



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

April 8, 1998

CERTIFIED MAIL - RETURN RECEIPT

Mr. Jack Christian Sales  
Sales & Weber  
Attorneys and Counsellors at Law  
P.O. Box 34  
Springfield, IL 62705

\$131.00

RE: FOIA Request S-801010: Information regarding Scripto-Tokai's "Aim-N-Flame"  
Multi Purpose Lighter (R-57-98)

Dear Mr. Sales:

Thank you for your Freedom of Information Act (FOIA) request seeking information from the Commission regarding multi-purpose lighters distributed by Scripto-Tokai. The records from the Commission files responsive to your request have been processed and copies of the releasable records are enclosed. As you are aware, we provided a partial response to your request under cover letter dated February 3, 1998. The enclosed records represent a final response to your request.

The enclosed records constitute *twelve (12)* 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.

As a step to assure fairness, we would normally accompany the manufacturer's/distributor's comments to the documents. 16 C.F.R. § 1101.33(a)(1). However, the distributor has objected to the disclosure of its comments.

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© 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 eight (8) product complaints and reported incidents that the Commission has obtained from consumers, attorneys for a consumers or others. The Commission has not received confirmation of the accuracy of the information in the complaint and reported incident. Pursuant to Exemption 3 of the FOIA, 5 U.S.C. § 552(b)(3) and section 6(b)(1) of the Consumer Product Safety Act (CPSA), 15 U.S.C. § 2055(b)(1), and our regulations, 16 C.F.R. § 1101.32, we must withhold the unconfirmed product complaints and reported incidents.

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

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

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

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 the following:

- (1) the duplication of 1,116 pages X \$0.10 per page = \$111.60;
- (2) file searching by professional personnel, 3 ½ hours X \$19.60/ hour = \$68.60; and
- (3) review time to determine whether records were permitted to be withheld, 3 hours X 19.60/ hour = \$58.80.

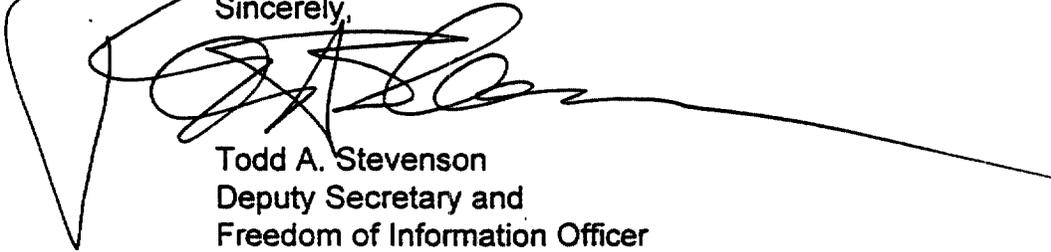
The FOIA and the Commission' regulations also permit a waiver of a certain amount of the fees according to the type of request. In your case we have decided to waive the first \$10.00 of the duplication fee, \$39.20 of the search fee and the entire review fee of \$58.80. Please forward the total amount due, **\$131.00** 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

Enclosure

Firm: 1604 Scripto-Tokai (multi purpose lighter) Off(6b release), Off(part. denial), Ex. 3, chron, ADFS R-57-98, Feelog, spec. 3285

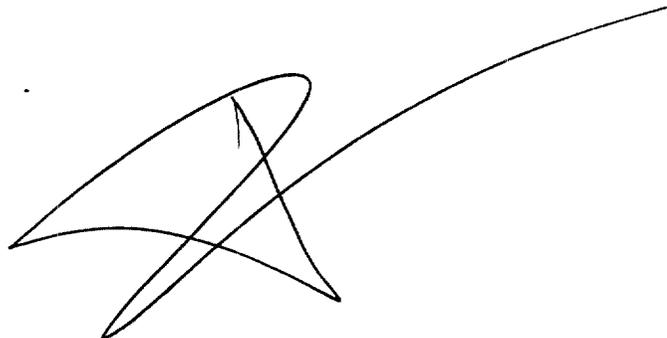


U.S. CONSUMER PRODUCT SAFETY COMMISSION  
WASHINGTON, D.C. 20207

April 8, 1998

CERTIFIED MAIL - RETURN RECEIPT

Mr. Jack Christian Sales  
Sales & Weber  
Attorneys and Counsellors at Law  
P.O. Box 34  
Springfield, IL 62705



RE: FOIA Request S-801010: Information regarding Scripto-Tokai's "Aim-N-Flame" Multi Purpose Lighter (R-57-98)

Dear Mr. Sales:

Thank you for your Freedom of Information Act (FOIA) request seeking information from the Commission regarding multi-purpose lighters distributed by Scripto-Tokai. The records from the Commission files responsive to your request have been processed and copies of the releasable records are enclosed. As you are aware, we provided a partial response to your request under cover letter dated February 3, 1998. The enclosed records represent a final response to your request.

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As a step to assure fairness, we would normally accompany the manufacturer's/distributor's comments to the documents. 16 C.F.R. § 1101.33(a)(1). However, the distributor has objected to the disclosure of its comments.

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We must also withhold eight (8) product complaints and reported incidents that the Commission has obtained from consumers, attorneys for a consumers or others. The Commission has not received confirmation of the accuracy of the information in the complaint and reported incident. Pursuant to Exemption 3 of the FOIA, 5 U.S.C. § 552(b)(3) and section 6(b)(1) of the Consumer Product Safety Act (CPSA), 15 U.S.C. § 2055(b)(1), and our regulations, 16 C.F.R. § 1101.32, we must withhold the unconfirmed product complaints and reported incidents.

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

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Thank you for your interest in consumer product safety. Should you have any questions, please contact Alberta Mills, Paralegal Specialist, by letter, facsimile (301) 504-0127 or telephone (301) 504-0785, ext. 1299.

Sincerely,

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

Enclosure

OSFOI Proc. Partial response  
1604 Scripto-Tokai (multi-purpose  
lighters) Off(6b clearance), chron,  
spec. 3285



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

February 3, 1998

Jack Christian Sales  
Sales & Weber  
Attorneys and Counsellors at Law  
P.O. Box 34  
Springfield, IL 62705

A large, stylized handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

**RE: FOIA Request S-801010: Records pertaining to the "Aim-N-Flame" Multi-Purpose  
Lighter by Scripto-Tokai**

Dear Mr. Sales:

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

The enclosed records include thirty-three (33) 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 is one (1) product complaint and reported incident submitted to the Commission by a consumer or other. The submitter has confirmed the accuracy of the information in the complaint and reported incident. The Commission has neither investigated the incident nor conducted or obtained any evaluations of the product that corroborate the substance of the information contained in the complaint and reported incident.

We have also enclosed copies of the Briefing Package and Commission Options Package on Petition CP 96-1, (Amendment of the Safety Standard for Cigarette Lighters to Include Multi-Purpose Lighters).

Mr. Sales, S801010

Page 2

With respect to other information responsive to your request, please note that, before we can release this material, we must, by law, provide any firms whose identity can be readily ascertained by the public, the opportunity to comment. (Please see the enclosed Section 6(b)(1) of the Consumer Product Safety Act and the regulations.) Therefore, we first must give the information we intend to release and a copy of your letter to the firm. The firm has 30 days to respond. If the company claims that the information is inaccurate or confidentiality for proprietary information, we must evaluate these comments and renotify the firms if we overrule any claims.

Please be assured that we are handling your request as quickly as possible. We simultaneously are writing to you and notifying the firms. The firms' response and our analysis of any comments, however, will take more than 30 days. You will receive all records to be released at the earliest possible date. Should you have questions, contact Alberta Mills, Paralegal Specialist, by letter, facsimile (301) 504-0127 or telephone (301) 504-0785, ext. 1299.

Sincerely,

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

Enclosure

EMG 1/5/98

C9815008

SALES & WEBER  
Attorneys and Counsellors at Law  
P.O. BOX 34  
SPRINGFIELD, ILLINOIS 62705  
(217) 789-9200

JACK CHRISTIAN SALES  
RAYMOND P. WEBER

January 5, 1998

U.S. Consumer Product Safety Commission  
Freedom of Information Office – Office of the Secretary  
4330 E. West Highway  
Bethesda, Maryland 20814-4408

Re: House fire on January 20, 1997  
1702 East Matheny Street  
Springfield, Illinois  
Client: Derek Roberts et al.  
D/L: January 20, 1997

ALG

Dear Sir or Madam:

1604

I have been asked by Derek Roberts to assist him with regard to a claim that arises out of a house fire that occurred on January 20, 1997. Mr. Roberts lost a large number of personal belongings in that fire and his son suffered severe and permanent injuries from burns as a result of that fire.

The fire was started by an Aim-N-Flame butane lighter gun that Mr. Roberts' four year old son took down from a high shelf. The lighter had the appearance of a toy gun. As the four year old boy was "playing" with the "gun", he accidentally lit the Roberts' blanket on fire. Their 10 month old baby was sleeping on the blanket at the time. He suffered second and third degree burns over 70% of his body. Miraculously he lived.

I am considering a product liability lawsuit against the manufacturer, Scripto-Tokai Corp. of Fontana, California. I have been advised that your Commission is conducting investigations into the design and use of these "utility lighters" and the injuries caused as a result of their use. Please consider this as my request under the Freedom of Information Act for copies of your briefing packages on these utility lighters, in particular the Scripto-Tokai Aim-N-Flame and Aim-N-Flame II lighters. I would also request copies of the investigation files of your field investigators on the Scripto-Tokai Aim-N-Flame and Aim-N-Flame II lighters. In particular, I am interested in the investigation files of Mr. Joe McDowell, resident in your Saint Louis, Missouri office.

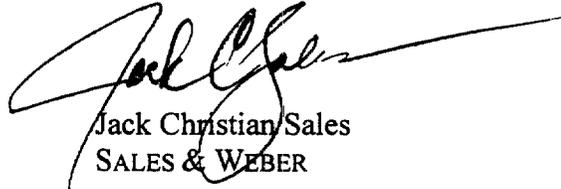
1/6/98  
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D.Y

3-80 1010

Naturally, I will pay the reasonable cost of reproducing your files. Please contact me at the above telephone number to discuss the estimated cost and the type of information contained in your files prior to duplicating the entire file. You may have some information that we do not necessarily need at this time.

Thank you in advance for your anticipated cooperation and assistance in this request.

Cordially yours,



Jack Christian Sales  
SALES & WEBER

January 15, 1998

JACK CHRISTIAN SALES  
SALES AND WEBER  
PO BOX 34  
SPRINGFIELD, IL 62705

RE: FOIA Request No. S-801010: "Aim-N-Flame" Butane Lighter Gun

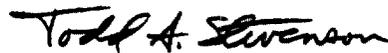
Dear Mr. Sales:

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

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

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

Sincerely,



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

28

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

May 28, 1998

Barbara A. Radnofsky, Esq.  
Vinson & Elkins  
2300 First City Tower  
1001 Fannin Street  
Houston, Texas 77002-6760

Re: FOIA Appeal 801047 on Scripto multi-purpose lighter

Dear Ms. Radnofsky:

On May 8, 1998, you appealed the April 8, 1998 decision of the Commission's Freedom of Information Officer, Todd Stevenson, to withhold information responsive to your Freedom of Information Act (FOIA) request. Under authority delegated to me by the Commission, 16 C.F.R. § 1015.7, I have reviewed your appeal.

The responsive information consisted of 12 Epidemiologic Investigation Reports and nine product complaints. Mr. Stevenson sent you the 12 reports and one of the complaints. He withheld eight complaints and the identities of certain injured parties. However, you have appealed the withholding of a document that is not within the scope of your FOIA request: Scripto-Tokai's comments on disclosure of the reports and complaints.

You have referenced a petition proceeding and a rulemaking proceeding that concern multi-purpose lighters. All public comments made by Scripto-Tokai or any other members of the public in such proceedings are, by definition, available to the public. However, Scripto-Tokai's comment letter concerning your FOIA request is not such a public comment. That letter concerns the Commission's section 6(b) process. If a FOIA requester seeks information that identifies a particular manufacturer's product, the Commission must provide the manufacturer with an opportunity to comment on possible disclosure of the information. 15 U.S.C. § 2055(b)(1); 16 C.F.R. Part 1101, Subpart C. If the manufacturer requests that its comments not be disclosed, as

Barbara A. Radnofsky, Esq.  
May 28, 1998

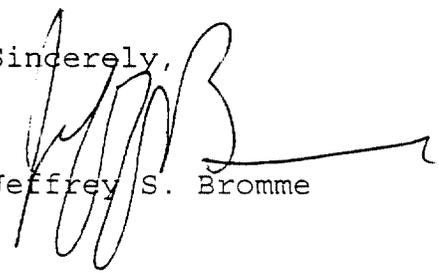
Page 2

Scripto-Tokai did in this case, the Commission does not disclose them, in accordance with 16 C.F.R. § 1101.33(a)(1). In any case, the letter containing Scripto-Tokai's comments does not fall within the scope of your FOIA request.

Your appeal letter also "renews" your request for "Scripto-Tokai's Freedom of Information request." As Mr. Stevenson informed you by letter on April 9, 1998, he has found no such document in the Commission's files.

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

# Vinson & Elkins

ATTORNEYS AT LAW

VINSON & ELKINS L.L.P.  
2300 FIRST CITY TOWER  
1001 FANNIN STREET

HOUSTON, TEXAS 77002-6760

TELEPHONE (713) 758-2222  
FAX (713) 758-2346

WRITER'S TELEPHONE  
(713) 758-2502

WRITER'S FAX  
(713) 615-5481

May 6, 1998

General Counsel  
Office of the Secretary  
U.S. Consumer Product Safety Commission  
Washington D.C. 20207

***CERTIFIED MAIL/RRR***

Re: FOIA Request S-801047; Information Regarding Scripto-Tokai's "Aim-N-Flame" Multi-Purpose Lighter (R-58-98)

Dear Sir:

Pursuant to 16 C.F.R. § 1015.7 please let this letter serve as notice of an appeal to the General Counsel, filed in a timely fashion within thirty days of our receipt of Todd A. Stevenson's letter of April 8, 1998 (attached as Exhibit A to this appeal), which denied access to documents responsive to the request captioned above. The letter from Mr. Stevenson was postmarked April 10, 1998, and was received by Vinson & Elkins' Mail Services on April 16, 1998 (copy of the face of the mailing envelope attached and marked as Exhibit B).

FOIA Request S-801047 was for information from the Commission regarding multi-purpose lighters distributed by Scripto-Tokai. The commission produced 12 Epidemiologic Investigation Reports with underlying and supporting documentation as well as one product complaint incident submitted by a "consumer or other." As stated in Mr. Stevenson's letter (page two, paragraph one), the manufacturer's/distributor's comments to the documents would normally accompany these documents per 16 C.F.R. § 1101.33(a)(1). The distributor has objected to disclosure of its comments.

It is the denial of production of these comments that forms the basis of this appeal.

At this time, the commission is investigating Petition CP96-1, a petition to initiate rule making proceedings to amend 16 C.F.R. 1210 Safety Standard for Cigarette Lighters to include multi-purpose lighters.

On January 16, 1997, the commission published an ANPR requesting comments and information regarding amendment to the cigarette lighter standard to include a rule mandating a performance standard for child-resistance of the operating mechanism of multi-purpose lighters.

Page 2  
May 6, 1998

This is the second notice and comment period related to Petition CP96-1. The manufacturer/distributor for whom we have requested information in our FOIA request is Scripto-Tokai, who has also commented to the commission in response to the petition. These comments have been received and duly noted by the commission and have been made available through the FOIA.

We infer that Scripto-Tokai has obtained and provided comment on the in-depth Epidemiologic Investigation Reports conducted by the Commission pertaining to their products, which were involved in the incidents. It appears that Scripto-Tokai has requested and received these Epidemiologic Investigation Reports and provided comments to the studies, unless there is some other mechanism by which they were notified.

Because comments have been filed with the Commission that may materially influence activities by the Commission related to an ongoing investigation, it is our position that we are entitled to obtain these documents pursuant to the Freedom of Information Act. In addition to this appeal, we renew our request for Scripto-Tokai's Freedom of Information request. We would like to know what they have asked for and received. We seek no information which would identify an injured party or health care provider, and certainly agree to any appropriate redactions.

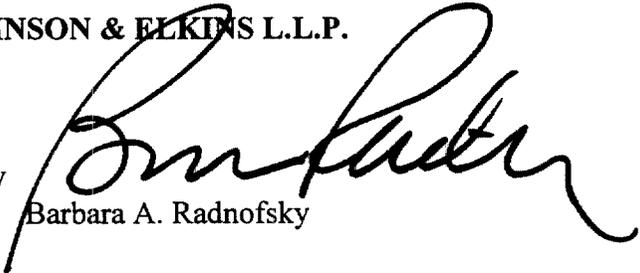
I have enclosed a self-addressed stamped envelope along with a copy of this letter to be file-stamped and returned to this office.

Thank you for your consideration of this appeal.

Very truly yours,

VINSON & ELKINS L.L.P.

By

  
Barbara A. Radnofsky

0486:7481:4436  
VEHOU03:153533.1

cc: Alex Garcia [Firm]  
Conrad B. Guthrie [Firm]

Attachments: Exhibit "A" - Todd Stevenson's letter of April 8, 1998  
Exhibit "B" - Copy of Mailing Envelope  
Exhibit "C" - Letter from Alberta Mills to Conrad B. Guthrie, 4/9/98



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

April 8, 1998

**CERTIFIED MAIL - RETURN RECEIPT**

Mr. Conrad B. Guthrie, Legal Assistant  
Vinson & Elkins  
Attorneys at Law  
2300 First City Tower  
1001 Fannin Street  
Houston, TX 77002-6760

**RE: FOIA Request S-801047: Information regarding Scripto-Tokai's "Aim-N-Flame"  
Multi Purpose Lighter (R-58-98)**

Dear Mr. Guthrie:

Thank you for your Freedom of Information Act (FOIA) request seeking information from the Commission regarding multi-purpose lighters distributed by Scripto-Tokai. The records from the Commission files responsive to your request have been processed and copies of the releasable records are enclosed. As you are aware, we provided a partial response to your request under cover letter dated February 3, 1998.

The enclosed records include twelve (12) Epidemiologic (In-Depth) Investigation Reports with the underlying and supporting documentation. The Commission has received this information from its formal investigation systems. Through these systems the Commission hopes to learn when specific products are associated with illness, injury or death. The Commission believes that it has taken reasonable steps to assure the accuracy of this information. While conducting the interviews for the investigation reports, Commission staff or contractors have spoken with the individuals involved or with others who witnessed or are familiar with the incidents. Although the Commission has investigated the incident described in the investigation reports, the Commission has not necessarily determined the cause of the incidents.

Also enclosed are records pertaining to one (1) product complaint and reported incident submitted to the Commission by a consumer or other. The submitter has confirmed the accuracy of the information in the complaint and reported incident. The Commission has neither investigated the incident nor conducted or obtained any evaluations of the product that corroborate the substance of the information contained in the complaint and reported incident.



As a step to assure fairness, we would normally accompany the manufacturer's/distributor's comments to the documents. 16 C.F.R. § 1101.33(a)(1). However, the distributor has objected to the disclosure of its comments.

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

According to the Commission's regulations implementing the FOIA at 16 C.F.R. § 1015.7, a partial denial of access to records may be appealed to the General Counsel

of the Commission within thirty (30) days of your receipt of this letter. An appeal must be in writing and addressed to: FOIA APPEAL, General Counsel, ATTN: Office of the Secretary, U.S. Consumer Product Safety Commission, Washington, D.C. 20207.

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 the following:

- (1) the duplication of 809 pages X \$0.10 per page = \$80.90;
- (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, 3 hours X 19.60/ hour = \$58.80.

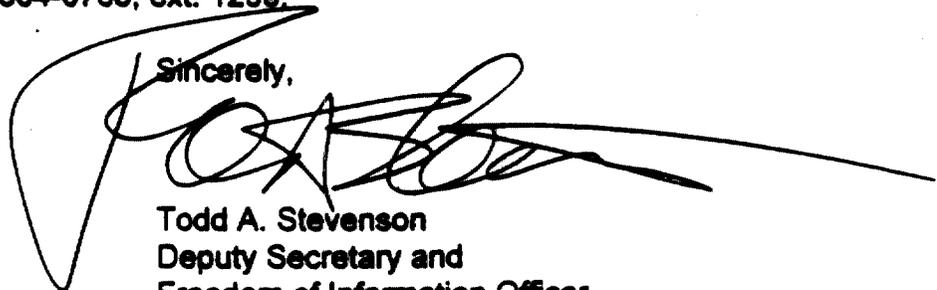
Please forward the total amount due, **\$198.50** by check or money order made payable to the **TREASURY OF THE UNITED STATES** with the enclosed copy of this letter to: **Division of Financial Services, ADFS Room 522, U.S. CONSUMER PRODUCT SAFETY COMMISSION, Washington, D. C. 20207.**

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

Enclosure



U.S. OFFICIAL MAIL  
U.S. POSTAGE

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CERTIFIED  
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MAIL

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

OFFICIAL BUSINESS

OS-010

*An Equal Opportunity Employer*

CONRAD B GUTHRIE  
VINSON AND ELKINS  
ATTORNEYS AT LAW  
2300 FIRST CITY TOWER  
1001 FANNIN STREET  
HOUSTON, TX 77002-6760

EXHIBIT

B



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

April 9, 1998

Mr. Conrad B. Guthrie  
Vinson & Elkins  
Attorneys at Law  
2300 First City Tower  
1001 Fannin Street  
Houston, TX 77002-6760

RE: FOIA Request S-803090: Freedom of information requests made to the Commission from Scripto-Tokai Corporation; Tokai Corporation; Walmart Stores, Inc.; Mark Suzumoto; Any person at the law firm of Pillsbury, Madison & Sutro regarding multi-purpose lighters; and person at the law firm of Van Etten, Suzumoto & Haag regarding multi-purpose lighters

Dear Mr. Guthrie:

Thank you for your Freedom of Information Act (FOIA) request seeking information from the Consumer Product Safety Commission (Commission).

A search of the Commission's files failed to produce any records responsive to your request.

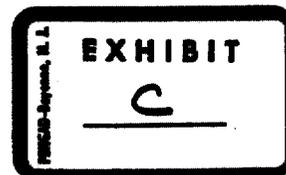
Processing this request, performing the file searches and preparing the information, cost the Commission \$30.00. In this instance, we have decided to waive all of the charges. Thank you for your interest in consumer product safety. Should you have any questions, please contact the undersigned by letter, facsimile (301) 504-0127 or telephone (301) 504-0785 ext. 1299.

Sincerely,

A handwritten signature in cursive script, appearing to read "Alberta Mills".

Alberta Mills  
Paralegal Specialist  
Freedom of Information Division  
Office of the Secretary

Enclosures



Firm: 1604 Scripto-Tokai (multi purpose lighter) Off(6b release), Off(part. denial), Ex. 3, chron, ADFS R-58-98, Feelog,spec3285

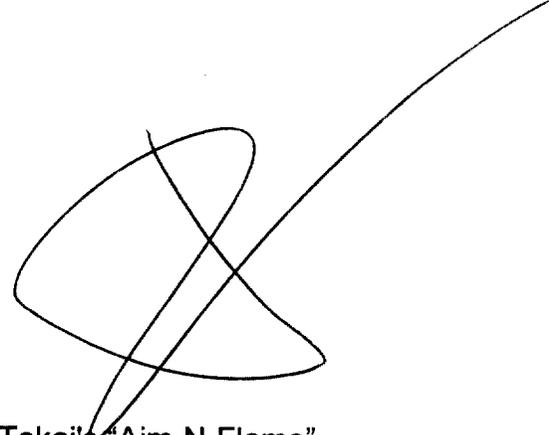


U.S. CONSUMER PRODUCT SAFETY COMMISSION  
WASHINGTON, D.C. 20207

April 8, 1998

CERTIFIED MAIL - RETURN RECEIPT

Mr. Conrad B. Guthrie, Legal Assistant  
Vinson & Elkins  
Attorneys at Law  
2300 First City Tower  
1001 Fannin Street  
Houston, TX 77002-6760



RE: FOIA Request S-801047: Information regarding Scripto-Tokai's "Aim-N-Flame" Multi Purpose Lighter (R-58-98)

Dear Mr. Guthrie:

Thank you for your Freedom of Information Act (FOIA) request seeking information from the Commission regarding multi-purpose lighters distributed by Scripto-Tokai. The records from the Commission files responsive to your request have been processed and copies of the releasable records are enclosed. As you are aware, we provided a partial response to your request under cover letter dated February 3, 1998.

The enclosed records include twelve (12) Epidemiologic (In-Depth) Investigation Reports with the underlying and supporting documentation. The Commission has received this information from its formal investigation systems. Through these systems the Commission hopes to learn when specific products are associated with illness, injury or death. The Commission believes that it has taken reasonable steps to assure the accuracy of this information. While conducting the interviews for the investigation reports, Commission staff or contractors have spoken with the individuals involved or with others who witnessed or are familiar with the incidents. Although the Commission has investigated the incident described in the investigation reports, the Commission has not necessarily determined the cause of the incidents.

Also enclosed are records pertaining to one (1) product complaint and reported incident submitted to the Commission by a consumer or other. The submitter has confirmed the accuracy of the information in the complaint and reported incident. The Commission has neither investigated the incident nor conducted or obtained any evaluations of the product that corroborate the substance of the information contained in the complaint and reported incident.

As a step to assure fairness, we would normally accompany the manufacturer's/distributor's comments to the documents. 16 C.F.R. § 1101.33(a)(1). However, the distributor has objected to the disclosure of its comments.

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© 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 eight (8) product complaints and reported incidents that the Commission has obtained from consumers, attorneys for a consumers or others. The Commission has not received confirmation of the accuracy of the information in the complaint and reported incident. Pursuant to Exemption 3 of the FOIA, 5 U.S.C. § 552(b)(3) and section 6(b)(1) of the Consumer Product Safety Act (CPSA), 15 U.S.C. § 2055(b)(1), and our regulations, 16 C.F.R. § 1101.32, we must withhold the unconfirmed product complaints and reported incidents.

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

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

According to the Commission's regulations implementing the FOIA at 16 C.F.R. § 1015.7, a partial denial of access to records may be appealed to the General Counsel

of the Commission within thirty (30) days of your receipt of this letter. An appeal must be in writing and addressed to: FOIA APPEAL, General Counsel, ATTN: Office of the Secretary, U.S. Consumer Product Safety Commission, Washington, D.C. 20207.

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 the following:

- (1) the duplication of 809 pages X \$0.10 per page = \$80.90;
- (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, 3 hours X 19.60/ hour = \$58.80.

Please forward the total amount due, **\$198.50** 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

Enclosure

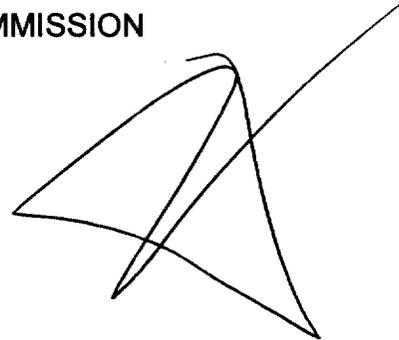
OSFOI Proc. Partial response  
1604 Scripto-Tokai (multi-purpose  
lighters) Off(6b clearance), chron,  
spec. 3285



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

February 3, 1998

Conrad B. Guthrie, Legal Assistant  
Vinson & Elkins  
Attorneys at Law  
2300 First City Tower  
1001 Fannin Street  
Houston, TX 77002-6760



**RE: FOIA Request S-801047: Records pertaining to the "Aim-N-Flame" Multi-Purpose Lighters by Scripto-Tokai**

Dear Mr. Sales:

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

The enclosed records include thirty-three (33) 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 is one (1) product complaint and reported incident submitted to the Commission by a consumer or other. The submitter has confirmed the accuracy of the information in the complaint and reported incident. The Commission has neither investigated the incident nor conducted or obtained any evaluations of the product that corroborate the substance of the information contained in the complaint and reported incident.

With respect to other information responsive to your request, please note that, before we can release this material, we must, by law, provide any firms whose identity

Mr. Guthrie, S801047

Page 2

can be readily ascertained by the public, the opportunity to comment. (Please see the enclosed Section 6(b)(1) of the Consumer Product Safety Act and the regulations.) Therefore, we first must give the information we intend to release and a copy of your letter to the firm. The firm has 30 days to respond. If the company claims that the information is inaccurate or confidentiality for proprietary information, we must evaluate these comments and renotify the firms if we overrule any claims.

Please be assured that we are handling your request as quickly as possible. We simultaneously are writing to you and notifying the firms. The firms' response and our analysis of any comments, however, will take more than 30 days. You will receive all records to be released at the earliest possible date. Should you have questions, contact Alberta Mills, Paralegal Specialist, by letter, facsimile (301) 504-0127 or telephone (301) 504-0785, ext. 1299.

Sincerely,

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

Enclosure

# Vinson & Elkins

ATTORNEYS AT LAW

VINSON & ELKINS L.L.P.  
2300 FIRST CITY TOWER  
1001 FANNIN STREET  
HOUSTON, TEXAS 77002-6760

TELEPHONE (713) 758-2222  
FAX (713) 758-2346

WRITER'S TELEPHONE  
(713) 758-2502

WRITER'S FAX  
(713) 615-5481

January 7, 1998

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

*A/1*

Re: Multi-Purpose Lighters *1604*

Dear Mr. Stevenson:

This letter is a request, pursuant to the Freedom of Information Act, for copies of any and all consumer complaints and/or case reports of personal injury and/or property damage caused by a Scripto-Tokai Aim'N Flame multi-purpose lighter. This should include, but not be limited to, information maintained by the National Injury Information Clearing House.

*10/12*

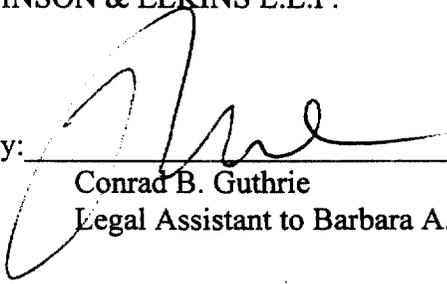
*D. B.*

*mm  
3285*

Should the cost of this request be estimated to exceed \$200, please contact me at the number listed above during regular business hours.

Very truly yours,

VINSON & ELKINS L.L.P.

By: 

Conrad B. Guthrie  
Legal Assistant to Barbara A. Radnofsky

VEHOU03:130947.1

cc: Barbara A. Radnofsky

*5-801047*



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

January 27, 1998

CONRAD B GUTHRIE  
VINSON AND ELKINS LLP  
2300 FIRST CITY TOWER  
1001 FANNIN STREET  
HOUSTON, TX 77002-6760

RE: FOIA Request No. S-801047: Multi-Purpose Lighters

Dear Mr. Guthrie:

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

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

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

Sincerely,

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

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

29

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

June 12, 1998

James M. Takos, Esq.  
P.O. Box 733  
Morgantown, W. Va. 26507-0733

Re: FOIA Appeal 801091 on  
Baby Dream Furniture, Generation Crib

Dear Mr. Takos:

On May 18, 1998, you appealed the decision of the Commission's Freedom of Information Officer to withhold information responsive to your Freedom of Information Act (FOIA) request. Under authority delegated to me by the Commission, 16 C.F.R. § 1015.7, I have reviewed your appeal. I affirm the Freedom of Information Officer's decision to withhold nine unconfirmed consumer complaints, based on FOIA Exemption 3. 5 U.S.C. § 552(b)(3).

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

Section 6(b)(1) requires that before disclosing information that would enable the public to identify the manufacturer or private labeler of a consumer product, the Commission "shall take reasonable steps to assure . . . that [the] information . . . is accurate, and that such disclosure is fair in the circumstances and reasonably related to effectuating the purposes of the [CPSA]." The information that is being withheld pursuant to Exemption 3, relying on section 6(b)(1), consists of nine unconfirmed consumer complaints. The Commission's regulations require that this information be confirmed as a reasonable step to assure the accuracy of the information. 16 C.F.R. § 1101.32(a)(3).

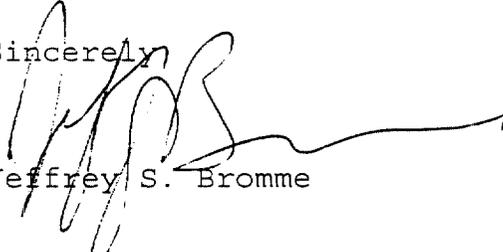
James M. Takos, Esq.  
June 12, 1998

Page 2

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

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

James M. Takos  
Attorney at Law  
P.O. Box 733  
Morgantown, WV 26507-0733  
(304) 594-9155  
jtakos@labyrinth.net

May 18, 1998

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

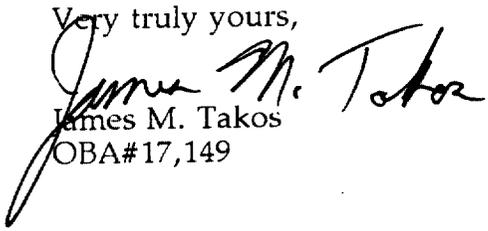
Re.: FOIA S-801091: Baby Dream Furniture, Generation Crib

Dear Person:

Pursuant to 16 C.F.R. § 1015.7, I am appealing the partial denial of information from the above FOIA request. I hear by request the other nine (9) reports you have collected. This request does not include a request for any privacy act information or information the consumer did not authorized release.

We are willing to accept non-certified, redacted data that limited the reports to type/description of injury, date of injury and any cause of injury from your report. Since these reports are not certified, they will not be introduced as evidence nor will they be used to contact the consumer. These reports will be used as background information only.

Very truly yours,

  
James M. Takos  
OBA#17,149

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

March 31, 1998  
CERTIFIED MAIL

James M. Takos, Esquire  
1708 Cherry Lane  
Del City, OK 73115-2304

RE: FOIA S-801091: Baby Dream Furniture, Generaation Crib

Dear Mr. Takos:

This responds to your Freedom of Information Act request to the U. S. Consumer Product Safety Commission (Commission). Your subpoena letter must have crossed in the mail with our letter to you advising that the documents were being sent to the manufacturer for comment under section 6(b) of the Consumer Product Safety Act.

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

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

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

You will note that in one of the documents disclosed information that could identify injured parties and persons treating them has been deleted, because section 25(c) of the Consumer Product Safety Act, 15 U.S.C. § 2074(c)(1), prohibits such disclosures without the consent of those individuals. In this case the injured party has denied consent.

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.

Takos; S-801091

This completes the processing of your request. The cost to the Commission to perform the searches and prepare this information was \$50.00. In this instance, we have decided to waive the charges. Thank you for your interest in consumer product safety. Should you have any questions, us 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

Enclosure

Rec'd 1/15/98

James M. Takos  
Attorney at Law

1708 Cherry Lane  
Del City, OK 73115-2304  
(405) 672-3857/Pager (405)440-7561  
E-Mail: jtakos@icon.net

CPSC/OFC OF THE SECRETARY  
FREEDOM OF INFORMATION ACT

JAN 13 P 3:15

January 4, 1998

Consumer Products Safety Commission  
Washington, D.C. 20204

Ref.: Case 970624CWE7036 & my July 4<sup>th</sup> letter to you.

Dear Person:

I represent the injured party in a products case investigate by the Consumer Product Safety Commission, Case 970624CWE7036. I need the complete report of this case, including copies of photographs as soon as possible. I will gladly pay the costs of reproduction of the photos and any coping expenses. If required, I can subpoena these documents from you.

I have not yet had any response to my requests of July 4<sup>th</sup>. Under the Freedom of Information Act, you have 90 days to meet my request or explain why. Neither has occurred. Please send the requested information.

Thank you for any assistance you can provide me.

Very Truly Yours,

*James M. Takos*  
James M. Takos  
OBA #17,149

Will cost \$6.20  
for negatives

AB

CRIB 1543

D.Y

5-801091

**James M. Takos**  
**Attorney at Law**  
1708 Cherry Lane  
Del City, OK 73115-2304  
(405) 672-3857/Pager (405)440-7561  
E-Mail: jtakos@icon.net

---

July 4, 1997

Consumer products Safety Commission  
Washington, D.C. 20204

Dear Person:

I am seeking two items from your organization:

- (1) Copy of the standard(s) used on baby cribs.
- (2) Any reports on Baby's Dream Furniture, Inc. of Buena Vista, Ga., especially in relation to their "Generation Crib."

If any of the requested information is located on the internet, please inform me of its location. Should there be any charges for the requested information, please inform me of them.

A response via the internet is most acceptable, if your policy allows.

Thank you for any assistance you can provide me.

Very Truly Yours,

James M. Takos  
OBA #17,149

1

97 05 12 12:32

**James M. Takos**  
**Attorney at Law**  
1708 Cherry Lane  
Del City, OK 73115-2304  
(405) 672-3857/Pager (405)440-7561  
E-Mail: jtakos@icon.net

---

July 4, 1997

Consumer products Safety Commission  
Washington, D.C. 20204

Dear Person:

I am seeking two items from your organization:

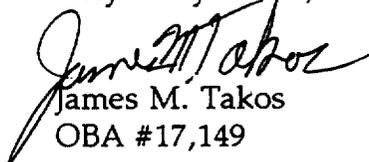
- (1) Copy of the standard(s) used on baby cribs. 1543  
PTSA neg
- (2) Any reports on Baby's Dream Furniture, Inc. of Buena Vista, Ga., especially in relation to their "Generation Crib." 1543  
i-c  
e-c

If any of the requested information is located on the internet, please inform me of its location. Should there be any charges for the requested information, please inform me of them.

A response via the internet is most acceptable, if your policy allows.

Thank you for any assistance you can provide me.

Very Truly Yours,

  
James M. Takos  
OBA #17,149

5 708054



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

June 9, 1998

Mr. Neil Sagot  
Sagot, Jennings & Sigmond  
The Penn Mutual Towers, 16th Floor  
510 Walnut Street  
Independence Square  
Philadelphia, PA 19106-3683

A large, stylized handwritten signature in black ink, appearing to be "TAS".

Re: FOIA Request S803032: Baby's Dream Furniture, Inc. Cribs / Complaints, Incidents and Investigations of Incidents / File Search 1990 to Present

Dear Mr. Sagot:

This concerns your letter dated May 27, 1998, to the Commission's General Counsel about the epidemiological investigative reports that we did not send in response to the Freedom of Information Act request dated March 24, from Ms. Lopez. We interpreted the original request to seek only the corrective action files and our response dated April 30, withheld those files for the reasons explained our letter. Based on your more recent letter, we are now processing the epidemiological reports for you. Before we can release this material, we must, by law, provide any firms whose identities can be readily ascertained by the public, the opportunity to comment. (Please see the enclosed Section 6(b)(1) of the Consumer Product Safety Act and the regulations.) Therefore, we first must give the information we intend to release and a copy of your letter to the firms. The firms have 30 days to respond. If the companies claim that the information is inaccurate or confidentiality for proprietary information, we must evaluate these comments and renotify the firms if we overrule any claims. Please be assured that we are handling your request as quickly as possible. We simultaneously are writing to you and notifying the firms. The firms' responses and our analysis of any comments, however, will take more than 30 days. You will receive all records to be released at the earliest possible date. At that time you may re-appeal any denials, including the denials made by our April 30, 1998 letter.

Sincerely,

Todd A. Stevenson  
Deputy Secretary and  
Freedom of Information Officer

Enclosure

ATTORNEYS AND COUNSELLORS AT LAW  
**SAGOT, JENNINGS & SIGMOND**  
THE PENN MUTUAL TOWERS, 16<sup>TH</sup> FLOOR  
510 WALNUT STREET  
INDEPENDENCE SQUARE

PHILADELPHIA, PA 19106-3683



(215) 922-6700

FAX (215) 922-3524

MY PRIVATE NUMBER IS:

(215) 351-0630

THOMAS W. JENNINGS  
RICHARD B. SIGMOND\*\*  
KENT CPREK  
SANFORD G. ROSENTHAL  
RICHARD C. MCNEILL, JR.  
STEPHEN J. HOLROYD\*  
SUSAN A. MURRAY\*  
MAGDELINE D. COLEMAN  
LINDA S. FOSSI\*  
BETH N. FORMAN\*  
JENNIFER B. LIEBMAN\*  
JOHN H. CHO

NEIL SAGOT  
THOMAS H. KOHN†  
JACK B. KATZ  
ERIC G. MARTILA  
JONATHAN KRINICK  
STUART J. PHILLIPS\*†  
DAVID G. PASCUCCI  
PAUL J. STACOM  
ILANA BERMAN FELDMAN\*  
CHARLES F. SZYMANSKI\*  
WILLIAM E. DENGLER\*

NEW JERSEY OFFICE  
ASHLAND OFFICE CENTER  
1 ALPHA AVENUE-SUITE 33  
VOORHEES, NJ 08043-1054  
(609) 427-0465  
FAX (609) 427-9285

COUNSEL TO THE FIRM:  
GARY M. LIGHTMAN  
2705 N. FRONT STREET  
HARRISBURG, PA 17110-1221  
(717) 234-0111  
FAX (717) 234-8964

\*PA & NJ BAR  
\*\*PA, NY & DC BAR  
†PA, VA & DC BAR  
‡MANAGING ATTORNEY NJ OFFICE

May 27, 1998

EDWARD DAVIS 1893-1987  
M. H. GOLDSTEIN 1904-1971

***Sent Via Certified Mail & Regular Mail***

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

**RE: FOIA Request S-803132: Baby's Dream Furniture, Inc. Cribs**

Dear Sir/Madam:

Enclosed please find a copy of a letter which I received dated April 30, 1998 denying our office's request for information concerning the above matter.

As directed by Mr. Stevenson in the attached letter, I contacted Eva M. Grady, Paralegal Specialist, by telephone. She advised me that there were three (3) epidemiological investigative reports and that she could not understand why they had not been forwarded. She also advised me that there were nine (9) other unconfirmed reports which possibly could have been sent to me. She further advised me that she would have an individual from the Compliance Department investigating this matter contact me because this was still an open case. **I've never received the three (3) confirmed reports nor the nine (9) unconfirmed reports. I have never been contacted by anyone from the Compliance Department.**

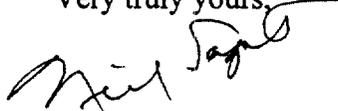
We have a claim involving a very small child whose finger was partially severed by the malfunction in this Baby's Dream Furniture, Inc. Crib. When this occurred in March, 1997, the parents contacted Baby's Dream Furniture, Inc. and were advised by their representatives that they had "never heard of such a thing and that it had never happened before." Within a year the parents had received information from Baby's Dream Furniture recalling the crib because of exactly the type of accident that occurred to their daughter, Amber A. Cannon. The Consumer Products Safety Commission was directly responsible for that recall. I can see no possible reason why we are not entitled to the information that is available to your public agency. This concerns small children injured by this product all over the United States and Canada.

FOIA Appeal  
May 27, 1998  
Page 2

**Please consider this a formal appeal of the denial of access to the records requested.**

Please advise us of the next step which must be taken to obtain the records in question that have been denied.

Very truly yours,

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

NEIL SAGOT

NS:ctc

Enclosure

cc: Mr. & Mrs. Greg Cannon (via regular mail)

Todd A. Stevenson, Deputy Secretary (via regular mail)

Eva M. Grady, Paralegal Specialist (via regular mail)



U.S. CONSUMER PRODUCT SAFETY COMMISSION

WASHINGTON, D.C. 20207

April 30, 1998

**Certified Mail**

Susan T. Lopez  
Sagot, Jennings and Sigmond  
The Penn Mutual Towers, 16th Floor  
510 Walnut Street  
Independence Square  
Philadelphia, PA 19106-3683

**RE: FOIA Request S-803132: Baby's Dream Furniture, Inc. Cribs**

Dear Ms. Lopez:

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

The records responsive to your request are contained in the Commission's law enforcement investigatory file (RP980062). 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 in litigation with the agency. Exemptions 7(A) provide for the withholding from disclosure records or information compiled for law enforcement purposes, to the extent that the production of such law enforcement records or information could reasonably be expected to interfere with enforcement proceedings.

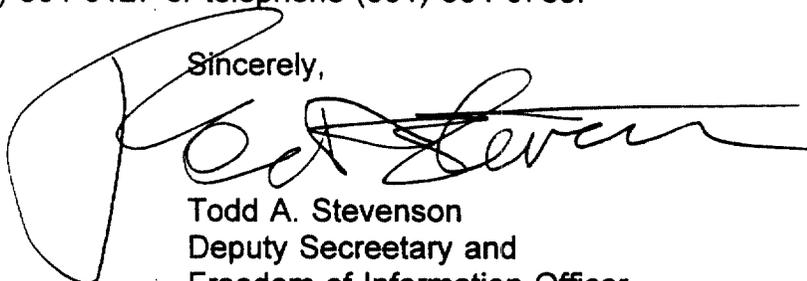
The records being withheld consist of internal notes, memoranda and other documents containing recommendations, opinions, suggestions and analyses of the Commission's technical and legal staffs. The records constitute both predecisional and deliberative discussion that clearly falls within the attorney-client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

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

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

This completes the processing of your request. The cost to the Commission to perform the searches and prepare this information was \$50.00. 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,

A handwritten signature in black ink, appearing to read "Todd A. Stevenson". The signature is written in a cursive style with a large, sweeping initial "T".

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



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: jrbromme@cpsc.gov

July 14, 1998

Mr. Stanton O. Berg  
6025 Gardena Lane N.E.  
Minneapolis, Minnesota 55432

Re: FOIA Appeal S707098  
Daisy Powerline 880

Dear Mr. Berg:

By letter dated June 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.

I affirm the FOI Officer's decision to withhold a portion of the records responsive to your FOIA request. These records are contained in the Commission's law enforcement investigatory files. My decision is based on Exemptions 3, 4, and 5 of the FOIA for the reasons discussed below.

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(b)(5) of the Consumer Product Safety Act (CPSA) to withhold information that was submitted to the Commission pursuant to section 15(b) of the CPSA. 15 U.S.C. §§ 2064(b);<sup>1</sup> 2055(b)(5).

---

<sup>1</sup> Section 15(b) imposes requirements on manufacturers, distributors and retailers of consumer products distributed in commerce. Any such firm must notify the Commission if it obtains information that reasonably supports the conclusion that such a product fails to comply with an applicable consumer product safety rule, contains a defect that could create a substantial product hazard, or creates an unreasonable risk of serious injury or death. 15 U.S.C. § 2064(b).

Mr. Stanton O. Berg  
July 14, 1998

Page 2

Section 6(b)(5) prohibits the disclosure of information about a consumer product submitted pursuant to section 15(b) unless (1) the Commission has issued a complaint under section 15(c) or (d) of the CPSA alleging that such product presents a substantial product hazard, (2) the Commission has accepted in writing a remedial settlement agreement, or (3) the person submitting the information agrees to its public disclosure. Since none of the above three exceptions applies, section 6(b)(5) requires that we withhold the information in this file that was submitted by the Daisy Company.

Under FOIA Exemption 3, the Commission is also 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. Such information is confidential if disclosure is likely (1) to impair the government's ability to obtain the necessary information in the future or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained. In addition, CPSA section 6(a)(2) incorporates Exemption 4 of the FOIA, which protects trade secrets and confidential commercial information obtained from a person. Some of the Commission's law enforcement investigatory files that are responsive to your FOIA request contain proprietary and confidential information that is being withheld under FOIA Exemptions 3 and 4.

Also, under FOIA Exemption 3, the Commission is relying on section 6(b)(1) of the CPSA. 15 U.S.C. § 2055. Section 6(b)(1) requires that before disclosing information that would enable the public to identify the manufacturer or private labeler of a consumer product, the Commission "shall take reasonable steps to assure . . . that [the] information . . . is accurate, and that such disclosure is fair in the circumstances and reasonably related to effectuating the purposes of the [CPSA]." The information being withheld consists of consumer product complaints and portions thereof. The Commission's "reasonable step" to assure the accuracy of these complaints consists of mailing letters to the complainants asking them to confirm the information which they submitted to us. 16 C.F.R. §1101.32(a)(3). Therefore, since the Commission was unable to confirm the information in these complaints, it has withheld them in their entirety or has withheld certain portions of them.

Finally, under FOIA Exemption 3, the Commission is relying on section 25(c) of the CPSA. 15 U.S.C. § 2074(c). Section 25(c) of the CPSA prohibits the identification of any injured person or any person treating him/her without the consent of the

Mr. Stanton O. Berg  
July 14, 1998

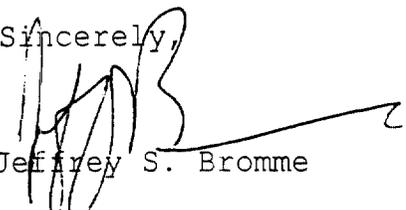
Page 3

person so identified. Since the Commission was unable to obtain such consent, in some instances, portions of some documents have been deleted.

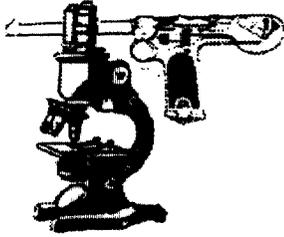
FOIA Exemption 5 provides for the withholding of certain inter-agency and intra-agency documents. It incorporates the deliberative process privilege, which protects advice, recommendations, and opinions that are part of the agency's deliberative, consultative, and decision-making processes. Although this privilege applies only to the opinions or recommendations in a document, and not to factual information, facts may be withheld when inextricably intertwined with the exempt portions. Under FOIA Exemption 5, the Commission is withholding intra-agency memoranda and analyses.

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



**STANTON O. BERG**  
Firearms Consultant  
**6025 Gardena Lane, Minneapolis, Minnesota 55432**  
612-571-9314 E-Mail: FORENSIC@AOL.COM

OFFICE OF THE SECRETARY  
FREEDOM OF INFORMATION  
FRI JUN 22 P 1:27

15 June 1998

**Todd A. Stevenson**  
Deputy Secretary and FOI Officer  
Freedom of Information Division  
4340 East West Highway, Room 502  
Bethesda, Maryland 20814-4408

**Re: FOIA Request S707098 Daisy Powerline 880**

Dear Mr. Stevenson:

Thank you for your letter of 11 June 1998.

I still desire to appeal the lack of disclosure of information as outlined in my letter of 9 May 1998. I appreciate the information in your letter however I feel that this is not reasonable.

Yours very truly,

  
**Stanton O. Berg**



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

June 11, 1998

Mr. Stanton O. Berg  
6025 Gardena Lane N.E.  
Minneapolis, MN 55432

A handwritten signature in black ink, appearing to be "S. Stevenson", is written over the right side of the letter.

Re: FOIA Request S707098: Daisy Powerline 880 Air Rifles / Materials Released in *Daisy Manufacturing Company, Inc., v. Consumer Product Safety Commission*

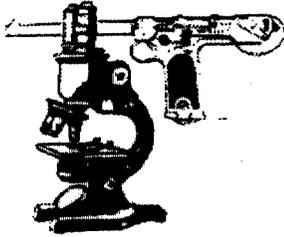
Dear Mr. Berg:

Regarding your letter dated May 9, 1998, that seeks information that we have already withheld from you. As explained in my letter to dated May 1, we have released the only releasable portions of the files (that are responsive to your request) after the conclusion of litigation with Daisy Manufacturing Company, Inc., about these disclosure of these same files. All of the withheld portions of the files were withheld for the reasons explained in the May 1 letter. As to the specific portions regarding a November 2, 1995, letter and any responses, which constitute information submitted by Daisy under section 15(b) of the Consumer Product Safety Act (CPSA), the information was withheld applying Exemption 3 of the Freedom of Information Act (FOIA) and section 6(b)(5) of the CPSA. That section prohibits the release of information submitted under section 15(b), where the Commission has not issued a complaint or accepted a remedial settlement agreement and the firm has not consented to disclosure. We have that situation with this information. CPSA section 15(b) requires manufacturers to report to the Commission and provide information regarding their products and potential substantial product hazards.

I hope this clarifies our May 1 disclosure to you. If you still want to appeal the withholdings, write me again and we will process your appeal.

Sincerely,

Todd A. Stevenson  
Deputy Secretary and  
Freedom of Information Officer



**STANTON O. BERG**

Firearms Consultant

**6025 Gardena Lane, Minneapolis, Minnesota 55432**

612-571-9314 E-Mail: FORENSICB@AOL.COM

9 May 1998

**FOIA APPEAL**

General Counsel

Office of the Secretary

U.S. Consumer Product Safety Commission

Washington, D.C. 20207

**Re: FOIA Request S707098 Daisy Powerline 880**

My original request was dated 18 June 1997 and was for information on Daisy airgun gravity feed systems used in the Models 880 and 840.

My letter referenced testimony (deposition) by a Daisy representative in which he advised that the CPSC has done "extensive research on the gravity feed system, safety mechanism, and they concluded that we had no design inherent defects in the gun...CPSC agrees there is not a design defect."

Very little of the information provided in response to my request was actually in point with the information requested. Your response letter was dated May 1, 1998, almost 1 year later.

One document dated November 2, 1995 from the US CPSC (Marc J. Schoem) directed to Daisy attorney Aaron Locker is however in point. Unfortunately this document which contains a series of recommendations by CPSC to Daisy has one of the recommendations deleted. Recommendation No. 3 is deleted. I cannot understand how this deletion can be justified. Daisy's response is also missing as is any follow up activity since November 2, 1995.

I request the deleted information from the November 2<sup>nd</sup>, 1995 letter as well as Daisy's response and the follow up activity since that date.

Yours very truly,

**Stanton O. Berg**

CPSC/OFFICE OF THE SECRETARY  
RECEIVED  
MAY 13 P 3:27

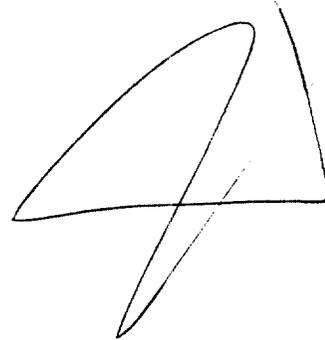


U.S. CONSUMER PRODUCT SAFETY COMMISSION  
WASHINGTON, D.C. 20207

May 1, 1998

CERTIFIED MAIL

Mr. Stanton O. Berg  
6025 Gardena Lane N.E.  
Minneapolis, MN 55432



Re: FOIA Request S707098: Daisy Powerline 880 Air Rifles / Materials Released in *Daisy Manufacturing Company, Inc., v. Consumer Product Safety Commission*

Dear Mr. Berg:

Thank you for your Freedom of Information Act (FOIA) request to the Commission for records regarding certain airguns made by the Daisy Manufacturing Company (Daisy). The records from the Commission files responsive to your request have been processed and copies of the releasable responsive records are enclosed.

The enclosed documents are from the Commission's Office of Compliance file designated CA940002, which is composed of seven packets of file materials. Following the courts' decisions in *Daisy Manufacturing Company, Inc. v. Consumer Product Safety Commission* (W.D. Ark., Civil Action No. 96-5152), and *Daisy Manufacturing Company, Inc. v. Consumer Product Safety Commission* (8th Cir., No. 97-1458), we are disclosing the releasable responsive documents. The documents released here are from: Packet One - correspondence and other documents from pages 1, 2 with excisions, 3, 68-71, 73, 74, and 316; Packet Two - correspondence and other documents from pages 660, 661, 664, 665, 667, 668, 682, 712, 739, 759, 769, 809, 811, 821, 823, 825, 826, 862, 863, 917, 918, and 927; Packet Five - 15 Epidemiologic Investigation Reports with related complaints (some with deletions); and Packet Six - summaries of incident reports with portions deleted from pages 2017, 2018, 2020-2022, 2024-2027, 2033-2048, 2051, 2052, 2083, 2084, 2086, 2087, 2089-2093, 2098, 2102-2144, 2146, 2149-2156, 2180 and 2181. The records were generated by the Commission itself for regulatory or enforcement purposes. The Commission has established management systems under which supervisors are responsible for reviewing the work of their employees or contractors. The information has 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.

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

The other records responsive to your request from the Commission's Office of Compliance file CA940002 are contained in the law enforcement investigatory files. We must withhold the records pursuant to the FOIA Exemptions 3, 4, and 5, 5 U.S.C. §§ 552(b)(3), (b)(4) and (b)(5), and sections 6(a)(2), 6(b)(1), 6(b)(5) and 25(c) of the Consumer Product Safety Act (CPSA), 15 U.S.C. §§ 2055(a)(2), (b)(1) and (b)(5), and § 2064(c).

FOIA Exemption 3 provides for the withholding from disclosure of matters that are specifically exempted from disclosure by another statute. In applying Exemption 3, we are also 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 or records derived from and based on that information. The Commission has not issued a complaint or accepted a remedial settlement agreement and the firm has not consented to disclosure.

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

Certain portions of the file materials related to product complaints and reported incidents that the Commission has obtained from consumers and others, but the Commission has not received confirmation of the accuracy of the information in the complaints and reported incidents. We have excised portions from these documents or withheld the documents entirely where the information pertains to the unconfirmed product complaints and reported incidents. In applying FOIA Exemption 3 to this information, we are relying on section 6(b)(1) of the CPSA. That section prohibits the Commission from disclosing information about a consumer product that identifies a manufacturer or private labeler unless the Commission has taken "reasonable steps" to assure that the information is accurate, that

disclosure is fair in the circumstances, and that disclosure will be reasonably related to effectuating the purposes of the laws that the Commission administers. See Commission regulation, 16 C.F.R. § 1101.32. The Commission's policy is to withhold each consumer complaint and reported incident unless: (1) the Commission has conducted an investigation of the complaint and reported incident, and the investigation corroborates the substance of the complaint and reported incident; (2) the Commission has conducted or obtained a technical, scientific, or other evaluation of the product that is the subject of the complaint and reported incident, and evaluation corroborates the substance of the information contained in the complaint and reported incident; or (3) the consumer or person reporting or submitting the incident confirms the accuracy of the information. The Commission did not take any of these steps with regard to these certain consumer complaints and reported incidents and those portions of the printout summaries responsive to your request.

Certain internal staff memoranda and analyses are also being withheld pursuant to FOIA Exemption 5. Exemption 5 provides for the withholding from disclosure of inter-agency and intra-agency memoranda which would not be available by law to a party other than an agency in litigation with the agency. The records being withheld consist of internal staff 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 discussions that clearly fall 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.

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

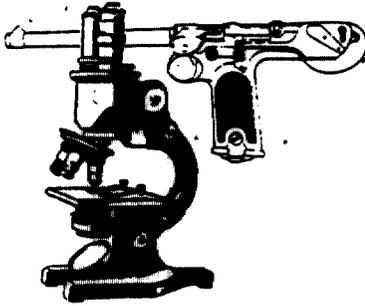
According to the Commission's regulations implementing the FOIA at 16 C.F.R. § 1015.7, a denial of access to records may be appealed to the General Counsel of the Commission within thirty (30) days of your receipt of this letter. An appeal must be in writing and addressed to: FOIA APPEAL, General Counsel,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

Processing this request, performing the file searches and preparing the information, cost the Commission \$100.00. In this instance, we have decided to waive all of the charges.

Sincerely,

Todd A. Stevenson  
Deputy Secretary and  
Freedom of Information Officer

Enclosures



**Stanton O. Berg**

FIREARMS CONSULTANT

6025 GARDENA LANE N.E. MINNEAPOLIS, MN 55432

(612) 571-9314

FORENSIC FIREARMS EXAMINATIONS AND CONSULTATIONS

18 June 1997

Colin B. Church, Voluntary Standards Coordinator  
U.S. Consumer Product Safety Commission  
Washington, D.C. 20207

R/1

Re: Airgun Gravity Feed Systems - Daisy

A Daisy Co. representative has stated that the CPSC has done "extensive research on the gravity feed system, safety mechanism, and they concluded that we had no design inherent defects in the gun... CPSC agrees there is not a design defect."

I was unaware that your office did design analysis of airgun manufacturers products, particularly design analysis of the gravity feeding and loading mechanisms and safety mechanisms.

If this has been done, particularly for the Daisy Co., I would like to secure a copy of such analysis and in particular the "extensive research" referred to.

The reference was to the Daisy 880, and 840 Powerline series of  
airguns that utilize a gravity feed system.

1237  
Your assistance will be much appreciated.

ERUS  
DIF. 4

If I have directed this inquiry to the wrong person, I would appreciate it if you could pass it on the correct party.

Yours very truly,

  
Stanton O. Berg

5-707098



DEN  
805081



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

June 29, 1998

Ms. Inez B. Vecchietti  
4924 Crescent Street  
Bethesda, MD 20816

**Re: FOIA Request S805081: Administrative Officer, GS-11 in AED for Hazard Identification and Reduction**

Dear Ms. Vecchietti:

Thank you for your Freedom of Information Act (FOIA) request to the Commission seeking personnel records about the Administrative Officer, GS-11, position in the Commission's Office for Hazard Identification and Reduction. Enclosed are copies of the responsive records: 1) Position Description for Administrative Officer, GS-11, in the office of the AED for Hazard Identification and Reduction; 2) the SF-52 Request for Personnel Action for the position; and 3) the SF-50, Notification of Personnel Action for the position. The SF-52 contains the authority, justification and request for the upgrade. Due to the accretion of duties in the position, the job was not advertised and there is no vacancy announcement.

We have excised portions of the personnel forms that would reveal personal information about the employee involved, pursuant to Exemption 6 of the FOIA, 5 U.S.C. § 552(b)(6). Exemption 6 provides for the withholding of personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. We believe that the personal information removed from these personnel records fall within the protection of the FOIA Exemption. We have determined that the disclosure of these types of records would be contrary to the public interest.

We now consider as moot your appeal as to the delay of the response to your request. However, you may now appeal any of the withholdings with this disclosure. According to the Commission's regulations implementing the FOIA at 16 C.F.R. § 1015.7, a partial denial of access to records may be appealed to the General Counsel of the Commission within thirty (30) days of your receipt of this letter. An appeal must be in writing and addressed to: FOIA APPEAL, General Counsel, ATTN: Office of the Secretary, U.S. CONSUMER PRODUCT SAFETY COMMISSION, Washington, D.C. 20207.

Ms. Inez B. Vecchietti

Page 2

Processing this request, performing the file searches and preparing the information, cost the Commission \$60.00. 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

Enclosures



United States  
**CONSUMER PRODUCT SAFETY COMMISSION**  
Washington, D.C. 20207

MEMORANDUM

DATE: June 23, 1998

TO : Jeffrey S. Bromme  
General Counsel  
Office of the General Counsel

Through: Todd Stevenson, FOI Officer

FROM : Inez B. Vecchietti *I. Vecchietti*  
Administrative Officer  
Directorate for Epidemiology & Health Sciences

SUBJECT: FOI Request

On May 15, 1998, I made an FOI request for five items. I attach a copy of that request. More than 30 days have passed and I have received no response to my request. I am assuming that because I have received no response, that constitutes a denial. Therefore, I am appealing and asking that I be provided with the information I requested on May 15th. I would appreciate a response from you in this regard as soon as possible.

Mr. Bromme, I have been employed here at CPSC since 1973, a total of 25 years and in all that time this is my first FOI request. The Commission's treatment of me by denying and/or ignoring my request to see papers that I understand I am entitled to see is reprehensible to me.

Here at the Commission I am in 604-10-extension 1335.  
My home address: 4924 Crescent Street  
Bethesda, MD 20816

Attachment(s)



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

FREEDOM OF INFORMATION ACT (FOIA)  
Request for Information

Date: 5/15/98 Received By: JVAD

REQUESTER: INEZ B VECCHIETTI ELS  
FIRM: 4924 CRESCENT ST  
ADDRESS: BETHESDA, MD 20816-1702 EXAMINER  
Telephone: 504 0539 X1335

- DOCUMENTS REQUESTED:
- 1. POSITION DESCRIPTION FOR ADMIN. OFFICER GS-11 (R STAFF ASSIST.) IN AED HAZARD ID & REJECT. D-3
  - 2. JUSTIFICATION MEMO.
  - 3. FORM 50, 52, FOR THE PERSONNEL ACTIONS WITH EFFECTIVE DATES
  - 4. VACANCY ADVERTISEMENT INFO

Obtain the following information from the requester:  
Have you submitted a written request for the records? 5. AUTHORITY FOR ACTION  
We want to avoid duplicate work and written requests are given priority (by our regulations) and are processed more efficiently.  
Will you pay any fees incurred by processing your request? \_\_\_\_\_  
Can we sent the materials by MAIL? \_\_\_\_\_  
Or Call for pick-up at our office? \_\_\_\_\_  
Please indicate the purpose of your organization or your need for the requested information for the purposes of assessing any applicable fee waivers: \_\_\_\_\_

Fees charges are different for commercial use requesters, non-commercial educational or scientific institutions, the news media or "others," including consumers and plaintiff attorneys. 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 FOIA regulations and fee schedule allow for the charges for file search time at \$12.00 an hour for clerical personnel and \$19.60 an hour for professional personnel, \$19.60 an hour for review time to determine whether records were permitted to be withheld, \$0.10 a page for duplication services and for computerized records: central processing unit (CPU) time, \$0.32 a second, \$10.00 for 1,000 lines printed. If you have questions, please contact the Commission's Office of the Secretary Freedom of Information Division by letter, facsimile (301) 504-0127, or call (301) 504-0785.  
CPSC Form 335

5805081

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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

July 14, 1998

Joseph R. Viola, Esq.  
Lewis M. Levin & Associates  
Seven Penn Center  
1635 Market Street  
Philadelphia, Pennsylvania 19103

Re: FOIA Appeal 805090 on  
State Industries hot water heaters

Dear Mr. Viola:

On June 11, 1998, you appealed the decision of the Commission's Freedom of Information Officer to withhold information responsive to your Freedom of Information Act (FOIA) request. Under authority delegated to me by the Commission, 16 C.F.R. § 1015.7, I have reviewed your appeal. I affirm the Freedom of Information Officer's decision to withhold 23 unconfirmed consumer complaints, based on FOIA Exemption 3. 5 U.S.C. § 552(b)(3).

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

Section 6(b)(1) requires that before disclosing information that would enable the public to identify the manufacturer or private labeler of a consumer product, the Commission "shall take reasonable steps to assure . . . that [the] information . . . is accurate, and that such disclosure is fair in the circumstances and reasonably related to effectuating the purposes of the [CPSA]." The information that is being withheld pursuant to Exemption 3, relying on section 6(b)(1), consists of 23 unconfirmed consumer complaints. The Commission's regulations require that this information be confirmed as a reasonable step

Joseph R. Viola, Esq.  
July 14, 1998

Page 2

to assure the accuracy of the information. 16 C.F.R. § 1101.32(a)(3).

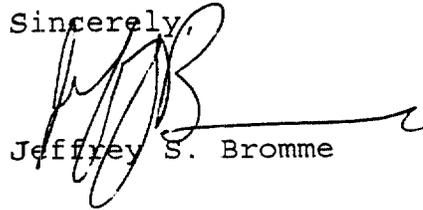
When consumers submit complaints to the Commission, the Commission sends them forms requesting that they confirm the information as accurate to the best of their knowledge and belief. We also send each submitter a franked return envelope for mailing back the confirmation. This process, which is voluntary on the part of the submitter, has been in place since 1983. The 23 complaints being withheld were subjected to this process. However, because the submitters of these complaints did not respond to the Commission's request for confirmation, the Commission may not disclose the complaints under the FOIA.

You have argued (1) that submitters may fail to return the confirmation forms because they have no changes, additions, or comments to make to their complaints; (2) that you will use the complaints for a limited litigation purpose and not for public dissemination; and (3) that I should exercise my discretion to waive a non-mandatory FOIA exemption.

However, in response to your first point, the Commission's applicable regulation that implements section 6(b) specifically requires a confirmation. 16 C.F.R. § 1101.32(a)(3). An affirmative action by the complainant is necessary, and silence is insufficient. In response to your second point, your use of the complaints is irrelevant. The Commission's disclosures and withholdings under FOIA are unaffected by how disclosed information will be used. If two requesters seek the same information, but for differing purposes, we must provide them with the same information. Finally, in response to your third point, section 6(b) of the CPSA is a mandatory statutory provision. Therefore, I must apply FOIA Exemption 3.

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

LEWIS M. LEVIN & ASSOCIATES  
ATTORNEYS AT LAW  
LEWIS M. LEVIN & ASSOCIATES PROFESSIONAL CORPORATION  
SUITE 300  
PENN CENTER  
1635 MARKET STREET  
PHILADELPHIA, PENNSYLVANIA 19103

JOSEPH R. VIOLA

FAX (215) 496-9006

(215) 496-9000

June 25, 1998

ON 8  
STATE

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

Re: **FOIA Request S-805090: CPSC information relating to injuries associated with electric and gas hot water heaters manufactured by State Industries, Inc. (R-72-98)**

Dear Sir or Madam:

Pursuant to 16 C.F.R. § 1015.7 we wish to appeal the denial of access to 23 of the 29 product complaints and reported incidents obtained from consumers, attorneys for consumers or others in response to the above-referenced request under the Freedom of Information Act. A copy of the Commission's June 11, 1998 letter over the signature of Freedom of Information Officer Stevenson is enclosed herewith.

The apparent basis for this partial denial is the fact that these particular complainants did not sign an unsworn form statement supplied by the CPSC providing space to make changes, additions or comments and stating that the information recorded by the CPSC staff was accurate to the best of the complainant's knowledge and belief. It would appear, however, that a significant number of complainants, in this instance nearly 80 percent, do not return the CPSC form. This may simply mean that the complainant had no changes, additions or comments to offer, and certainly does not suggest that the incident reported was a fabrication.

The purpose of the accuracy requirements of 15 U.S.C. § 2055(b)(1) will not be contravened by disclosure of these 23 documents. All documents obtained pursuant to the instant FOIA request will be used exclusively for litigation purposes in a particular case and not for public dissemination. The admissibility of the documents will be subject to the applicable evidentiary standards governing the judicial proceedings. They may be offered solely for the limited purpose of demonstrating that the complaints were lodged with the CPSC and/or that the

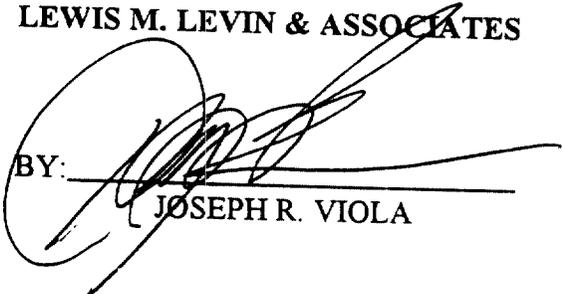
**General Counsel  
Office of the Secretary  
U.S. Consumer Product Safety Commission  
June 25, 1998  
Page Two**

manufacturer was on notice of consumer complaints. The Commission is free to disclaim any representation as to their accuracy and the manufacturer is equally free to insert its comments at the time of disclosure.

Pursuant to 16 C.F.R. § 1015.7(d), the General Counsel has the authority to disclose, in the exercise of his or her discretion, records exempt from mandatory disclosure under 5 U.S.C. § 552(b), which should include records which may not satisfy the accuracy requirement of 15 U.S.C. § 2055(b)(1). We therefore respectfully request that this appeal be granted and the 23 documents disclosed subject to such restrictions, if any, that the Commission may deem necessary and appropriate.

Respectfully submitted,

**LEWIS M. LEVIN & ASSOCIATES**

BY: 

JOSEPH R. VIOLA

JRV:sm  
Enclosure  
cc: Todd A. Stevenson, Esquire

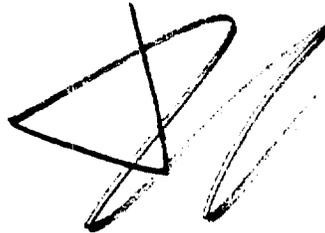
Firm: 0118 State Ind. (water heaters), Off(6b release), Off(part. denial), Ex. 3, ADFS R-72-98, chron, spec. 3285



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

June 11, 1998

Lewis M. Levin, Esq.  
Lewis M. Levin & Associates  
Seven Penn Center  
1635 Market Street, Suite 300  
Philadelphia, PA 19103



**RE: FOIA Request S-805090: CPSC information relating to injuries associated with electric and gas hot water heaters manufactured by State Industries, Inc. (R-72-98)**

Dear Mr. Levin:

Thank you for your Freedom of Information Act (FOIA) request seeking information from the Consumer Product Safety Commission (Commission). The records from the Commission files responsive to your request have been processed and copies of the releasable records are enclosed. The enclosed records represent a final response to your request (we provided a partial response under cover letter dated May 27, 1998).

The enclosed records include seventeen (17) 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. Where possible, Commission staff have examined the products reportedly involved in the incidents. Although the Commission has investigated the incidents described in the investigation reports, the Commission has not necessarily determined the cause of the incidents.

Also enclosed are records pertaining to five (5) product complaints and reported incidents submitted to the Commission by consumers, attorneys for consumers or others. The submitters have confirmed the accuracy of the information in the complaints and reported incidents. The Commission has neither investigated the incidents nor conducted or obtained any evaluations of the products that corroborate the substance of the information contained in the complaints and reported incidents.

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© of the Consumer Product Safety Act, 15 U.S.C. § 2074(c)(1), prohibits such disclosures without the consent of those individuals.

We must withhold twenty three (23) product complaints and reported incidents that the Commission has obtained from consumers, attorneys for consumers or others. The Commission has not received confirmation of the accuracy of the information in the complaints and reported incidents. Pursuant to Exemption 3 of the FOIA, 5 U.S.C. § 552(b)(3) and section 6(b)(1) of the Consumer Product Safety Act (CPSA), 15 U.S.C. § 2055(b)(1), and our regulations, 16 C.F.R. § 1101.32, we must withhold the unconfirmed product complaints and reported incidents.

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

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

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

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) duplication of 754 pages X \$0.10/page = \$75.40.
- (2) file searching by professional personnel, 2 3/4 hours X \$19.60/hour = \$53.90;
- (3) review time to determine whether records were permitted to be withheld, 1/2 hour X \$9.80 hour = \$9.80

Please forward the total amount due, **\$139.10**, 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

Enclosure

Rec'd 4/23/98

LEWIS M. LEVIN & ASSOCIATES

ATTORNEYS AT LAW  
OFFICE OF THE SECRETARY  
FREEDOM OF INFORMATION ACT  
PROFESSIONAL CORPORATION

1998 APR 21 P 1.32  
SUITE 300  
SEVEN PENN CENTER  
1635 MARKET STREET  
PHILADELPHIA, PENNSYLVANIA 19103

LEWIS M. LEVIN

FAX (215) 496-9006

(215) 496-9000

April 17, 1998

Todd A. Stevenson  
Freedom of Information Officer  
Office of the Secretary  
Consumer Product Safety Commission  
Washington, DC 20207

A/1

Re: **FOIA Request:**  
**MANUFACTURER: STATE INDUSTRIES, INC. (ASHLAND CITY, TN)**  
**PRODUCT: ELECTRIC AND GAS HOT WATER HEATERS**

Dear Mr. Stevenson:

0118

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552, and Section 6 of the Consumer Product Safety Act, 15 U.S.C. § 2055, kindly provide us, at our firm's expense, all information in the possession of the Consumer Product Safety Commission relating to personal injuries associated with electric and gas hot water heaters manufactured by State Industries, Inc., of Ashland City, Tennessee.

D.Y

State Industries claims to be the world's leading water heater manufacturer, producing over 2.5 million water heaters a year. Its water heaters are apparently re-sold and marketed under various brand names as well as being directly marketed by State Industries. We are interested in all such products.

Thank you for your anticipated courtesy and cooperation.

Very truly yours,

LEWIS M. LEVIN & ASSOCIATES

BY: Lewis M. Levin  
Lewis M. Levin, Esquire

LML:sm

5-505070

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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

July 30, 1998

Mr. Robert Florio  
61 Tioga Walk  
Breezy Point, New York 11697

Re: FOIA Appeal 804107 on  
Living Air air filters

Dear Mr. Florio:

On July 16, 1998, you appealed the decision of the Commission's Freedom of Information Officer to withhold information responsive to your Freedom of Information Act (FOIA) request. Under authority delegated to me by the Commission, 16 C.F.R. § 1015.7, I have reviewed your appeal. I affirm the Freedom of Information Officer's decision to withhold six unconfirmed consumer complaints, based on FOIA Exemption 3. 5 U.S.C. § 552(b)(3).

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

Section 6(b)(1) requires that before disclosing information that would enable the public to identify the manufacturer or private labeler of a consumer product, the Commission "shall take reasonable steps to assure . . . that [the] information . . . is accurate, and that such disclosure is fair in the circumstances and reasonably related to effectuating the purposes of the [CPSA]." The information that is being withheld pursuant to Exemption 3, relying on section 6(b)(1), consists of six unconfirmed consumer complaints. The Commission's regulations require that this information be confirmed as a reasonable step to assure the accuracy of the information. 16 C.F.R. § 1101.32(a)(3).

Mr. Robert Florio  
July 30, 1998

Page 2

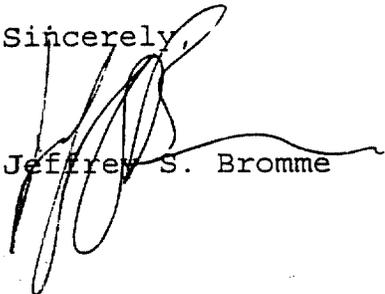
When consumers submit complaints to the Commission, the Commission sends them forms requesting that they confirm the information as accurate to the best of their knowledge and belief. We also send each submitter a franked return envelope for mailing back the confirmation. This process, which is voluntary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

Mr. Todd Stevenson's June 18, 1998 letter and this letter discuss only your request for "other claims or complaints" about the Living Air filters. However, I recognize that your February 8 and July 16, 1998 letters also ask that the Commission conduct an investigation, contact the company, and otherwise assist you in your claim against the manufacturer of these filters.

The Commission has neither the statutory mandate nor the resources to represent individual consumers in claims against manufacturers, distributors or retailers. Rather, we collect information about potentially unsafe products from consumers, from companies, from hospitals, and from other sources. When appropriate, we undertake an investigation of those products. If we can document a safety problem, we pursue recalls, penalties, prospective regulations, and other actions that address the risk of injury presented to all consumers using the products. For assistance with their own claims, consumers must rely on actions that they, their private lawyers, or their local consumer groups might undertake.

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

Robert Florio  
61 Tioga Walk  
Breezy Point, New York 11697

July 16, 1998

U.S. CONSUMER PRODUCT SAFETY COMMISSION  
OFFICE OF THE SECRETARY  
1573 J. 21 P. 201

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

**Re: FAIA Request S804107 Living Air air filter / Complaints or Incidents / File Search 1990 to the Present**

Dear Sir:

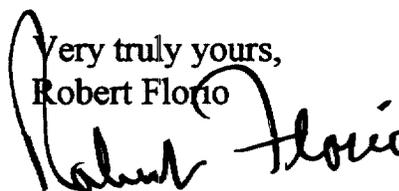
I am in receipt of a letter dated June 18, 1998 stating in effect that there was nothing more that could be done for me regarding my above captioned complaint against a company called **LIVING AIR**. The reason given was that no other initial complaints were confirmed after the initial complaint was made and your office does not have the facilities to conduct an investigation of the complaint and therefore was unable to corroborate the complaint.

I made my initial complaint to your office on the Internet on 1/6/98 at 7:51:12 PM and I confirmed the information in my complaint in writing to your office on 2/8/98 as requested by Ann Montalbano, Director, National Injury Information Clearinghouse.

I then e-mailed a note to Todd A. Stevenson, Deputy Secretary and Freedom of Information Officer at [www.tstevenson@cpsc.gov](mailto:www.tstevenson@cpsc.gov) and received no answer until the Certified Mail dated June 18, 1998 advising me that there was little your office can do with respect to my complaint. No information has been given me as to your contacting the company involved, or their response, if any, or if you have conducted an investigation into these matters.

Kindly look into this matter and advise at your earliest convenience.

Very truly yours,  
Robert Florio





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

June 18, 1998

CERTIFIED MAIL

Mr. Robert Florio  
701 N. Riverside Drive, Unit #803  
Pompano Beach, FL 33062-4539

Re: FOIA Request S804107 Living Air air filter / Complaints, or Incidents / File Search  
1990 to the Present

Dear Mr. Florio:

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 are enclosed. Enclosed are records pertaining to one product complaint and reported incident submitted to the Commission by a consumer or his or her attorney or others. The consumer or submitter has confirmed the accuracy of the information in the complaint and reported incident. The Commission has neither investigated the incident nor conducted or obtained any evaluations of the product that corroborate the substance of the information contained in the complaint and reported incident. In this case, we have removed the identity of the complainant at his or her request.

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

Mr. Robert Florio

Page 2

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

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

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

Processing this request, performing the file searches and preparing the information, cost the Commission \$35.00. In this instance, we have decided to waive all of the charges. Thank you for your interest in consumer product safety.

Sincerely,

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

Enclosures

Rec'd 3/13/98

Robert Florio  
701 N. Riverside Drive, Unit # 803  
Pompano Beach, FL 33062-4539

February 8, 1998

RE: Internet Form Complaint Doc # I9810020

U.S. Consumer Product Safety Commission  
National Injury Information Clearing House  
Rm. 504  
Washington, DC 20207

Attn: Ann Montalbano  
Director  
National Injury Information  
Clearinghouse

AIR FILTER  
0307

Dear Ms. Montalbano:

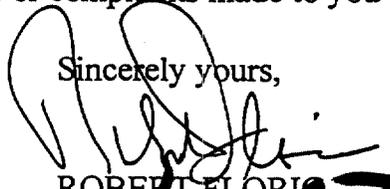
With regard to the above referenced complaint, I believe I furnished you with all the information I have in connection with the manufacturer and the retail dealer who actually sold us the machine.

I first wrote to Living Air at 9199 Central Avenue NE, Blaine, MN 55434 and a representative of the company telephoned me and said that I must take up the problem with the Dealer who sold me the machine for any adjustment or refund as they would not do anything for me.

I called Gourmet Water, at (954) 522-4326 and spoke with one Felix A. Lebel who said that his location has been changed to 916 N.E. 20th Ave., Ft. Lauderdale, FL 33304 and that he would do nothing for me as I purchased the machine almost one year ago. I explained to him that I had returned to New York for six months after I had purchased the machine and did not have an opportunity to speak with him before. He remained adamant about not making any kind of adjustment.

I believe the TV Weekly Show "60 Minutes" ran a segment about this exact product and the false and misleading claims Living Air Co. Exposes the public to. Can your office advise me as to other claims or complaints made to you concerning this product and what is being done about it.

Sincerely yours,

  
ROBERT FLORIO

5-804107

D.Y



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](mailto:jbromme@cpsc.gov)

September 4, 1998

Mr. Steven Lane  
FDR Research  
5161 River Road  
Bethesda, MD 20816

Re: FOIA Appeal #S806010  
Black and Decker Irons

Dear Mr. Lane:

By letter dated August 5, 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, which are included in an investigatory file.

I affirm the FOI Officer's decision to withhold the information responsive to your FOIA request. My decision is based on Exemptions 3, 4, 5, 7(A), and 7(E) of the FOIA. 5 U.S.C. §§ 552(b)(3), (b)(4), (b)(5), (b)(7)(A), and (b)(7)(E).

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