The information being withheld pursuant to FOIA Exemption 3, relying on CPSA section 6(a)(2), and FOIA Exemption 4 consists of engineering data, testing reports, an Underwriters Laboratories report, corporate inter-office memoranda, minutes of corporate meetings, and investigation summaries.

We are also withholding some responsive documents pursuant to FOIA Exemption 3 relying on CPSA section 6(b)(1). 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 must notify and provide a summary of the information to each manufacturer or private labeler to which the information pertains and provide a reasonable opportunity for comment. The Commission must also take reasonable steps to assure, prior to its disclosure, that such information is accurate, and that disclosure is fair in the circumstances and reasonably related to effectuating the purposes of the CPSA. Essentially the entire file identifies a Black & Decker product and would require that the company be given an opportunity to comment. Because, as discussed below, the investigatory file is still open, we will not seek section 6(b)(1) comments from Black & Decker at this time.

Finally, with respect to FOIA Exemption 3, we are relying on CPSA section 6(b)(5) to withhold information that was submitted pursuant to section 15(b) of the CPSA. 15 U.S.C. §§ 2055(b)(5) and 2064(b).[1] 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 all of the information

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[1]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).

submitted by the manufacturer.

Exemption 5 provides for the withholding of certain inter-agency and intra-agency documents. The documents withheld under this exemption consist of internal notes, staff memoranda, and other internal documents contained in an open investigatory file. This exemption incorporates the deliberative process privilege which protects advice, recommendations, and opinions that are part of the deliberative, consultative, and decision-making processes of the agency. Although this privilege applies only to the advice, opinions, or recommendations in a document and not to factual information, facts are withheld here because they are inextricably intertwined with the exempt portions.

Exemption 7(A) provides for the withholding of investigatory records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information could reasonably be expected to interfere with enforcement proceedings. The documents withheld under this exemption consist of the same documents being withheld under FOIA Exemption 5 as well as external correspondence that is included in the open investigatory file. I have determined that release of these documents could reasonably be expected to interfere with law enforcement proceedings.

Finally, some of the documents being withheld under FOIA Exemption 5, as discussed above, are also being withheld under FOIA Exemption 7(E). FOIA Exemption 7(E) provides for the withholding of investigatory records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law. Some intra-agency staff memoranda and internal notes meet this criterion.

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

Sincerely,

Jeffrey S. Bromme

CPSC/OFC OF THE SECRETARY
FOIA/OFC OF INFORMATION
1998 AUG -7 A 10:15

DEN 806010

FDR Research
5161 River Road
Bethesda, MD 20816
Tel 800.874.4337/301.951.1410
Fax 800.403.9949/301.215.6004
email fdrorders@disclosure.com

August 5, 1998

FOIA APPEAL
Attn: Office of the Secretary
U.S. Consumer Products Safety Commission
Washington, DC 20207

RE: FOIA Request S806010: Black & Decker Irons.
Appeal of Decision of Deputy Secretary and Freedom of Information Officer.

Dear Sir or Madam:

Pursuant to 16 CFR §1015.7, FDR Research hereby appeals the denial of access to records by Todd A. Stevenson, Deputy Secretary and Freedom of Information Officer, in response to the above-referenced FOIA Request relating to Black & Decker Irons. FDR Research requests that the Commission reconsider its denial of access to all records relating to Black & Decker Irons based upon FOIA Exemptions 5 and 7(A), 5 USC §§552(B)(5) and (B)(7)(A).

This appeal is made within thirty (30) days of the denial of access letter, a copy of which is enclosed for your reference.

Thank you for your reconsideration of this matter. I look forward to hearing from you soon.

Sincerely,

Steven Lane

Steven Lane
Researcher

DEN S806010

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

July 10, 1998

Certified Mail

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

Re: FOIA Request S806010: Black and Decker Irons

Dear Mr. Lane:

Thank you for your Freedom of Information Act (FOIA) request to the Commission. We must withhold the records responsive to your request, specifically, the records from the Commission's Office of Compliance's active law enforcement investigatory files, (file RP980135) pursuant to the FOIA Exemptions 5 and 7(A), 5 U.S.C. §§ 552(b)(5) and (b)(7)(A). Exemption 5 provides for the withholding from disclosure of inter-agency and intra-agency memoranda which would not be available by law to a party other than an agency in litigation with the agency. Exemption 7(A) provides for the withholding from disclosure records or information compiled for law enforcement purposes, to the extent that the production of such law enforcement records or information could reasonably be expected to interfere with enforcement proceedings.

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

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

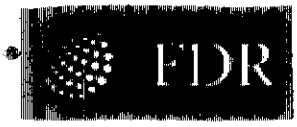
The Commission's Directorate for the National Injury Information Clearinghouse has informed us that you did not respond to their fee estimate letter, therefore, we will not further process the part of your request for injury information.

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

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

Sincerely,

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



May 28, 1998

FDR Research
5161 River Road
Bethesda, MD 20816
Tel 800.874.4337/301.951.1410
Fax 800.403.9949/301.215.6004
email fdrorders@disclosure.com

Mr. Todd Stevenson
Freedom of Information Act Officer
Consumer Products Safety Commission
Room 502
Washington, DC 20207

#R4,

Dear Mr. Stevenson:

This is a request pursuant to the Freedom of Information Act and implementing regulations to obtain a copy of any and all records, including but not limited to all publicly available information regarding any safety report, investigation for defective product, incident report or other report, correspondence, or the like pertaining to any iron manufactured by Black & Decker. I request that the search extend as far back as your records allow.

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I agree to pay all reasonable costs for obtaining the information. If the costs will exceed $250, please contact me so I may obtain approval for such an expenditure. Please forward any documents pursuant to the request to me: Steven Lane; FDR InfoCenters; 5161 River Road; Bethesda, MD 20816. Please call me at (301) 951-1410 if you have any questions regarding the request.

If any portion of the request is denied, please notify me in writing, stating reason(s) for the denial and specify alternatives available should I wish to further pursue the request after such denial.

Thank you in advance for your assistance.

Sincerely,

Steven Lane

Steven Lane
Researcher

5-80601D

36

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

OFFICE OF THE GENERAL COUNSEL

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

September 9, 1998

Mr. Russell Carollo
Dayton Daily News
45 S. Ludlow Street
Dayton, Ohio 45402

Re: FOIA Appeal ~~S512074~~ 802023

Dear Mr. Carollo:

By letter dated July 30, 1998, you appealed the decision of the Commission's Freedom of Information (FOI) Officer to withhold the document that is 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 document.

The FOI Officer has partially reconsidered his decision to withhold the document, a "Voluntary Standards Tracking Report." Except for three deletions, he has disclosed the report to you on September 3, 1998. He has also explained to you that the deleted information is being withheld under FOIA Exemption 5. 5 U.S.C. §§ 552(b)(5). As explained below, I affirm the FOI Officer's decision to withhold that deleted information.

FOIA Exemption 5 provides for the withholding of certain inter-agency and intra-agency documents and incorporates the deliberative process privilege. This privilege protects advice, recommendations, and opinions that are part of the deliberative, consultative, and decision-making processes of the agency. The information being withheld pursuant to FOIA Exemption 5 consists of staff notes that reflect internal recommendations.

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

Dayton Daily News

45 S. Ladlow St
Dayton OH 45402
Phone: (937) 225-2399
Fax: (937)-225-2241

July30, 1998

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

This is an appeal under the Freedom of Information Act, 5 U.S.C. 552. On Jan 30, 1998, I filed the attached FOIA, and the attached responses were sent subsequent to that request.

The response is not appropriate for the following reasons:

1) Paragraph 1 of my FOIA request asked for a "record layout (data dictionary)." No such document was provided and no reason was given for not providing the document.

2) Without the record layout listing the fields that were denied and the specific exemptions/reasons for denying each field/data element, it is very difficult to file an appeal. Without knowing the names of the fields/data elements and a description of what is in each field/data element, it is difficult to discuss specific pieces of information there were denied.

3) Records of compliance with standards set by the United States government is not something done behind the closed doors of government agencies – at least not in the United States of America. These records (the database/data elements) cannot be considered an "internal working document." In this country, citizens have a right to records showing how well a government agency is doing its job, especially when that jobs to protect the public from harm. This newspaper was the first to get the OSHA database, computer records of compliance with the standards of OSHA. If the OSHA database is considered a public record by the United States government, then there is no reason your database is not a public record also.

4) Even if there are portions of your database that you think are exempt (we maintain, however, there are no portions exempt), my request asked you to release "reasonable segregable portions." Filtering 100 fields/data elements from a database (I am sure your database would not require filtering nearly that many fields) requiries pushing 100 buttons – less time than it has taken me to get this far in this appeal letter. This involves making change commands for data elements or filtering for fields. The records are not "inextricably intertwined" as you suggest, and we could find dozens of computer experts to made declarations to that effect. I recommend you check several decisions made during the past two years by the United States District Court in Dayton, Ohio, in Dayton Daily News and/or Russell Carollo Vs. Department of Defense, Department of the Army, Department of the Navy and Department of the Air Force. You will find the court ordered the military to filter data from computer databases much larger than the one that is the subject of this appeal. That same court is the one that will hear this case should you deny this appeal and we decide to take further action, as we have many times in the past. Again, I will need the record layout to argue this point further.

5) If an agency of the United States government decides an entity is in violation of a regulation or standard or is in compliance, a decision has been made. If an agency conducts a review and makes a report, a decision has been made. This is factual information. House Report 101-193 says, "Protection for the decision-making process is appropriate only for the period while decisions are being made. Thus, the fifth exemption has been held to distinguish between documents that are predecisional and therefore may be protected and those which are post-decisional and therefore not subject to protection. Once a policy is adopted, the public has a greater interest in knowing the basis for the decision."

6) The information I seek is kept in a computer and is therefore data responsive to my request. The FOIA response letter is deceptive because it indicated the information was not in computer form.

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

Yours very truly,

Russell Carollo
Dayton Daily News

U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, D.C. 20207
July 10, 1998

CERTIFIED MAIL

Mr. Russell Carollo
Dayton Daily News
45 S. Ludlow Street
Dayton, OH 45402

RE: FOIA S-802023: Voluntary Standards Tracking Report

Dear Mr. Carollo:

This responds to your request to the U. S. Consumer Product Safety Commission (Commission) of January 30, 1998, for copies of the Commission's "Voluntary Standards Database."

We have been informed by staff of the Commission's Hazard Identification and Reduction Directorate that the only information we have is a "Voluntary Standards Tracking Report". This document is not an automated database, but rather an internal working document that includes draft plans and proposals. We must withhold the report pursuant to FOIA exemption 5 U.S.C. §§ 552(b)(5) which 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 a company or manufacturer in litigation with the agency.

The staff memoranda contain recommendations, opinions, suggestions and analyses of the Commission's technical staff. The materials constitute predecisional strategy discussions that clearly fall within the deliberative privilege. Any factual materials in the records not covered by some other exemption are inextricably intertwined with exempt materials or the disclosure of the factual materials would itself expose the deliberative process. We have determined that the disclosure of these certain 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 impair the frank exchange of views necessary with respect to such matters.

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

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

Sincerely,

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

U.S. CONSUMER PRODUCT SAFETY COMMISSION

WASHINGTON, D.C. 20207

February 12, 1998

RUSSELL CAROLLO
DAYTON DAILY NEWS
45 S LUDLOW STREET
DAYTON, OH 45402

RE: FOIA Request No. S-802023: Voluntary Standards Database

Dear Mr. Carollo:

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

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

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

Sincerely,

Todd A. Stevenson

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

U.S. CONSUMER PRODUCT SAFETY COMMISSION

WASHINGTON, D.C. 20207

February 12, 1998

RUSSELL CAROLLO
DAYTON DAILY NEWS
45 S LUDLOW STREET
DAYTON, OH 45402

RE: FOIA Request No. S-802023: Voluntary Standards Database

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

Sincerely,

Todd A. Stevenson

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

Dayton Daily News

45 S. Ludlow St.
Dayton OH 45402

Jan. 30, 1998

Phone: (937) 225-2399
Fax: (937)-225-2241

Tod Stevenson
Consumer Product Safety Commission (FOIA)

2-OF-2 FOIAS

Dear Mr. Stevenson,

Pursuant to the federal Freedom of Information Act, 5 U.S.C. 552, I request access to and copies of the Voluntary Standards Database or a computer database of a similar name. I understand that Colin Church of your agency is familiar with the database. I can accept this information in ASCII or EBCDIC; 9 track tape, 3.5 diskette or CD rom; 6250 or 1600 bpi; or, if necessary, another form more convenient for you. Please include some type of field delimiter and a record layout (data dictionary). I need raw data, not a text dump or printout.

If you conclude that any of the documents are exempt under the Act, please exercise you discretion to disclose these records nevertheless.

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

Include information that otherwise would be considered non-responsive, and let me know if any similar requests have been filed.

Notify me prior to incurring more than $50 of expenses. The FOIA Act provides for a waiver or reduction of fees if disclosure could be considered as "primarily benefiting the general public," and this information is related to my job as a journalist.

This information is of timely value, so please communicate questions by telephone rather than by mail. I look forward to your reply within 10 business days, as the statute requires.

Thanks for your assistance.

Yours very truly,

Russell Carollo
Dayton Daily News

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this is not my handwrite

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Officer (vh), chron. 2618

DENIAL 802023

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

July 10, 1998

CERTIFIED MAIL - RETURN RECEIPT

Mr. Russell Carollo
Dayton Daily News
45 S. Ludlow Street
Dayton, OH 45402

RE: FOIA S-802023: Voluntary Standards Tracking Report

Dear Mr. Carollo:

This responds to your request to the U. S. Consumer Product Safety Commission (Commission) of January 30, 1998, for copies of the Commission's "Voluntary Standards Database."

We have been informed by staff of the Commission's Hazard Identification and Reduction Directorate that the only information we have is a "Voluntary Standards Tracking Report". This document is not an automated database, but rather an internal working document that includes draft plans and proposals. We must withhold the report pursuant to FOIA exemption 5 U.S.C. §§ 552(b)(5) which 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 a company or manufacturer in litigation with the agency.

The staff memoranda contain recommendations, opinions, suggestions and analyses of the Commission's technical staff. The materials constitute predecisional strategy discussions that clearly fall within the deliberative privilege. Any factual materials in the records not covered by some other exemption are inextricably intertwined with exempt materials or the disclosure of the factual materials would itself expose the deliberative process. We have determined that the disclosure of these certain 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 impair the frank exchange of views necessary with respect to such matters.

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

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

Sincerely,

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

Dayton Daily News

45 S. Ludlow St.
Dayton OH 45402

Phone: (937) 225-2399
Fax: (937)-225-2241

Jan. 30, 1998

Tod Stevenson
Consumer Product Safety Commission (FOIA)

2 of 2 FOIAS ME/4

Dear Mr. Stevenson,

Pursuant to the federal Freedom of Information Act, 5 U.S.C. 552, I request access to and copies of the Voluntary Standards Database or a computer database of a similar name. I understand that Colin Church of your agency is familiar with the database. I can accept this information in ASCII or EBCDIC; 9 track tape, 3.5 diskette or CD rom; 6250 or 1600 bpi; or, if necessary, another form more convenient for you. Please include some type of field delimiter and a record layout (data dictionary). I need raw data, not a text dump or printout.

9999 EXHR/C EX.5/C D.3

If you conclude that any of the documents are exempt under the Act, please exercise you discretion to disclose these records nevertheless.

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

Include information that otherwise would be considered non-responsive, and let me know if any similar requests have been filed.

Notify me prior to incurring more than $50 of expenses. The FOIA Act provides for a waiver or reduction of fees if disclosure could be considered as "primarily benefiting the general public," and this information is related to my job as a journalist.

This information is of timely value, so please communicate questions by telephone rather than by mail. I look forward to your reply within 10 business days, as the statute requires.

Thanks for your assistance.

Yours very truly,

Russell Carollo
Dayton Daily News

The First COX Newspaper

3-802023

37

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

September 3, 1998

Mr. John Groseclose
Legal Intern
Graham, Lundberg & Peschel, P.S., Inc.
500 John Street -- Floor 2
Seattle, Washington 98109-5013

Re: FOIA Appeal 807010 on
Answer/Manitou suspension forks

Dear Mr. Groseclose:

On August 19, 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 two unconfirmed consumer complaints, based on FOIA Exemption 3. 5 U.S.C. § 552(b)(3).

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

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

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

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

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

Sincerely,

Jeffrey S. Bromme

ATTORNEYS AT LAW

GRAHAM LUNDBERG & PESCHEL, P.S., INC.

500 JOHN STREET • FLOOR 2 • SEATTLE, WA 98109-5013 • (206) 448-1992 • (425) 827-1111 • (800) 422-4610 • FAX: (206) 448-4640

SCOTT F. LUNDBERG
(206) 394-1757
VOICE MAIL

LEGAL ASSISTANT
TAMMY L. KENDALL
(206) 394-6793
VOICE MAIL

AUG 27 P 10:5

August 19, 1998

Todd Stevenson
FOIA Officer
CPSC, Room 502
Washington D.C. 20207

Dear Mr. Stevenson

This is a appeal of the partial denial of access to records pursuant to a request for information S-807010, related to the Answer/Manitou Suspension Fork. It is an after market bicycle component.

I would like the specifics of the two complaints which were not confirmed by your agency. I was told that several complaints have been made (5/18 & 8/31 of 1997). Although the dates may be incorrect, the accidents were described as a dropout and a crown fork separation, respectively.

My client was injured when his bicycle suspension fork malfunctioned and the crown fork separated from the bike fork. I have reason to believe that the August, 1997, complaint or one of the two unsupplied complaints may be very similar and am interested in this information to determine if a similar product failure is involved.

My client is Rudy Watson and he was injured on June 13, 1997. The specifics of his accident were reported to the manufacturer and to your agency . Official complaint was completed in June of 1998.

Thank you,

John Groseclose
Legal Intern
Graham Lundberg & Peschel, P.S., Inc.

8/11/98
1202 ANS

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

August 11, 1998

Certified Mail

John Groseclose
Graham, Lundberg and Peschel, PS, Inc.
500 John Street, Floor 2
Seattle, WA 98109-5013

RE: FOIA Request S-807010: Answer/Manitou Suspension Fork
File Number RP960031

Dear Mr. Groseclose:

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

The enclosed records include file information generated by the Commission itself or its contractors for regulatory or enforcement purposes. These records are in file RP960031 and identified as correspondence, notes and documents. The Commission has established management systems under which supervisors are responsible for reviewing the work of their employees or contractors. The file information materials are final and have been prepared and accepted by the Commission's staff under such review systems. The Commission believes that it has taken reasonable steps to assure the accuracy of the information. Please note that the Commission's staff, not the Commissioners themselves, made the preliminary determination that this product presented a substantial risk of injury to the public as defined by the Consumer Product Safety Act. Also enclosed is a copy of the Consumer Publication Recall Notice (December '95 BMXer).

The enclosed records include one (1) Epidemiologic Investigation Report with the underlying and supporting documentation and related product complaint or reported incident 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 responsible for illness, injury or death. The Commission believes that it has taken reasonable steps to assure that this information is accurate. While they were conducting the interview for the investigation report, Commission staff or contractors have spoken with the individuals involved or with others who witnessed or are familiar with the incident. Commission staff have examined the products reportedly involved in the incident. Although the Commission has looked into the incident described in the report, they have not yet decided what caused the problem.

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

The other records from the Commission files responsive to your request relate to two 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. Also we could not locate file number C9775032A, it was not in the files.

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.

We must withhold portions of the Answer file RP960031, that have been claimed as proprietary and confidential by them pursuant to Exemptions 3 and 4 of the FOIA, 5 U.S.C. §§ 552(b)(3) and (b)(4), and section 6(a)(2) of the CPSA, 15 U.S.C. § 2055(a)(2). In applying FOIA Exemption 3 in this instance we are applying in part section 6(a)(2) of the CPSA. Section 6(a)(2) prohibits the Commission from disclosing information that is exempt from disclosure under Exemption 4 of the FOIA. That exemption protects trade secrets and confidential commercial information. Confidential commercial information is information directly related to a firm's business that the firm has not made public and whose disclosure could give a substantial commercial advantage to a competitor.

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

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

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

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

Sincerely,

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

Enclosures

ATTORNEYS AT LAW
GRAHAM LUNDBERG & PESCHEL, P.S., INC.
600 JOHN STREET • FLOOR 2 • SEATTLE, WA 98109-5013 • (206) 448-1992 • (425) 827-1111 • (800) 422-4610 • FAX: (206) 448-4640

SCOTT F. LUNDBERG
(206) 394-1757
VOICE MAIL

LEGAL ASSISTANT
TAMMY L. KENDALL
(206) 394-6793
VOICE MAIL

98 JUN 30 P 12:50

C9875002

June 24, 1998

Todd Stevenson
FOIA Officer
CPSC, Room 502
Washington D.C. 20207

Dear Mr. Stevenson

This is a request for information related to the Answer/Manitou Suspension Fork. It is an after market bicycle component.

1202 5033 5040

I would like the specifics of the complaints from 1996 to present. I do not want the complaints related to the 1996 recall of the Manitou suspension fork. I was told that several complaints have been made (5/18 & 8/31 of 1997) unrelated to the previous recall.

I am gathering information because a client had an accident caused by a separation of his bicycle forks from the fork crown.

I would also like information If there are inspections or other actions taken by CPSC related to the 1996 recall.

Thank you,

John Groseclose

Enclosure: FOIA FORM

487010

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

FREEDOM OF INFORMATION ACT (FOIA)
Request for Information

Date: 6-24-98 Received By: _____

REQUESTER: RUDY WATSON
FIRM: GRAHAM, LUNDBERG, & PESCHEL PS, INC.
ADDRESS: 500 JOHN STREET
FLOOR 2
SEATTLE WA 98109-5013
Telephone: 206 448 1992

DOCUMENTS REQUESTED:
ANYTHING FROM 1996 TO PRESENT ON ANSWER PRODUCTS INC, A SUBSIDIARY OF LACY DIVERSIFIED INDUSTRIES INC.
- LOOKING FOR INFORMATION OF BICYCLE SUSPENSION FORK.
SPECIFICALLY INFORMATION OF MAY 1997 & AUGUST 1997 COMPLAINTS.

ALSO ANYTHING RELATED TO 1996 4-30-98 RECALL

Obtain the following information from the requester:
Have you submitted a written request for the records? THIS IS IT.
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? YES
Can we sent the materials by MAIL? YES
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: GATHERING INFORMATION IN POSSIBLE PURSUIT OF LITIGATION.

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

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

OFFICE OF THE GENERAL COUNSEL

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

September 17, 1998

Ms. Christine Bush
KCTV News 5
P.O. Box 5555
Kansas City, MO 64109-0155

Re: FOIA Appeal #S803008
Lennox Pulse Furnaces

Dear Ms. Bush:

By letter dated June 25, 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.

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

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)(1). 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 must notify and provide a summary of the information to each manufacturer or private labeler to which the information pertains and provide a reasonable opportunity for comment. The Commission must also take reasonable steps to assure, prior to its disclosure, that such information is accurate, and that disclosure is fair in the circumstances and reasonably related to effectuating the purposes of the CPSA. Since the Commission is unable to take the necessary steps to assure the accuracy of an unconfirmed consumer product complaint, it is being withheld.

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

With respect to your comment concerning "the Commission's refusal to produce non-internal documents based solely on Exemption 7(E)," there are no "non-internal" documents that are being withheld pursuant to FOIA Exemption 7(E) or any other exemption. As stated above, all of the withheld information (except for the consumer product complaint) consists of internal documents.

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

Sincerely,

Jeffrey S. Bromme

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

September 2, 1998

Ms. Amy Marcus
Lathrop & Gage
2345 Grand Boulevard
Kansas City, MO 64108

Re: FOIA Request S803008: Request and Appeal for Christine Bush of KCTV News5 / Lennox Pulse Furnaces

Dear Ms. Marcus:

As we discussed in our telephone conversation, the June 25, 1998 appeal from Ms. Bush of the partial denial dated June 5, 1998 has been delayed, because we have misplaced our copies of the withheld materials. As I told you, when we process FOIA requests, we work from copies of the original file materials. I have reordered the original files from the records retirement center to recopy the withheld materials and then forward the appeal to the Commission's General Counsel to complete the processing of the appeal. We have expedited the reprocessing and expect it to take an additional 10 to 20 days. I apologize for the inconvenience for you and Ms. Bush.

Please be assured that we are handling the appeal as quickly as possible. You will receive the response at the earliest possible date.

Sincerely,

Todd A. Stevenson
Deputy Secretary and
Freedom of Information Officer

Office of the Secretary, Freedom of Information Division, 4340 East West Highway, Room 502, Bethesda, MD 20814-4408
Telephone (301) 504-0785, X1239, Facsimile (301) 504-0127, E-Mail www.tstevenson@cpsc.gov

cc: Ms. Christine Bush
KCTV News 5
P.O. Box 5555
Kansas City, MO 64109-0155

NEWS 5
KCTV KANSAS CITY

0310 Lennox
6/5/98

June 25, 1998

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

Re: FOIA Request S-803008; Information concerning Lennox Pulse Furnaces

Dear General Counsel:

I hereby appeal from the partial denial of the above request. Specifically, I appeal from that portion of the denial which is based on Exemption 7(e) of the FOIA, 5 U.S.C. section 552 (b) (7) (E).

Both the Commission's public information office and Lennox have publicly confirmed that the Commission is investigating these complaints.

Thus the existence of the investigation is not confidential. As such, the Commission's refusal to produce non-internal documents based solely on Exemption 7(E) rings hollow. Exactly what investigatory techniques would be disclosed if, for example, the Commission produced correspondence between Lennox and the Commission? Furthermore, given that Lennox is clearly aware of the investigation, how could production of such documents reasonably be expected to risk circumvention of the law?

Accordingly, I would ask you to reverse that portion of the denial which is based on Exemption 7(E).

Sincerely,

Christine Bush

Christine Bush

POST OFFICE BOX 5555
KANSAS CITY, MISSOURI 64100-0155
913 677.5555
FAX 913 677 7243

Firm: 0310 Lennox (pulse furnaces), Off(6a6b release), Off(Denial) Ex. 3, 5, 7(E), chron, spec. 3285

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

June 5, 1998

CERTIFIED MAIL
Ms. Christine Bush
Call for Action Producer
5KCTV
4500 Shawnee Mission Parkway
Fairway, KS 66205

Re: FOIA Request S-803008: Information concerning Lennox Pulse Furnaces

Dear Ms. Bush:

This responds to your Freedom of Information Act (FOIA request seeking information from the Consumer Product Safety Commission. The records from the Commission files responsive to your request have been processed and copies of the releasable records are enclosed. The enclosed records represent a final response to your request (a partial response was provided under cover letter dated May 4, 1998).

The enclosed records include file information generated by the Commission itself or its contractors for regulatory or enforcement purposes. These records are in file ID85-19 and are identified as Inspection Reports, Laboratory Summaries, Hazard Assessment memoranda and other correspondence, notes and documents. The Commission has established management systems under which supervisors are responsible for reviewing the work of their employees or contractors. The file information materials are final and have been prepared and accepted by the Commission's staff under such review systems. The Commission believes that it has taken reasonable steps to assure the accuracy of the information.

Also enclosed are six (6) 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.

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

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

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.

We must also withhold portions of the law enforcement investigatory files pursuant to Exemptions 5 and 7 (E) of the FOIA, 5 U.S.C. § § 552 (b) (5) and (b) (7) (E). Exemption 5 provides for the withholding from disclosure of inter-agency and intra-

agency memoranda which would not be available by law to a party in litigation with the agency. FOIA Exemption 7 (E) provides for the withholding from disclosure records or information compiled for law enforcement purposes, to the extent that the production of such law enforcement records or information would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.

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

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

Processing this request, conducting the file searches and preparing the information cost the Commission $100.00. 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 question, please contact Alberta Mills, Paralegal Specialist, by letter, facsimile (301) 504-0127 or by telephone (301) 504-0785, ext. 1299.

Sincerely,

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

enclosures

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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

September 25, 1998

David Stevens, Esq.
Heller, Holmes & Associates, P.C.
1101 Broadway
P.O. Box 889
Mattoon, Illinois 61938-0889

Re: FOIA Appeal 806044 on
Black & Decker Compound Miter Saws

Dear Mr. Stevens:

On September 2, 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 four 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 four unconfirmed consumer complaints. The Commission's regulations require that this information be confirmed as a reasonable step

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

When consumers submit complaints to the Commission, the Commission sends them forms requesting that they confirm the information as accurate to the best of their knowledge and belief. We also send each submitter a franked return envelope for mailing back the confirmation. This process, which is voluntary on the part of the submitter, has been in place since 1983. The four 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

HARLAN HELLER
BRENT D. HOLMES
H. KENT HELLER
DAVID STEVENS
FRED JOHNSON
JASON M. CROWDER
COLLEEN MANNIX
MARK E. BOVARD

LAW OFFICES OF
HELLER, HOLMES & ASSOCIATES, P.C.
PROFESSIONAL CORPORATION
1101 BROADWAY
P. O. BOX 889
ATTOON, ILLINOIS 61938-0889
(217) 235-2700
FAX NO. (217) 235-0743

OF THE SECRETARY
OM OF INFORMATION
1998 SEP -9 P 1: 05

September 2, 1998

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

0841 BLK
814

Re: FOIA Request S-806044, James Stephens
Our file 11702

To Whom It May Concern:

This law firm represents James Stephens in a potential lawsuit against Black & Decker (U.S.), Inc., and Charles Kirchner and Son, Inc., d/b/a Kirchner Building Center, regarding an incident occurring on August 24, 1997. Mr. Stephens made an FOIA request, and in response received five epidemiologic investigation reports with the underlying and supporting documentation and related product complaints or reported incidents. Two other reported incidents, C9525003A and C9635036A, could not be located. We request that the search for these reports continue.

There were also four additional product complaints and reported incidents that the Commission has not yet received confirmation of. The Commission therefore withheld the unconfirmed product complaints and reported incidents from its response to Mr. Stephens' FOIA request.

On Mr. Stephens' behalf, I wish to appeal this partial denial of access to records. It is extremely important to Mr. Stephens that he receive as complete information as is available in order that he might determine whether or not to file his lawsuit. We understand that the Commission is understaffed and under funded, but it looks like Mr. Stephens is being punished for the Commission's status which is not his fault. Our request is that these additional product complaints and reported incidents be revealed to Mr. Stephens pursuant to his request. He would be willing to sign a release, if necessary, agreeing to non-disclosure of the information so received.

Thank you very much for your consideration of Mr. Stephens' appeal of the partial denial of access to these records. If any more formal procedure is required, please let me know and I will be happy to comply. If a hearing is possible, Mr. Stephens wishes me to participate in such a hearing.

I look forward to receipt of the additional reports at your earliest convenience.

Very truly yours,

David Stevens

DS/am
a:foi11702.ltr/98-27

OS/FOI Partial Denial, Chron, Officer 6b Partial Denial, 3488, Neiss code 0841 Black & Decker

August 4, 1998

Certified Mail
James Stephens
PO Box 156
Toledo IL 62468

Re: FOIA Request S-806044: A Copy of Accident Investigation 971020HCN0018 and Injuries and/or Complaints associated with Compound Miter Saws manufactured by Black and Decker

Dear Mr. Stephens:

Thank you for your Freedom of Information Act (FOIA) request seeking information from the Commission. The records from the Commission files responsive to your request have been processed and copies of the releasable responsive records are enclosed. We have searched the Commission's injury information files covering calendar year 1990 through the current year for information responsive to your request. If you want us to search into other records, please send in a new request and specify the time period.

The enclosed records include five Epidemiologic (In-Depth) Investigation Reports with the underlying and supporting documentation and related product complaints or reported incidents. 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.

You will note that in the documents disclosed information that could identify injured parties and persons treating them has been deleted, because section 25(c) of the Consumer Product Safety Act, 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.

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

The search also revealed two reported incidents, designated C9525003A and C9635036A, that may be responsive to your request, but the reports cannot be located. We must presume that the documents are misplaced and lost. We apologize for any inconvenience.

The other records from the Commission files responsive to your request relate to four 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 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.

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. Should you have any questions, contact 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

Enclosures

Rec'd 4/23/98

To whom it may concern

We are hereby requesting the following information under the Freedom Of Information Act.

A copy of case # 971020 HCN 0018 and any other information involving compound miter saws. Any investigation of Black & Decker / Dewalt, concerning saws. 0641 We are requesting this information because DL (Jim Stephens) am the individual involved in the fore-mentioned case.

Thank You for any information and a speedy response.

C/S James & Shelly Stephens
PO Box 156
Toledo Ill. 62468
D.Y 217-849-2503

S-806044

40

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

October 7, 1998

Robert M. Marionneaux, Jr., Esq.
P.O. Box 779
Maringouin, LA 70757

Re: FOIA Appeal #S-807031: Space Heaters
Sample Numbers 98-860-6617
98-860-6618
98-860-6619

Dear Mr. Marionneaux:

By letter dated September 12, 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.

The information you requested pertains to test results from samples of space heaters collected by the Commission. Upon investigation, my staff has learned that the Commission was unable to test the space heaters because of their deteriorated condition. Therefore, there are no test results that would be responsive to your FOIA request.

At the time of your request, the FOI Officer was not aware that the space heaters had not been tested (and could not be tested). Accordingly, he responded to your initial request based on the incorrect assumption that responsive information existed.

We understand that an In-depth Epidemiological Investigation Report (IDI) exists that may be responsive to your FOIA request. We cannot disclose it now, however, because we have not complied with section 6(b)(1) of the Consumer Product Safety Act. 15 U.S.C. § 2055(b)(1). Such compliance requires, in part, that we provide an opportunity for comment to the heater manufacturer.

Exemption 3 of the FOIA provides for withholding information that is specifically exempted from disclosure by another statute.

In applying Exemption 3 to the IDI, the Commission is relying on CPSA section 6(b)(1).

The FOI Officer will contact you again after he has complied with section 6(b)(1).

Sincerely,

for

Jeffrey S. Bromme

ROBERT M. MARIONNEAUX, JR.

Attorney at Law

P.O. Box 779 Maringouin, LA 70757
phone (225) 637-3622 fax (225) 637-3613

September 12, 1998

DEN 887037
5/19/98

MR. TODD A. STEVENSON
Freedom of Information Office
US Consumer Product Safety Commission
Room 502 C
Washington, DC 20207

Re: *Heater Inspection/Analysis*
Sample Numbers: *98-860-6617*
98-860-6618
98-860-6619

Dear Mr. Stevenson:

This office is in receipt of your correspondence dated August 19, 1998, wherein you have responded to my request for information. You mentioned exemptions 5 and 7 (A) of 5 U.S.C. 552(b)(5) and (b)(7)(A). Exemption 5 as you note 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*. Please know that my clients are not a party in litigation with the agency, and for that reason the exemption that you site does not apply to my clients and my request should be honored. Exemption 7 (A) provides for the withholding from disclosure records or information compiled for law enforcement purposes, *to the extent that the production of such law enforcement records or information could reasonably be expected to interfere with enforcement proceedings*. Please know that there has not been any criminal investigation and there will not be a criminal prosecution regarding my clients or with any other persons involved in this claim. For that reason the release of these documents *does not* in anyway interfere or impede with law enforcement proceedings. Therefore your sighting of Exemption 7 (A) does not allow you *not* to furnish the requested records.

Accordingly, I am forwarding a copy of my letters of request and your correspondence as well to the General Counsel of the Commission. That should serve as an appeal for the record.

I look forward to discussing this matter with you in the future.

Sincerely,

Robert M. Marionneaux, Jr.

RMM:bs

CPSC/OFC OF THE SECRETARY
FREEDOM OF INFORMATION

Code 0474: Subject Spece Heaters, Chron, Officer 6b Release, Sp/EG

DEN 807031

August 19, 1998

Robert M. Marionneauz, Jr.
PO Box 779
Maringoun, LA 70757

RE: FOIA Request S-807031: Space Heaters, Sample Numbers 98-860-6617, 18 & 19

Dear Mr. Marionneauz:

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

The records responsive to your request are contained in the Commission's law enforcement investigatory files. 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,

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

ROBERT M. MARIONNEAUX, JR.

Attorney at Law

P.O. Box 779 Maringouin, LA 70757
phone (504) 637-3622 fax (504) 637-3613

OFFICE OF THE SECRETARY
'98 JUL -6 P 3:03

A/1

June 29, 1998

MR. TODD A. STEVENSON
U.S. Consumer Product Safety Commission
Washington, D. C. 20207

Re: Specific Request for Information regarding Sample# (s) 98-860-6617, 98-860-6618, and 98-860-6619

0348

Dear Mr. Stevenson:

This office is in receipt of your correspondence dated June 12, 1998, wherein you provided information regarding the above referenced space heaters located in a residence situated in Blanks, Louisiana, which was engulfed in a fire which ultimately was the cause of death of six minor children.

The information provided to this office consisted of SAMPLE COLLECTION REPORTS for each heater or sample. These reports basically stated the description and condition of the heater when received from the State Fire Marshal and any remarks made regarding the samples.

This office is in need of the following information regarding the sample collections obtained by the commission:

1) Whether any or all of the heaters were "On" or "Off" the night of the fire;

2) Whether any or all of the heaters were defective and were the cause of the fire that consumed the residence;
3) Whether the commission was able to obtain the name of the manufacturers' of the samples in question;
4) Copies of any and all test results, test documentation, notations, etc., regarding the heaters (samples);
5) Any and all final reports, analysis reports, etc., in reference to the heaters (samples)..

CA/C

Please advise this office whether this documentation is available, and if there is a charge for the photostatic copying of said documents or shipping costs, so that this office can forward payment on receipt for this information.

Your assistance is greatly appreciated. Should you have further questions please do not hesitate to contact by legal secretary, **Bonnie Suggs at (504) 637-3622.**

5-807-31

Sincerely,

Robert M. Marionneaux, Jr.

RMM:bs

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

OFFICE OF THE GENERAL COUNSEL

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

October 8, 1998

David G. Abramovici, Esq.
Smith Demahy & Drake
Bayside Office Center
141 N.E. Third Avenue
Miami, Florida 33132

Re: FOIA Appeal S-807035
Keller Extension Ladders

Dear Mr. Abramovici:

By letter dated August 19, 1998, you appealed the decision of the Commission's Freedom of Information (FOI) Officer to withhold information responsive to your Freedom of Information Act (FOIA) request. Under authority delegated to me by the Commission, 16 C.F.R. § 1015.7, I have reviewed your appeal.

I affirm the FOI Officer's decision to withhold the pages identified in the paragraphs below. My decision is based on FOIA Exemptions 3, 4, 5, and 7(E). 5 U.S.C. §§ 552(b)(3), (b)(4), (b)(5), and (b)(7)(E).

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 information, the Commission is 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. National Parks & Conservation Association v. Morton, 498 F.2d 765, 770 (D.C. Cir. 1974). 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.

Under FOIA Exemptions 3 and 4, and CPSA section 6(a)(2), the Commission is withholding correspondence between the Commission and Keller Industries, Inc., corporate financial information, and a list of trucking companies that transport the company's products on pages 26, 54, 65, 79-81, 85-90, 104-107, and 152-154.

In applying FOIA Exemption 3, the Commission is also relying on CPSA section 6(b)(1). 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 FOIA Exemption 3, relying on section 6(b)(1), consists of documents relating to the negotiations leading up to the recall on pages 42-43, 46, 48-49, 53, 55-64, 66-77, 91-100, 142-144, 147, 155-161, 163-164, 166, 170, 172, 175-177, 182-184, 188-194, 196, 198, 200-201, 203, 205, 207, 209, 211, 213-214, and 217-224. Since these documents are merely drafts of the recall data that was ultimately published, it would be not be "fair in the circumstances" for the Commission to release this information. 16 C.F.R. § 1101.33(b)(1)and (2).

FOIA Exemption 5 provides for the withholding of certain inter-agency and intra-agency documents and incorporates the deliberative process privilege. This privilege protects advice, recommendations, and opinions which are part of the deliberative, consultative, and decision-making processes of the agency. Although this privilege applies only to the opinions or recommendations in a document and not to factual information, facts are withheld here because they are inextricably intertwined with the exempt portions. The information being withheld pursuant to Exemption 5 consists of intra-agency memoranda and internal notes on pages 127, 136-141, 145, and 148-151.

The documents being withheld under FOIA Exemption 5, as discussed above, are also being withheld under FOIA Exemption 7(E). In addition, a document on pages 31 and 32 is being withheld under FOIA Exemption 7(E). FOIA Exemption 7(E) provides for the withholding of investigatory records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if

such disclosure could reasonably be expected to risk circumvention of the law. I have determined that disclosure of these documents could reasonably be expected to interfere with law enforcement proceedings and would disclose techniques and procedures for law enforcement proceedings.

The documents concerning different models of Keller ladders are not responsive to this FOIA request. If you would like to obtain these documents, you should make a new FOIA request.

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

Sincerely,

for

Jeffrey S. Bromme

LAW OFFICES
SMITH DEMAHY & DRAKE
A PROFESSIONAL ASSOCIATION

DAVID G. ABRAMOVICI

PENTHOUSE
BAYSIDE OFFICE CENTER
141 N.E. THIRD AVENUE
MIAMI, FLORIDA 33132

DADE (305) 375-0900
FAX (305) 375-0202

August 19, 1998

BY FACSIMILE AND U.S. MAIL

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

RE: FOIA Request S-807035: Keller Recall Industrial Type 1 and Industrial Heavy Duty Type 1A-28, 32, 36 and 40 Foot Fiberglass Extension Ladders, Search Covers 1990-1996

Dear Sirs:

Pursuant to your letter of July 21, 1998, in which you exempted various information pursuant to Mr. Frank Labrador Esq's., (our co-counsel) F.O.I.A request, we hereby file this appeal on his behalf. Attached is a copy of your response letter to Mr. Labrador.

The requested information which was denied is in **file RP960051** and is identified as unconfirmed product complaints and reported incidents, information deemed as proprietory or trade secrets, information in your law enforcement investigatory file and information withheld because of wrong model number.

The first group of denied materials are complaints and incidents of consumers. The Commission denied this pursuant to Exemption 3 of the F.O.I.A, 5 U.S.C sect. 552(b)(3) and section 6(b)(1) of the Consumer Product Safety Act, and in addition pursuant to 15 U.S.C sect. 2055(b)(1) and regulation 16 C.F.R sect. 1101.32. The denial was based on the conclusion that these reports and incidents were unconfirmed. It is our contention that these complaints and incidents are reported and confirmed and as such we are entitled to review them.

In addition, the Commission withheld a second group of documents pursuant to Exemptions 3 and 4 and section 6(a)(2) of the CPSA and 15 U.S.C. sect. 2055(a)(2). This exemption protects trade secrets and confidential information. We believe that the public's safety and right to know takes precedent over this exemption.

The following pages were withheld pursuant to the above exemption.: 49, 81, 85-99, 100, 104, 142-144, 147, 152-161, 163-164, 166, 170, 172, 175, 176-177, 182-184, 188-194, 196, 198, 200-201, 203, 205, 207, 209, 211, 214 and 217-224.

The third denial of documents was based on Exemption 5 and 7(e) of the F.O.I.A and 5 U.S.C sections 552(b)(5) and (b)(7)(e). This exemption prohibits the disclosure of intra and inter-agency memoranda which would not be available to a party in litigation with the agency. This exemption does not apply to us because we are not in litigation with the agency and therefore are entitled to review them.

The following pages were denied based on the above exemption.: 31-32, 84, 127, 136-141, 145 and 148-151.

The last denial of documents pursuant to our request was based on that the model number of the ladder was different than the one in question. We do not see how this is important if it is essentially the same ladder with the same faulty mechanism. In our case, the locking mechanism of the ladder involved appeared to have locked, but did not, causing our client to fall. Therefore, we should be entitled to this material as well.

The following pages were withheld based on the above reason.: 16-21, 28, 115-116, 123-126 and 134-135.

In conclusion, we do not see how the information requested is in violation of the attorney-client or attorney work product privelege. In addtion, we believe that this information is in the public's interest to know, in that it will help to reveal the products liability issue in this case. In addition, we would also request to be given more specific information regarding the documents withheld so that we can better address our legal position.

Awaiting your timely response,

Sincerely,

David Abramovici, Esq.

cc: Law Offices of Frank L. Labrador
Gables International Centre
300 Aragon Avenue, Suite 250
Coral Gables, Fl., 33134

U.S. CONSUMER PRODUCT SAFETY COMMISSION

WASHINGTON, D.C. 20207

July 21, 1998

Certified Mail

Frank L. Labrador, Esq.
Gables International Centre
300 Aragon Avenue
Suite 250
Coral Gables, FL 33134

RE: FOIA Request S-807035: Keller Recall Industrial Type 1 and Industrial Heavy Duty Type IA - 28, 32, 36 and 40 Foot Fiberglass Extension Ladders, Search Covers 1990 - 1996

Dear Mr. Labrador:

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

The enclosed records include file information generated by the Commission itself or its contractors for regulatory or enforcement purposes. These records are in file RP960051and are identified as correspondence, notes and documents. The Commission has established management systems under which supervisors are responsible for reviewing the work of their employees or contractors. The file information materials are final and have been prepared and accepted by the Commission's staff under such review systems. The Commission believes that it has taken reasonable steps to assure the accuracy of the information. Please note that the Commission's staff, not the Commissioners themselves, made the preliminary determination that this product presented a substantial risk of injury to the public as defined by the Consumer Product Safety Act.

The enclosed records include two (2) Epidemiologic 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.

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

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.

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.

We must withhold other records pertaining to the Keller Industries, Inc. that have been claimed as proprietary and confidential by them pursuant to Exemptions 3 and 4 and section 6(a)(2) of the CPSA, 15 U.S.C. § 2055(a)(2). Section 6(a)(2) prohibits the Commission from disclosing information that is exempt from disclosure under Exemption 4 of the FOIA. That exemption protects trade secrets and confidential commercial information. Confidential commercial information is information directly related to a firm's business that the firm has not made public and whose disclosure could give a substantial commercial advantage to a competitor. We are withholding pages: 49, 81, 85-99, 100, 104, 142-144, 147, 152-161, 163-164, 166, 170, 172, 175, 176-177, 182-184, 188-194, 196, 198, 200-201, 203, 205, 207, 209, 211, 214, and 217-224.

We must withhold other records responsive to your request that is contained in the Commission's law enforcement investigatory file, pursuant to the Exemptions 5 and 7(E) of the FOIA, 5 U.S.C. §§ 552(b)(5) and (b)(7)(E). Exemption 5 provides for the withholding from disclosure of inter-agency and intra-agency memoranda which would not be available by law to a party in litigation with the agency. FOIA Exemptions 7(E) provide for the withholding from disclosure records or information compiled for law enforcement purposes, to the extent that the production of such law enforcement records or information would disclose techniques and procedures for law enforcement investigations or prosecutions or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law. We are withholding pages 31-32, 84, 127, 136-141, 145, and 148-151.

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, (2) reveal the techniques, guidelines and strategies utilized by the investigative and legal staff in developing the information regarding this investigation and other on-going investigations, which if disclosed would significantly risk circumvention of the statutes and regulations that the Commission administers.

Also, other documents not responsive to your request are being withheld because the model number is different, the withholding pages are 16-21, 28, 115-116, 123-126 and 134-135.

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 $65.00. In this instance, we have decided to waive all of the charges. Thank you for your interest in consumer product safety. Should you have any questions, contact Eva M. Grady, Paralegal Specialist by letter, facsimile (301) 504-0127 or telephone (301) 504-0785.

Sincerely,

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

Enclosures

TODD — re FOIA appeal

SMITH, DEMAHY & DRAKE, P.A.
Bayside Office Center, Penthouse
141 Northeast Third Avenue
Miami, Fl. 33132
(305)375-0900

Fax Number: (305)375-0202

TELECOMMUNICATION TRANSMITTAL

TO: ALLAN SHAKIN / FOIA APPEALS / GEN. COUNSEL U.S CONSUMER PRODUCT SAFETY COM.

FAX NUMBER: 1-(301) 583-0403

FROM: DAVID ABRAMOVICI, ESQ. OF SMITH, DEMAHY & DRAKE.

RE: FOIA REQUEST S-807035

TOTAL NUMBER OF PAGES INCLUDING COVER PAGE: 7

DATE: 8/20/98

MESSAGE: PLEASE ACCEPT THE FOLLOWING APPEAL ON BEHALF OF CO-COUNSEL FRANK LABRADOR.

The information contained in this facsimile message (and/or the documents accompanying it) is attorney privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify the sender by telephone and return the original message to SMITH, DEMAHY to the above address via the U.S. Postal Service at our expense. Thank you.

**If you do not receive all the pages indicated above, please call us immediately at (305)375-0900.

0688
from Keller

U.S. CONSUMER PRODUCT SAFETY COMMISSION

WASHINGTON, D.C. 20207

July 21, 1998

Certified Mail

Frank L. Labrador, Esq.
Gables International Centre
300 Aragon Avenue
Suite 250
Coral Gables, FL 33134

RE: FOIA Request S-807035: Keller Recall Industrial Type 1 and Industrial Heavy Duty Type IA - 28, 32, 36 and 40 Foot Fiberglass Extension Ladders, Search Covers 1990 - 1996

Dear Mr. Labrador:

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

The enclosed records include file information generated by the Commission itself or its contractors for regulatory or enforcement purposes. These records are in file RP960051and are identified as correspondence, notes and documents. The Commission has established management systems under which supervisors are responsible for reviewing the work of their employees or contractors. The file information materials are final and have been prepared and accepted by the Commission's staff under such review systems. The Commission believes that it has taken reasonable steps to assure the accuracy of the information. Please note that the Commission's staff, not the Commissioners themselves, made the preliminary determination that this product presented a substantial risk of injury to the public as defined by the Consumer Product Safety Act.

The enclosed records include two (2) Epidemiologic 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.

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

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.

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.

We must withhold other records pertaining to the Keller Industries, Inc. that have been claimed as proprietary and confidential by them pursuant to Exemptions 3 and 4 and section 6(a)(2) of the CPSA, 15 U.S.C. § 2055(a)(2). Section 6(a)(2) prohibits the Commission from disclosing information that is exempt from disclosure under Exemption 4 of the FOIA. That exemption protects trade secrets and confidential commercial information. Confidential commercial information is information directly related to a firm's business that the firm has not made public and whose disclosure could give a substantial commercial advantage to a competitor. We are withholding pages: 49, 81, 85-99, 100, 104, 142-144, 147, 152-161, 163-164, 166, 170, 172, 175, 176-177, 182-184, 188-194, 196, 198, 200-201, 203, 205, 207, 209, 211, 214, and 217-224.

We must withhold other records responsive to your request that is contained in the Commission's law enforcement investigatory file, pursuant to the Exemptions 5 and 7(E) of the FOIA, 5 U.S.C. §§ 552(b)(5) and (b)(7)(E). Exemption 5 provides for the withholding from disclosure of inter-agency and intra-agency memoranda which would not be available by law to a party in litigation with the agency. FOIA Exemptions 7(E) provide for the withholding from disclosure records or information compiled for law enforcement purposes, to the extent that the production of such law enforcement records or information would disclose techniques and procedures for law enforcement investigations or prosecutions or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law. We are withholding pages 31-32, 84, 127, 136-141, 145, and 148-151.

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, (2) reveal the techniques, guidelines and strategies utilized by the investigative and legal staff in developing the information regarding this investigation and other on-going investigations, which if disclosed would significantly risk circumvention of the statutes and regulations that the Commission administers.

Also, other documents not responsive to your request are being withheld because the model number is different, the withholding pages are 16-21, 28, 115-116, 123-126 and 134-135.

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 $65.00. In this instance, we have decided to waive all of the charges. Thank you for your interest in consumer product safety. Should you have any questions, contact Eva M. Grady, Paralegal Specialist by letter, facsimile (301) 504-0127 or telephone (301) 504-0785.

Sincerely,

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

Enclosures

LAW OFFICES
FRANK L. LABRADOR
— A PROFESSIONAL ASSOCIATION —

FRANK L. LABRADOR

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FAX: (305) 443-5960

June 30, 1998

A/1

FOX

U.S. Consumer Product Safety Commission
Washington, D.C. 20207
Attention: Patrick D. Shannon

0688

RE: PRODUCT: KELLER AND COLUMBIA EXTENSION LADDER;

Dear Mr. Shannon:

I thank you for the information you recently provided to me regarding the recall of the industrial extension ladders that were manufactured under the "Keller" and Columbia" name.

I would like to request copies of the files regarding the investigation that led up to the decision to recall these products and any other information that your office may have concerning same. Needless to say, I will pay all reasonable costs associated with this request. CA/S

Your continued cooperation is appreciated. Should you have any questions or wish additional information, please do not hesitate to call me.

Very truly yours,

FRANK L. LABRADOR

FLL/cd
cc. Ken Drake, Esq.

L-807035

42

9999 database info

COMMISSION

September 30, 1998

Carollo
Daily News
Window Street
Dayton, OH 45402

RE: FOIA S-802039: Listing of Computer Databases

Dear Mr. Carollo:

This responds to your Freedom of Information Act request for a listing of the U. S. Consumer Product Safety Commission's (Commission) databases.

Enclosed is the most recent listing of Commission database applications along with a description of each.

This completes the processing of your request. With this response we consider as closed your appeal of our delay in responding. The cost to the Commission to prepare this information for release was $30.00. In this instance we have decided to waive the charges. Thank you for your interest in product safety.

Sincerely,

SB

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

Enclosure

Dayton Daily News

45 S. Ludlow St
Dayton OH 45402

Phone: (937) 225-2399
Fax: (937)-225-2241

Sept. 22, 1998

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

RE: FOIA REQUEST NO. S-802039

This is an appeal under the Freedom of Information Act, 5 U.S.C. 552. On Feb. 2, 1998, I filed the attached FOIA, and the attached responses were sent subsequent to that request.

The last response was dated Feb. 12, 1998, more than seven months ago.

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

Yours very truly,

Russell Carollo
Dayton Daily News

OK-to Atm

Dayton Daily News

45 S. Ludlow St.
Dayton OH 45402

Phone: (937) 225-2399
Fax: (937)-225-2241

Jan. 30, 1998

Tod Stevenson
Consumer Product Safety Commission (FOIA)

1-of-2 FOIAS

Dear Mr. Stevenson,

9999

MEM

Pursuant to the federal Freedom of Information Act, 5 U.S.C. 552, I request access to and copies of all paper documents or computer databases listing all computer databases held by the Consumer Product Safety Commission. Please include, but do not limit this request to, the titles of the databases and a description of the information held in each database. If you have this information (a list of databases) in database form, I can accept 9 track tape, 3.5 diskette or CD rom. I need raw data, not a text dump or printout.

EX15/C

D-3

If you conclude that any of the documents are exempt under the Act, please exercise you discretion to disclose these records nevertheless.

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

Include information that otherwise would be considered non-responsive, and let me know if any similar requests have been filed.

Notify me prior to incurring more than $50 of expenses. The FOIA Act provides for a waiver or reduction of fees if disclosure could be considered as "primarily benefiting the general public," and this information is related to my job as a journalist.

This information is of timely value, so please communicate questions by telephone rather than by mail. I look forward to your reply within 10 business days, as the statute requires.

Thanks for your assistance.

Yours very truly,

Russell Carollo
Dayton Daily News

The First COX Newspaper

580239

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

October 27, 1998

CERTIFIED MAIL

Mr. Russell Carollo
Dayton Daily News
45 S. Ludlow Street
Dayton, OH 45402

Re: FOIA Request S802004: Copies of Databases

Dear Mr. Carollo:

Thank you for your Freedom of Information Act (FOIA) request to the Commission seeking "copies of [specific] computer databases." Enclosed are the publically available information from: (1) the National Electronic Injury Surveillance System (NEISS) and Death Certificate summaries on CD Rom disk and with sheets explaining the fields; and (2) reference documents that include the press releases on floppy disks. We cannot identify the database that your identify as "the Civil Penalties Database." With this response we will consider as moot your appeal dated September 22, 1998, as to the delay in responding to this request. Should you wish to appeal any part of this response, the appeal rights are explained below.

We removed from the NEISS data, the hospital codes and the case numbers of the injured persons pursuant to Exemptions 3 and 4 of the FOIA, 5 U.S.C. § 552(b)(3) and (b)(4) and section 6(b)(1) of the Consumer Product Safety Act (CPSA), 15 U.S.C. § 2055(a)(2). FOIA Exemption 3 provides for the withholding from disclosure of matters that are specifically exempted from disclosure by another statute. In applying FOIA Exemption 3 to these records, we are relying in part on section 6(a)(2) of the CPSA, which prohibits the Commission from disclosing information that is exempt from disclosure under Exemption 4 of the FOIA. Exemption 4 protects trade secrets and commercial or financial information obtained from a person that is privileged or confidential. To be "confidential," information must be likely to (1) impair the government's ability to obtain necessary information in the future or (2) cause substantial harm to the competitive position of the person from whom the

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

information was obtained. National Parks & Conservation Ass'n v. Morton, 498 F.2d 765 (D.C. Cir. 1974). In addition, Exemption 3 of the FOIA, 5 U.S.C. § 552(b)(3), provides for the withholding from disclosure of matters that are specifically exempted from disclosure by another statute.

We are also withholding portions that would identify manufacturers or products from the database information applying FOIA Exemption 3 to this material while relying on section 6(b)(1) of the CPSA, 15 U.S.C. § 2055(b)(1). 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. In most cases the information in the databases has not been confirmed as to accuracy and the required steps in the CPSA have not been taken by the Commission.

Finally, we are withholding the CPSA Section 37 application database containing information submitted under Section 37 by consumer product manufacturers, private labelers or importers, pursuant to FOIA Exemption 3 and section 6(e)(1) of the CPSA, 15 U.S.C. § 2055(e). Under section 6(e)(1) of the CPSA, the Commission is prohibited from publicly disclosing information furnished under section 37. Section 37 requires the manufacturer of a particular model of a consumer product that is the subject of at least three civil actions that have been filed in Federal or State court for death or grievous bodily injury that result in either a final settlement or a court judgment in favor of the plaintiff to report to the Commission each such civil action within 30 days after the final settlement or court judgment in the third civil action. Section 6(e)(1) of the CPSA prohibits disclosure of these submissions.

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

This completes the processing of your request. The cost to the Commission to perform the file searches and prepare this information was $150.00. In this instance we have decided to waive the charges.

Sincerely,

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

Enclosures

Dayton Daily News

45 S. Ludlow St
Dayton OH 45402

Phone: (937) 225-2399
Fax: (937)-225-2241

Sept. 22, 1998

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

RE: FOIA REQUEST NO. S-802039

This is an appeal under the Freedom of Information Act, 5 U.S.C. 552. On Feb. 2, 1998, I filed the attached FOIA, and the attached responses were sent subsequent to that request.

The last response was dated Feb. 12, 1998, more than seven months ago.

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

Yours very truly,

Russell Carollo
Dayton Daily News

Dayton Daily News

45 S. Ludlow St.
Dayton OH 45402
Phone: (937) 225-2399
Fax: (937)-225-2241

Feb. 2, 1998

Tod Stevenson
Consumer Product Safety Commission (FOIA)

Pursuant to the federal Freedom of Information Act, 5 U.S.C. 552, I request access to and copies of the following computer databases: the National Electronic Injury Surveillance System (NEISS); the database of reports made under Sec. 37 of the Consumer Product Safety Act; the Death Certificates Database; the Civil Penalties Database; and The Reference System database, news releases since 1973. CPSC spokesman Ken Giles provided these names so please consult with him if necessary.

I can accept this information in ASCII or EBCDIC; 9 track tape, 3.5 diskette or CD rom; 6250 or 1600 bpi; or, if necessary, another form more convenient for you. Please include some type of field delimiter and a record layout (data dictionary). I need raw data, not a text dump or paper printout.

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

Include information that otherwise would be considered non-responsive, and let me know if any similar requests have been filed.

Notify me prior to incurring more than $50 of expenses. The FOIA Act provides for a waiver or reduction of fees if disclosure could be considered as "primarily benefiting the general public," and this information is related to my job as a journalist.

This information is of timely value, so please communicate questions by telephone rather than by mail. I look forward to your reply within 10 business days, as the statute requires.

Thanks for your assistance.

Yours very truly,

Russell Carollo
Dayton Daily News

The First COX Newspaper

5-8020024