 25(c), consists of several deletions in the investigation reports as well as deletions in some medical records.

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 which are part of the deliberative, consultative, and decision-making processes of the agency. Although this privilege applies only to the opinions or recommendations in a document and not to factual information,

facts are withheld here because they are inextricably intertwined with the exempt portions. The information being withheld pursuant to FOIA Exemption 5 consists of intra-agency memoranda and internal notes, including preliminary staff determinations, handwritten notes, and draft documents.

Some of the documents being withheld under FOIA Exemption 5, as discussed above, are also being withheld under FOIA Exemption 7(E). 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. Some of the intra-agency memoranda and internal notes meet this criterion.

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

Enclosures

WBI 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-710115a) p. 1 of 2 January 15, 1998

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. § 522(a)(6).

On December 9, 1997, CPSC responded to a *Product Safety Letter* FoIA request (CPSC ID: S-710115a) filed Feb. 19, 1996, by then editor Maureen Cislo concerning the recall of charcoal water smokers by Brinkman. CPSC denied part of the request based on exemption 3.

Please reconsider the denial based on these points, addressing <u>each</u> 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. <u>We note that you have ignored this issue in our past FoIA appeals; please respond.</u>

B. Attorney General Reno's new guideline, 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 the appeal, identify specifically the foreseeable harm that would result from disclosure. <u>We note that you have ignored this issue in our past FoIA appeals; please respond.</u>

C. Exemption 3 has been invoked based on the purported applicability of section 6(b)(1) of the CPSA. The letter cites fairness as reason for nondisclosure of "(1) information furnished by a firm to facilitate prompt remedial action or settlement of a case; (2) a firm's notes, drafts or minutes of meetings to discuss and negotiate settlements." In both cases CPSC simply makes bald assertions of unfairness, without say <u>why</u> it would be unfair. Please explain why or release the information.

D. CPSC also cites fairness under 6(b)(1) to withhold "(3) the work-product of attorneys employed by a firm and information subject to...attorney-client privilege, when the company has a reasonable expectation that the information will be maintained by the Commission in confidence or the firm requested confidentiality." Attorney-client rights are lost when material is given to a third party (NEED CITE). Therefore, please release <u>all</u> material so withheld.

I trust that upon reconsideration, you will reverse the decision denying us acces 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 you assistance.

Sincerely,

Sean Oberle, Editorial Director

cc: Thomas Howlett, Esq.

2235K100.6YY

Officer (6a6b rel), Officer (wh), chron, 2618,
bcc; winik

0219 BRINKMANN

U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, D.C. 20207
December 9, 1997

Mr. Sam Cristy, Editor
PRODUCT SAFETY LETTER
Washington Business Information, Inc.
1117 North 19th Street, Suite 200
Arlington, Virginia 22209-1799

RE: FOIA S-710115a: **CPSC Docket #97-C0001; The Brinkmann Corporation**

Dear Mr. Cristy:

This responds to your Freedom of Information request for information on the Brinkman Corporation's charcoal water smoker.

The enclosed records include file information generated by the Commission itself or its contractors for regulatory or enforcement purposes. These records are in file CPSC 97-C001 and are identified as Laboratory Summaries, Hazard Assessment memoranda, Preliminary Determination Sheet 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 investigatory files where the manufacturer has requested confidentiality are being withheld pursuant to Exemptions 3 and 4 of the FOIA, 5 U.S.C. §§ 552(b)(3) and (b)(4), and sectionS 6(a)(2) and 6(B)(1) of the Consumer Product Safety Act (CPSA), 15 U.S.C. § 2055(a)(2) and (b)(1). 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 and information on other items manufactured by Brinkman Corporation not responsive to this request.

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

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 Brinkmann on the recall of grill cookers.

RP 960015 open Chamberlain

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

SAM CRISTY

Receipt of this letter is acknowledged:

_____ _____
Signature Date

_____
Name (please print or type)

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

5710115 K
(A-0) 44

15

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

March 31, 1998

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

Re: FOIA Appeal #S-710113B
Answer BMX Bicycle Forks

Dear Mr. Oberle:

By letter dated January 21, 1998 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 regarding several of the documents, including consumer publication recall notices, dealer recall mailings, owner instructions, and fax cover sheets. These documents 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 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 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 reconsidered documents until the section 6(a) and (b) review processes are complete.

The Freedom of Information Officer will initiate the required review and notification processes and will notify you regarding his determination on release of the reconsidered documents when those processes are complete. If he withholds any of the documents, you will be given another opportunity to appeal his decision on those documents.

While the above processes are taking place with respect to the reconsidered documents, you may either wait for our decision or treat this letter as a denial of your FOIA request for the documents under Exemption 3, in reliance on CPSA 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 5. 5 U.S.C. §§ 552(b)(3), (b)(4), and (b)(5).

1. Exemptions 3 and 4. Exemption 3 of the FOIA provides for the withholding of documents which are specifically exempted from disclosure by another statute. In applying FOIA Exemption 3 to these documents, we are relying on section 6 of the CPSA. 15 U.S.C. § 2055.

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

Section 6(a)(2) of the CPSA expressly prohibits the disclosure of information reported to or otherwise obtained by the Commission that contains or relates to trade secrets or other confidential commercial information. Section 6(a)(2) incorporates Exemption 4 of the FOIA, which also protects trade secrets and confidential commercial information.

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 that has been withheld pursuant to Exemption 3, relying on section 6(a)(2), and Exemption 4 includes: the numbers of units produced and in inventory, warranty returns and complaints, the results of tests Answer had conducted by a private testing company, and engineering drawings and design changes.

b. Section 6(b)(1) of the CPSA

The information we are withholding under this section consists of consumer complaints from the firm's files. The

Commission has not taken reasonable steps to assure the accuracy of these complaints or the fairness of their release in the circumstances. Their release is, therefore, prohibited under section 6(b)(1).

2. Exemption 5. FOIA Exemption 5 provides for the withholding of certain inter-agency and intra-agency documents and incorporates the attorney work-product doctrine. This doctrine protects documents prepared by an attorney, or someone supervised by an attorney, in anticipation of litigation. FOIA Exemption 5 also incorporates the deliberative process privilege. This privilege protects advice, recommendations, and opinions which are part of the deliberative, consultative, and decision-making processes of the agency. The information being withheld pursuant to FOIA Exemption 5 consists of a document containing a Commission engineer's recommendation regarding the bicycle forks and the staff's preliminary determination regarding the bicycle forks.

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

code 1202: chron, firm Answer Inc., officer, sp/eg

January 6, 1998

Certified Mail

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

RE: FOIA Request S-710113B: Answer BMX Mini-Bike Fork, File Number RP960031

Dear Ms. Cislo:

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

The enclosed records include file information generated by the Commission itself or its contractors for regulatory or enforcement purposes. These records are in file RP960031 and identified as 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.

We must withhold portions of the Answer file RP960031, 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 CPSA, 15 U.S.C. § 2055(a)(2). 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.

Also, we must withhold other records responsive to your request, the preliminary determination memoranda that is contained in the law enforcement investigatory files, 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.

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.

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

May 10, 1996

PSL CODE -- Recall -- 089

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

1202
3258

CO: ANSWER

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 Answer Products of Valencia, Calif. on the recall of mountain bikes (release #96-114). 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)

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

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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: jbromme@cpsc.gov

February 25, 1998

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

Re: FOIA Appeal S710119B
Excelex Ammonia Recall of Mislabeled Bottles

Dear Mr. Oberle:

By letter dated January 18, 1998, 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 January 14, 1998 response to your request, he has tentatively reconsidered his decision as to some of the responsive documents that he had previously withheld under FOIA Exemptions 5 and 7(A). These documents are two letters from the Commission to Excelex. However, he cannot finally decide whether to withhold or disclose them until after the Commission complies with section 6(b) of the Consumer Product Safety Act (CPSA). 15 U.S.C. § 2055(b). Under this provision, the Commission must provide the manufacturer the opportunity 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 been completed. If he decides to withhold any responsive information at that time, you may appeal his decision to me. While the manufacturer comment process is underway, you may either await his decision or treat this letter as a denial of

your FOIA appeal for that responsive information. We are currently withholding it under FOIA Exemption 3, in reliance on CPSA section 6(b). Exemption 3 provides for withholding information that is specifically exempted from disclosure by another statute.

As to the remainder of the responsive information, I affirm the FOI Officer's decision. My decision is based on Exemptions 3 and 4 of the FOIA. 5 U.S.C. §§ 552(b)(3) and (b)(4).

As noted above, 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 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 (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 invoices to various customers, mixing instructions, certificates of analyses, procedures for consumer claims and affidavits of Excelex officials.

We are also withholding documents pursuant to FOIA Exemption 3 relying on CPSA section 6(b). 15 U.S.C. § 2055(b). Section 6(b) requires that, before disclosing information that would enable the public to identify the manufacturer or private labeler of a consumer product, the Commission must notify and provide a summary of the information to each manufacturer or private labeler to which the information pertains and provide a reasonable opportunity for comment. The Commission must also take reasonable steps to assure, prior to its disclosure, that such information is accurate, and that disclosure is fair in the circumstances and reasonably related to effectuating the purposes of the CPSA. Since some of the responsive documents contain information furnished by Excelex to facilitate prompt remedial action or settlement of this case when the company had a reasonable expectation that the information would be maintained by the Commission in confidence, it would be unfair in the circumstances to disclose it. See 16 C.F.R. § 1101.33(b)(1). The information being withheld pursuant to FOIA Exemption 3

relying on CPSA section 6(b) consists of the documents being withheld pursuant to FOIA Exemptions 3 and 4 as well as letters from Excelex to the Commission.

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

Sincerely,

Jeffrey S. Bromme

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

OFFICE OF COMPLIANCE
Division of Administrative Litigation

Traci J. Williams
Trial Attorney
Tel: (301) 504-0626 Ext. 1235
Fax: (301) 504-0359

December 13, 1995

Mr. John R. Paine
President
The Excelex Corporation
2929 Storey Lane
Dallas, Texas 75220

Re: Mislabeled Bottles of Better Valu Bleach

Dear Mr. Paine:

The staff of the Consumer Product Safety Commission's Office of Compliance is investigating The Excelex Corporation's ("Excelex") sale of half gallon bottles of bleach labeled as ammonia to The Federated Group, Inc. ("Federated").

The staff has information indicating that, in June 1995, Excelex distributed to Federated mislabeled bottles of bleach. Federated distributed the bleach to Brookshire's retail stores. The staff believes Excelex learned about the mislabeled bottles on or about June 28, 1995.

Under Section 15(b) of the Consumer Product Safety Act ("CPSA"), a distributor of a consumer product distributed in commerce, who obtains information which reasonably supports the conclusion that such product contains a defect which could create a substantial risk of injury to the public, shall immediately inform the CPSC of such defect. 15 U.S.C.A. § 2064(b) (1982). Any person who knowingly violates the reporting requirement is subject to a civil penalty of as much as $6,000 per product, up to $1.5 million, pursuant to Section 20(a)(1) of the CPSA. 15 U.S.C.A. § 2069(a)(1) (1982); Civil Penalties, 59 Fed. Reg. 66523 (1994).

In order for the staff to discern what Excelex knew about the mislabeled bottles, please provide copies of all listings of telephone calls between Excelex and Federated from June 1995 until August 23, 1995 as well as any written summaries of telephone calls between Excelex and Federated in which the firms discuss the mislabeled bottles of bleach. In addition, for the same time frame, please include any other records which refer to the

mislabeled bottles. If Excelex refuses to provide the records, the staff will ask the Commission to issue a subpoena in order to obtain them.

Please provide the requested information within seven working days of your receipt of this letter. If you have any questions, please contact me at the telephone number listed above.

Sincerely,

Traci J. Williams

Traci J. Williams

WBI 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-710119B) p. 1 of 2 January 18, 1998

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. § 522(a)(6).

On January 14, CPSC responded to a *Product Safety Letter* FoIA request (CPSC ID: S-710119B) filed Feb. 19, 1996, by then-editor Maureen Cislo concerning the recall of ammonia by Excelex. CPSC denied part of the request based on exemptions 5 and 7(A).

Please reconsider the denial based on these points, addressing <u>each</u> 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. <u>We note that you have ignored this issue in our past FoIA appeals; please respond.</u>

B. Attorney General Reno's new guideline, 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 the appeal, identify specifically the foreseeable harm that would result from disclosure. <u>We note that you have ignored this issue in our past FoIA appeals; please respond.</u>

C. 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.

D. 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.

E. Exemption 7(A) applies only when enforcement proceedings have begun or when there is concrete prospect of such proceedings. Because CPSC has not made clear that any such enforcement proceedings exist, any withholding of records, based on Exemption 7(A), would not appear to be justified.

F. Conclusion of enforcement proceedings makes documents otherwise exempt under 7(A) subject to disclosure. If this represents a closed case, please release the material.

I trust that upon reconsideration, you will reverse the decision denying us acces 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 you assistance.

Sincerely,

Sean Oberle

Sean Oberle, Editorial Director

cc: Thomas Howlett, Esq.

2235K100.6YY

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

January 14, 1998

Certified Mail

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

Re: FOIA Request S710119B: Excelex Ammonia Recall of Mislabeled Bottles

Dear Mr. Cristy:

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

The records being withheld consist of internal staff memoranda and correspondence containing recommendations, opinions, suggestions and analyses of the Commission's technical and legal staffs. The records constitute both predecisional and deliberative discussion that clearly falls within the attorney-client and attorney-work product privileges. Any factual materials in the records not covered by some other exemption are inextricably intertwined with exempt materials or the disclosure of the factual materials would itself expose the deliberative process. We have determined that the disclosure of these certain law enforcement investigatory records responsive to your request would be contrary to the public interest. It would not be in the public interest to disclose these materials because disclosure would (1) impair the frank exchange of views necessary with respect to such matters, and (2) prematurely reveal information used in the investigation, thereby interfering with this and other matters by disclosing the government's basis for pursuing this matter.

Office of the Secretary, Freedom of Information Division, 4340 East West Highway, Room 502, Bethesda, MD 20814-4408
Telephone (301) 504-0785, Facsimile (301) 504-0127, E-Mail: tstevenson@cpsc.gov

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

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

Sincerely,

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

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

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 Excelex on the recall of ammonia bottles.

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)

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

5710119B

NEWS from CPSC

U.S. CONSUMER PRODUCT SAFETY COMMISSION

OFFICE OF INFORMATION AND PUBLIC AFFAIRS WASHINGTON, D.C. 20207

FOR IMMEDIATE RELEASE
September 18, 1995
Release # 95-167

CONTACT: Ken Giles
(301) 504-0580 Ext. 1184

CPSC AND EXCELEX ANNOUNCE AMMONIA RECALL

WASHINGTON, D.C. - In cooperation with the U.S. Consumer Product Safety Commission (CPSC), The Excelex Corporation of Dallas, Tex., is recalling 3,608 mislabeled bottles of a product labeled as "Better Valu Clear Ammonia." The product is a misbranded hazardous substance under the Federal Hazardous Substances Act. The recalled bottles actually contain bleach. If the bleach is accidentally mixed with ammonia or acid, irritating or toxic gases could be produced.

The product is packaged in 64-fluid oz. containers made of white, opaque plastic, labeled in part, "Better Valu***Clear Ammonia***64 FL. OZ 2QTS.) *** 79801 98767 *** E15295 *** PACKED FOR FEDERATED FOODS, INC. ARLINGTON HEIGHTS, IL 60005-1096 ***." The bleach sold for about $1 between June 1 and August 23, 1995 at Brookshires retail grocery stores and independent retail outlets serviced by Brookshires Brothers, Fleming El Paso and Hale Halsell in Texas, Oklahoma and Louisiana. Only bottles labeled as "Ammonia" with the 10 digit bar code "79801 98767" and 10 digit batch code beginning with "E15295****" are affected by this recall.

Consumers should stop using the product in these containers immediately and return it to the store where purchased for a full refund. Consumers should call The Excelex Corporation toll free at (800) 852-4108 for more information.

Excelex and CPSC are aware of one incident in which a consumer mixed the contents of one of the mislabeled bottles with ammonia, producing a harmful gas. Excelex initiated this recall at CPSC's request.

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

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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: jbromme@cpsc.gov

April 27, 1998

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

Re: FOIA Appeal S710121C
Small World Toys - Recall of Small Parts Toys

Dear Mr. Oberle:

By letter dated January 22, 1998, 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 January 13, 1998 response to your request, he has tentatively reconsidered his decision as to some of the responsive documents that he had previously withheld under FOIA Exemptions 5 and 7(A). These documents consist of letters from the Commission to Small World and from Small World to the Commission as well as recall notice letters with portions deleted. However, he cannot finally decide whether to withhold or disclose them until after the Commission complies with sections 6(a) and 6(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 or private labeler the opportunity to mark information as confidential and to comment upon the disclosure of information that identifies a manufacturer or private labeler. If the Commission decides to disclose information over the objection of the identified manufacturer or private labeler, it must notify the manufacturer or private labeler of the proposed disclosure at least 10 days in advance.

The FOI Officer has initiated the process of manufacturer/private labeler claims and comment, and he will notify you of his determination when it has been completed. If he decides to withhold any responsive information at that time, you may appeal his decision to me. While the manufacturer/private labeler comment process is underway, you may either await his decision or treat this letter as a denial of your FOIA appeal for that responsive information. We are currently withholding it under FOIA Exemption 3, in reliance on CPSA sections 6(a) and (b). Exemption 3 provides for withholding information that is specifically exempted from disclosure by another statute.

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

WBI 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-710121C) January 22, 1998

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. § 522(a)(6).

On January 13, 1998, CPSC responded to a *Product Safety Letter* FoIA request (CPSC ID: S-710121C) filed February 19, 1996, by then-editor Maureen Cislo concerning the recall of toys by Small World Toys. CPSC denied the request based on Exemptions 5, and 7(A).

Please reconsider the denial based on these points, addressing <u>each</u> 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. <u>We note that you have ignored this issue in our past FoIA appeals; please respond.</u>

B. Attorney General Reno's new guideline, 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 the appeal, identify specifically the foreseeable harm that would result from disclosure. <u>We note that you have ignored this issue in our past FoIA appeals; please respond.</u>

C. 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.

D. 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.

E. Exemption 7(A) applies only when enforcement proceedings have begun or when there is concrete prospect of such proceedings. Because CPSC has not made clear that any such enforcement proceedings exist, any withholding of records, based on Exemption 7(A), would not appear to be justified.

F. Conclusion of enforcement proceedings makes documents otherwise exempt under 7(A) subject to disclosure. If this represents a closed case, please release the material.

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 you assistance.

Sincerely,

Sean Oberle

Sean Oberle, Editorial Director

cc: Thomas Howlett, Esq.

2235K100.6YY

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

January 13, 1998

Certified Mail

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

Re: FOIA Request S710121C: Small World Toys, Los Angeles, CA Recall of Small Parts for Toy Necklaces, Bracelets and Vehicles

Dear Mr. Cristy:

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

The records being withheld consist of internal staff memoranda and correspondence containing recommendations, opinions, suggestions and analyses of the Commission's technical and legal staffs. The records constitute both predecisional and deliberative discussion that clearly falls within the attorney-client and attorney-work product privileges. Any factual materials in the records not covered by some other exemption are inextricably intertwined with exempt materials or the disclosure of the factual materials would itself expose the deliberative process. We have determined that the disclosure of these certain law enforcement investigatory records responsive to your request would be contrary to the public interest. It would not be in the public interest to disclose these materials because disclosure would (1) impair the frank exchange of views necessary with respect to such matters, and (2) prematurely reveal information used in the investigation, thereby interfering with this and other matters by disclosing the government's basis for pursuing this matter.

Office of the Secretary, Freedom of Information Division, 4340 East West Highway, Room 502, Bethesda, MD 20814-4408
Telephone (301) 504-0785, Facsimile (301) 504-0127, E-Mail: tstevenson@cpsc.gov

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

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

Sincerely,

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

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

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 Small World Toys on the recall of small part toys.

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)

cc: PUB/SEC-rf, DIR
(1227E074.1YY)

9710121C

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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

July 14, 1998

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

Re: FOIA Appeal S512074: McDonald's Playground Equipment

Dear Mr. Oberle:

By letter dated January 19, 1998, 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. In doing so, I have discovered that certain of the withheld documents were not responsive to your request. I have therefore not considered those documents as part of this appeal. As explained below, I affirm the FOI Officer's decision to withhold the remaining documents pursuant to FOIA Exemptions 3, 4, 5 and 7(E). 5 U.S.C. §§ 552(b)(3), (4), (5), and (7)(E).

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, I am relying on sections 6(a)(2) and 6(b)(1) of the CPSA. 15 U.S.C. § 2055(a)(2) and (b)(1).

Section 6(a)(2) expressly prohibits the disclosure of information reported to or otherwise obtained by the Commission that contains or relates to trade secrets or other confidential commercial information. Section 6(a)(2) incorporates Exemption 4 of the FOIA. That 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 includes sales information and corporate financial statements. Based on my review of pertinent factors, including the claims of McDonald's and JBI, Inc., it is my judgment that release of this information would cause substantial competitive harm to McDonald's or JBI. I have also determined that while certain of the other information originally withheld under CPSA section 6(a)(2) and FOIA Exemption 4 is not confidential commercial information, it will continue to be withheld on fairness grounds under section 6(b)(1) because, as explained below, it was submitted by McDonald's or JBI to facilitate prompt remedial action.

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 has not taken 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 in part of information submitted to the Commission in confidence to facilitate prompt remedial action, internal Commission memoranda that incorporate or discuss such information, and correspondence and notes or minutes of meetings and phone calls between Commission staff and representatives of JBI and/or McDonald's to facilitate prompt remedial action and/or to negotiate settlement.

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.

The remainder of the information we are withholding on accuracy and fairness grounds consists of incident reports, computer and handwritten summaries of incidents, and court documents relating to private lawsuits against JBI and/or McDonald's. The Commission has taken no steps to assure the

accuracy of this information, as described at 16 C.F.R. § 1101.32. Contrary to the assertion in your appeal letter, the Commission has no obligation to determine the accuracy of the information at the time it is requested under FOIA. Rather, the Commission need only determine whether it has taken reasonable steps to assure the accuracy of the information. If not, it must withhold the information. Additionally, we are withholding some of these documents on fairness grounds because JBI and/or McDonald's submitted them to the Commission to facilitate prompt remedial action. See 16 C.F.R. § 1101.33(b)(1).

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

Exemption 5 also incorporates the attorney work-product doctrine, which protects documents prepared by an attorney, or someone supervised by an attorney, in anticipation of litigation. Some of the information withheld under Exemption 5 is also attorney work product.

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 corrective action plans and the staff's preliminary hazard determinations.

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

WBI 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-512074) p. 1 of 2 January 19, 1998

Fax to: 301/504-0127

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

Dear Mr. Bromme,

This is an appeal under the Freedom of Information Act, 5 U.S.C. § 522(a)(6).

On Dec. 23, 1997, CPSC responded to a *Product Safety Letter* FoIA request (CPSC ID: S-512074) filed May 5, 1995, by then-editor Maureen Cislo concerning McDonald's Playground Equipment. CPSC denied part of the request based on exemptions 3, 4, 5, 7(E)

Please reconsider the denial based on these points, addressing <u>each</u> 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. <u>We note that you have ignored this issue in our past FoIA appeals; please respond.</u>

B. Attorney General Reno's new guideline, 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 the appeal, identify specifically the foreseeable harm that would result from disclosure. <u>We note that you have ignored this issue in our past FoIA appeals; please respond.</u>

C. Exemption 3 has been invoked based on the purported applicability of section 6(B)(1) of the CPSA. The letter cites fairness as reason for nondisclosure. CPSC simply makes bald assertions of unfairness, without saying <u>why</u> it would be unfair. Please explain why or release the information.

D. Some material is withheld based on Exemption 3 vis-a-vis CPSC 6(A) requirements to assure accuracy. CPSC does not state that the information is inaccurate -- it states only that the agency has not assured that accuracy. CPSC has an obligation to determine accuracy and release the material if accurate. Please make such a determination and release any accurate material.

E. Material has been withheld pursuant to Exemption 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 & Conservation Assn. v. Morton*, 498 F. 2d 765 (C.C. Cir 1974). The information withheld from disclosure here does not appear to qualify for this exemption.

F. A promise by an agency of "confidentiality" is not, by itself, sufficient to invoke Exemption 4.

G. Exemption 4 does <u>not</u> cover government-prepared documents based primarily on information the government generates itself.

H. 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.

I. 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.

J. 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 acces 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 you assistance.

Sincerely,

Sean Oberle

Sean Oberle, Editorial Director

cc: Thomas Howlett, Esq.

2203K100.6YY

Firm: 3273 McDonald's Playground Equipment, Off(6ab release), Off(Denial) Exm. 3, 4 6a2, Chron, spec. 3285, Feelog (Sheila P.), ADFS R-33-98

December 23, 1997

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

Re: FOIA Request S-512074: Information concerning McDonald's Playground Equipment (R-33-98)

Dear Mr. Cristy:

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.

The enclosed records include file information generated by the Commission itself or its contractors for regulatory or enforcement purposes. These records are in files CA920080 and RP920011 and are identified as Establishment Inspection Reports, Laboratory Summaries, Hazard Assessment memoranda, Preliminary Determination Sheet 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 also include four (4) 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 others. 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. We have also enclosed a copy of the "Playground Equipment Reporting Agreement", dated October 12, 1995 between McDonald Corporation and the United States Government (through the Department of Justice, Civil Division and the Consumer Product Safety Commission).

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 one (1) product complaint and reported incident that the Commission has obtained from a consumer, an attorney for a consumer 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 complaint and reported incident.

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.

Finally, other records contained in file RP920011 are being withheld based on the following exemptions.

INFORMATION WITHHELD ON FAIRNESS GROUNDS

We are withholding on fairness grounds the documents at the following pages : 55; 318-20; 328-29; 334-44; 560-64; 568; 571-2; 575-6; 590-604; 608-21; 1040-1084; and 1336-39. Each of the documents was submitted to the Commission by JBI or McDonald's in confidence to facilitate prompt remedial action. See 16 C.F.R. § 1101.33(b)(1). For the same reason, we are withholding: (1) those portions of the internal Commission memoranda at pages 1-9, 275-80, 287-99, and 302 that incorporate or discuss information that JBI or McDonald's submitted to the Commission (we have also eliminated from the documents the identical copies of these documents at pages 102-07, 281-86, 304, 306, and 307-12); and (2) the internal Commission staff notes and memoranda at pages 90-96, 108-112, and 114-18.

We are also withholding on fairness grounds the correspondence and notes or minutes of meetings and phone calls between CPSC staff and representatives of JBI and/or McDonald's at the following pages (see 16 C.F.R. § 1101.33(b)(2)): 120-24; 137-40; 143; a portion of 566; 569-70; 573-4; and 585-89.

CONFIDENTIAL COMMERCIAL OR FINANCIAL INFORMATION:

We are withholding pursuant to CPSA section 6(a) and FOIA Exemption 4 the documents at the following pages that contain McDonald's or JBI confidential commercial or financial information: 19-21; 67-84; 86-89; 319-20; and 5076-79. We are also withholding under section 6(a) and FOIA Exemption 4 the copyrighted Dun and Bradstreet Business Information Report about JBI at pages 313-16.

ACCURACY AND FAIRNESS:

We are withholding on accuracy grounds the incident reports, computer and handwritten summaries of incidents, and court documents relating to private lawsuits against JBI and/or McDonald's at the following pages: 145-241; 245-73; 577-84; 622; 623-30; 631-33; 634-36; 637-39; 640-46; 647-51; 652-63; 664; 665-78; 916; 679-1003; 1026-39; 1043-1335; 1340-65; 1367-1459; 1462-1498; 1499-1589; 1590-1674; 1675-91; 1692-1766; 1831-32; 2163-68; 2187; 2233-34; 2351-61; 4681-4708; 5087-5159; 5163-70; 5759-5992; 6059-67; 6241-42; and 6249 (we have also eliminated from the documents the identical copies of these documents at pages 22; 1767-1794; 1813; and 4855). The Commission has not taken adequate steps to assure the accuracy of the information, as described at 16 C.F.R. § 1101.32. Additionally, we are withholding

some of these documents on fairness grounds because JBI and/or McDonald's submitted them to the Commission to facilitate prompt remedial action and settlement. See 16 C.F.R. § 1101.33(b)(1).

Please note that we are also withholding on fairness grounds the following documents from file CA920080:

Pages 19-28; 47-54; 56-57; 59; 61; 67-84; 86-108; 113-120; 121-122; 133-134; 139-146; and 149-168. These documents were submitted to the Commission by McDonald's in confidence to facilitate prompt remedial action. See 16 C.F.R. § 1101.33(b)(1).

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.

The Commission's FOIA regulations at 16 C.F.R. § 1015.9, provide for the charging of fees resulting from the processing of FOIA requests. The processing of your request involved:

(1) the duplication of 4,000 pages X $0.10/page = $400.00;
(2) file searching by professional personnel, 3 hours X $19.60/hour = $58.80; and
(3) review time to determine whether records were permitted to be withheld, 5 hours X $19.60/hour = $98.00;

The FOIA and the Commission's regulations also permit a waiver of a certain amount of the fees according to the type of request. In your case we have decided to waive the first $10.00 of the duplication costs, $40.00 of the search fees and the entire review fee of $98.00. Please forward the total amount due, **$408.80**, by check or money order made payable to the **TREASURY OF THE UNITED STATES** with the enclosed copy of this letter to: **Division of Financial Services, ADFS Room 522, U.S. CONSUMER PRODUCT SAFETY COMMISSION, Washington, D. C. 20207**.

Note that after thirty days interest will be charged on amounts billed. Furthermore, if billing is not paid in a timely manner the Commission will require advance payment for your future requests and any pending requests.

The Commission's Freedom of Information Officer, Office of the Secretary, will consider written request for a waiver of the assessed fees when the requester can show that disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and disclosure of the requested information is not primarily in the commercial interest of the requester. Other factors to be considered are listed in the regulations at 16 C.F.R. § 1015.9(f)(5).

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

enclosures

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

December 8, 1995

ME/4

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 the settlement agreement and all related documents and correspondence to and from J.B.I. Inc., of Long Beach, Calif., concerning J.B.I.'s alleged failure to report to the CPSC about injuries from the Tug-N-Turn playground equipment. 3273 GC/C

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

Maureen Cislo, Editor
PRODUCT SAFETY LETTER

Receipt of this letter is acknowledged:

_____ _____
Signature Date

_____
Name (please print or type)

cc: PUB/SEC-rf, DIR
(1327K074.1YY)

5-51074

19

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

March 31, 1998

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

Re: FOIA Appeal 710113A (part II)
Rock Shox bike forks

Dear Mr. Oberle:

By letter dated January 21, 1998, 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. (Note: On December 15, 1997, I decided your November 20, 1997 appeal concerning different information on Rock Shox bike forks. Both FOIA requests and appeals have the same CPSC number, 710113A.)

I affirm the decision of the FOI Officer to withhold the 47 pages of information that is responsive to your request. I am withholding the information under Exemptions 3, 4, and 5 of the FOIA. 5 U.S.C. §§ 552(b)(3), (4), and (5).

FOIA Exemption 3 provides for the withholding from disclosure of matters that are specifically exempted from disclosure by another statute. 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 that contains or relates to trade secrets or other confidential commercial information. Section 6(a)(2) incorporates FOIA Exemption 4, which 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. Pursuant to FOIA Exemption 3, relying on CPSA section 6(a)(2), and FOIA Exemption 4, we are withholding production numbers, sales information, internal drawings, and test reports.

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. Pursuant to FOIA Exemption 3, relying on CPSA section 6(b)(5), we are withholding correspondence between Rock Shox and the Commission staff, Rock Shox test data, and other information. Some of this information is also confidential commercial information, as discussed above.

FOIA Exemption 5 provides for the withholding of certain inter-agency and intra-agency documents and incorporates the attorney work-product doctrine. This doctrine protects documents prepared by an attorney, or someone supervised by an attorney, in anticipation of litigation. The information being withheld under Exemption 5 consists of the staff's preliminary determination regarding the bicycle forks.

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

WBI 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-710113A) p. 1 of 2 January 21, 1998

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. § 522(a)(6).

On Jan. 5, 1998, CPSC responded to a *Product Safety Letter* FoIA request (CPSC ID: S-710113A) filed Feb. 19, 1996, by then-editor Maureen Cislo concerning the recall of bike forks by RockShox. CPSC denied part of the request based on Exemptions 3, 4, 5 and 7(E). (CPSC earlier denied other parts of this file, pending decision on this part. That separate denial was dealt with in my Nov. 20, 1997, appeal and your Dec. 15, 1997 response.)

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. We note that you have ignored this issue in our past FoIA appeals; please respond.

B. Attorney General Reno's new guideline, 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 the appeal, identify specifically the foreseeable harm that would result from disclosure. We note that you have ignored this issue in our past FoIA appeals; please respond.

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 & Conservation Assn. v. Morton*, 498 F. 2d 765 (C.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.

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 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 acces 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 you assistance.

Sincerely,

Sean Oberle, Editorial Director

cc: Thomas Howlett, Esq.

2235K100 6YY

code 1202: chron, firm Rockshox, officer, sp/eg

January 5, 1998

Certified Mail

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

RE: FOIA Request S-710113A: Rockshox Bicycle Suspension Fork Caps, File Number RP960024

Dear Ms. Cislo:

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

The records responsive to your request are contained in the Commission's enforcement investigatory file RP960024. The records are confidential business records submitted or derived from Rockshox, Inc. We must withhold the records pursuant to the Exemption 3 and 4, 5 U.S.C. of the FOIA, 5 U.S.C.§§ 552(b)(3) and (b)(4), and sections 6(a)(2) and 6(b)(5) of the Consumer Product Safety Act (CPSA), 15 U.S.C. §§ 2055(a)(2) and (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 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 from the file includes information submitted by the manufacturer pursuant to section 15(b) of the CPSA. The Commission has not issued a complaint or accepted a remedial settlement agreement and the firm has not consented to disclosure.

The file also contain information that is considered to be trade secrets and proprietary, confidential business information that we must withhold pursuant to Exemptions 3 and 4 and section 6(a)(2) of the CPSA. Section 6(a)(2) prohibits the Commission from disclosing information that is exempt from disclosure under 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.

We must withhold other records responsive to your request, the preliminary determination memoranda that is contained in the law enforcement investigatory files, 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.

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 denial of access to records may be appealed to the General Counsel of the Commission within thirty (30) days of your receipt of this letter. An appeal must be in writing and addressed to: FOIA APPEAL, General Counsel, ATTN: Office of the Secretary, U.S. CONSUMER PRODUCT SAFETY COMMISSION, Washington, D.C. 20207.

This completes the processing of your request. The cost to the Commission to perform the searches and prepare this information was $75.00. In this instance, we have decided to waive 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

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

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 RockShox on the recall of mountain bike forks. RP950153 closed 2/28/96 RP960024 closed 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 Cielo

~~Maureen Cielo,~~ Editor
PRODUCT SAFETY LETTER

Receipt of this letter is acknowledged:

Sam Cristy

Signature

Date

Name (please print or type)

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

5710113A
(A-U) 16

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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

April 3, 1998

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

Re: FOIA Appeal #S-710115C
Lane Cedar Chest Recall

Dear Mr. Oberle:

By letter dated January 20, 1998 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 regarding several of the documents, including Commission staff notes and telephone memos. These documents are being released today because the Commission has complied with sections 6(a) and (b) of the Consumer Product Safety Act (CPSA). 15 U.S.C. §§ 2055(a) and (b). The FOI Officer is sending you these materials and the manufacturer's comments under separate cover.

I affirm the FOI Officer's decision as to the remaining document. This document is being withheld pursuant to FOIA Exemption 5. 5 U.S.C. §§ 552(b)(5). FOIA Exemption 5 provides for the withholding of certain inter-agency and intra-agency documents and incorporates the attorney work-product doctrine. This doctrine protects documents prepared by an attorney, or someone supervised by an attorney, in anticipation of litigation. The information being withheld pursuant to FOIA Exemption 5 is the staff's preliminary determination about the Lane cedar chests.

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

WBI 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-710115C) 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. 3, 1997, CPSC responded to a *Product Safety Letter* FoIA request filed Nov. 9, 1996, by then editor Maureen Cislo (CPSC ID: S-710115C) concerning the recall of cedar chests by Lane Company. CPSC denied the request based on exemptions 5 and 7(A).

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. 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.

D. 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.

E Exemption 7(A) applies only when enforcement proceedings have begun or when there is concrete prospect of such proceedings. Because CPSC has not mae clear that any such enforcement proceedings exist, any withholding of records, based on Exemption 7(A) would not appear to be justified

G. Also, conclusion of enforcement proceedings makes documents otherwise exempt under 7(A) subject to disclosure. If this represents a closed case, please release the material

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

Officer (media response), Officer (wh) chron, 2618 **9999 media**

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

November 3, 1997

Mr. Sam Cristy
PRODUCT SAFETY LETTER
Washington Business Information, Inc.
1117 North 19th Street, Suite 200
Arlington, VA 22209-1788

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

Dear Mr. Cristy:

This responds to your company's request of September 6, 1996, for the back-up materials involving the Commission's press release number 96-186, Lane Furniture Company, Cedar Chests.

The responsive records are contained in the active investigatory files of the Commission's Directorate for Compliance. Open cases are not available for release. We must withhold the records pursuant to the Exemptions 5 and 7(A), 5 U.S.C. §§ 552(b)(5) and (b)(7)(A). Exemption 5 provides for the withholding from disclosure of inter-agency and intra-agency memoranda which would not be available by law to a party other than an agency in litigation with the agency. Exemption 7(A) provides for the withholding from disclosure records or information compiled for law enforcement purposes, to the extent that the production of such law enforcement records or information could reasonably be expected to interfere with enforcement proceedings.

The records being withheld consist of internal staff notes, correspondence 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) prematurely reveal information used in the investigation, thereby interfering with this and other matters by disclosing the government's basis for pursuing this matter.

According to the Commission's regulations implementing the FOIA at 16 C.F.R. § 1015.7, a 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 this request. The cost to the Commission to perform the file searches and prepare this response was $50.00. In this case we have decided to waive the cost. If you have questions regarding this response, contact Sandra Bradshaw by telephone at (301) 504-0785, ext. 1224.

Sincerely,

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

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

September 6, 1996

MEA

PSL CODE -- Recall -- 141

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

RECEIVED

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 the Lane Company of Altavista, Va., on the recall of cedar chests. 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) _____

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

S-60904 #10115C 9/13/97

News from

U.S. Consumer Product Safety Commission

Office of Information and Public Affairs Washington, D.C. 20207

For Immediate Release
September 4, 1996
Release # 96-186

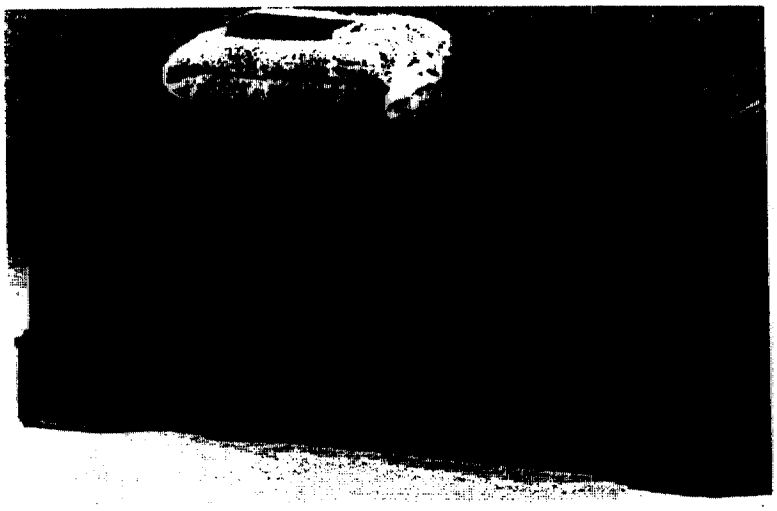
Contact: Robin Diamond
(301) 504-0580 Ext. 1219

CPSC, The Lane Furniture Company Announce Recall for In-Home Replacement of Locks on Cedar Chests

WASHINGTON, D.C. - In cooperation with the U.S. Consumer Product Safety Commission (CPSC), The Lane Company of Altavista, Va., is announcing a voluntary program to replace the locks on cedar chests manufactured prior to 1987. The Lane Company manufactured approximately 12 million cedar chests from 1912 to 1987 that latch automatically when the lid is closed. Young children playing in the chest can become trapped inside and suffocate.

Between 1977 and 1994, six children suffocated inside Lane cedar chests manufactured with an old design lock. The victims ranged in age from 21 months to ten years old.

Consumers can determine whether their chest has an old lock by closing the chest lid without depressing the locking button and then attempting to open the lid without touching the button. If the lid opens, the chest has the new lock and does not need to be replaced. If the lid does not open, it has the old lock. Additionally, old locks click loudly when the lid is shut, locking the chest automatically.



-MORE-

Furniture stores sold the chests nationwide in a variety of styles, sizes, and colors between 1912 and 1987. Some of the chests may have been handed down through families. By 1987, The Lane Company began manufacturing all of its cedar chests with redesigned locks, which do not need to be replaced.

Consumers who own Lane cedar chests with old locks should call The Lane Company toll-free at (888) 856-8758 for free, redesigned, easy to install safety locks. Lane will make special arrangements for consumers who need additional help installing the locks.

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

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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

March 6, 1998

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

Re: FOIA Appeal 710111A
Ryobi and Sears Table Saw Switch Compliance File

Dear Mr. Oberle:

By letter dated January 22, 1998, 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 pertinent materials.

I affirm the FOI Officer's decision to withhold the responsive information that you have not already received. We are withholding this information under FOIA Exemptions 3 and 4. 5 U.S.C. §§ 552(b)(3) and (4). It consists of the following pages of the Compliance file concerning the Ryobi and Sears table saw switch: 3-16, 23-36, 40-53, 55-67, 76, and 81-83.

Under FOIA Exemption 3, relying on section 6(b)(1) of the Consumer Product Safety Act (CPSA), it would not be fair in the circumstances to disclose the correspondence, draft documents, and other information that was generated during settlement negotiations on this case. See 15 U.S.C. § 2055(b)(1) and 16 C.F.R. § 1101.33(b)(2). In addition, some of this information is also confidential business information, as claimed and supported by the manufacturer. Such information is exempt from disclosure under FOIA Exemption 4 and section 6(a) of the CPSA. See 15 U.S.C. § 2055(a) and 16 C.F.R. § 1015.18(c).

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