

**U.S. Consumer Product Safety Commission (CPSC)
Chief FOIA Officer Report to the Department of Justice Pursuant to Attorney
General Holder's FOIA Guidelines
March 1, 2011**

I. Steps Taken to Apply the Presumption of Openness

Describe the steps your agency has taken to ensure that the presumption of openness is being applied to all decisions involving the FOIA.

1. a. Describe how the President's FOIA Memorandum and the Attorney General's FOIA Guidelines have been publicized throughout your agency.

We have provided President Obama's memorandum, dated January 21, 2009, and the Attorney General's FOIA Guidelines dated March 19, 2009, to CPSC staff and have trained the staff to ensure that the policies are applied to the processing of records responsive to FOIA requests.

b. What training has been attended and/or conducted on the new FOIA Guidelines?

FOIA request processing is centralized in the CPSC's Office of the Secretary (also called the Division of Information Management), which includes the FOIA office and the National Injury Information Clearinghouse. We have provided specialized training to the professional and clerical staff responsible for FOIA processing and to staff throughout the agency who are responsible for performing file searches for FOIA requests. CPSC FOIA professional staff also attended training sessions conducted by the U.S. Department of Justice, Office of Information Policy.

c. How has your agency created or modified your internal guidance to reflect the presumption of openness?

The policy of the CPSC with respect to requests for records is that disclosure is the rule and withholding is the exception. See 16 C.F.R. § 1015.1. All records that are not subject to an exemption are disclosed. Records that are subject to exemption from disclosure are made available as a matter of discretion except when prohibited by law. The presumption of openness is the central policy of the CPSC's Office of the Secretary and Office of the General Counsel for the processing of FOIA requests.

d. To what extent has your agency made discretionary releases of otherwise exempt information?

The FOIA professional staff has been trained and instructed on the release of previously withheld records, such as, the withholding of staff records with internal

discussions and draft staff memoranda, draft press releases, draft staff technical reports, and other early versions of reports. Those types of draft materials are now generally released with clear markings that they are draft versions.

e. What exemptions would have covered the information that was released as a matter of discretion?

Most records previously were withheld applying FOIA Exemptions 5 and 7(A).

f. How does your agency review records to determine whether discretionary releases are possible?

The CPSC uses a multilayered review system that, in most cases, involves initial reviews by the FOIA Paralegal Specialists in the Office of the Secretary, then review by the FOIA Officer and the Chief FOIA Officer. In many cases, CPSC offices that perform file searches for responsive records, including the Office of the General Counsel, also review requested records prior to providing the information for processing by the Office of the Secretary.

g. Describe any other initiatives undertaken by your agency to ensure that the presumption of openness is being applied.

With each FOIA request, the FOIA office reminds CPSC offices of the “presumption of openness policy” in the memorandum requesting them to perform file searches for responsive records.

2. Report the extent to which the numbers of requests where records have been released in full and the numbers of requests where records have been released in part has changed from those numbers as reported in your previous year’s Annual FOIA Report.

The number of full denials based on FOIA exemptions to disclosure decreased to 58 in fiscal year 2010, from 64 in fiscal year 2009 (a decrease of 9%). The number of partial grants increased to 407 in fiscal year 2010, from 366 in fiscal year 2009 (an increase of 9%). The number of full grants decreased to 2,349 in fiscal year 2010, from 2,690 in fiscal year 2009 (a decrease of 9%).

II. Steps Taken to Ensure that Your Agency has an Effective System for Responding to Requests

Describe here the steps your agency has taken to ensure that your system for responding to requests is effective and efficient.

a. Do FOIA professionals within your agency have sufficient IT support?

The Office of the Secretary (Division of Information Management), which includes the FOIA office and the National Injury Information Clearinghouse, is a division within of the CPSC Office of Information and Technology Services. As such, the FOIA professionals receive comprehensive information technology (“IT”) support. The CPSC has implemented an electronic FOIA processing application and new document scanning procedures. In addition, the records of the agency are being systematically scanned into an electronic filing system that makes file searching and retrieval quicker and more efficient. The records can be retrieved into the FOIA processing application system where the materials can be copied to individual FOIA request files to be reviewed and redacted electronically. The Office of the Secretary has procured contractors to scan all official records and records responsive to FOIA requests to make these records more readily available and easier to process. The FOIA office has an Information Technology Specialist, who is dedicated to the maintenance of the FOIA processing application to ensure that the system is functioning at all times. All FOIA professional staff members have desktop scanning equipment and computer software to expedite the scanning needs for individual cases or requests. Shared scanning equipment is used for large files that need to be processed.

b. Describe how your agency’s FOIA professionals interact with your Open Government Team.

The FOIA office is an integral part of the Open Government Team. Many records that are placed on the CPSC’s website, www.cpsc.gov, go through a review and clearance process by the FOIA office. The Office of the Secretary manages certain portions of the website, including a Public Calendar of the CPSC’s public activities and the FOIA Electronic Reading Room.

c. Describe the steps your agency has taken to assess whether adequate staffing is being devoted to responding to FOIA Requests.

During the last year, CPSC management and the Office of the Secretary reviewed the staffing levels in the FOIA office, resulting in the hiring of two new FOIA Paralegal Specialists, two new administrative assistants, and the procurement of two Paralegal contractors devoted to processing FOIA requests. As of the end of Fiscal Year 2010, staff resources for processing FOIA requests were 11 full-time equivalents (FTEs).

d. Describe any other steps your agency has undertaken to ensure that your FOIA system operates efficiently and effectively.

The Office of the Secretary has procured two new paralegal contractors and hired two new administrative assistants to improve management of the official records of the agency. The new staff are indexing, scanning, and filing records. The records are frequently the subject of FOIA requests and are disclosed proactively on the CPSC website.

III. Steps Taken to Increase Proactive Disclosures

Describe here the steps your agency has taken to increase the amount of material that is available on your agency website, including providing examples of proactive disclosures that have been made since issuance of the new FOIA Guidelines.

1. a. Has your agency added new material to your agency website since last year?

Since last year, the CPSC has added live webcasts of the Commission's public meetings and hearings and of staff conferences and roundtable discussions with public stakeholders on the CPSC's website, www.cpsc.gov. The CPSC created or enhanced pages on its website devoted to topics of high interest, such as drywall, hot tubs and spas, cribs, and all-terrain vehicles. Documents pertaining to those subjects are posted without any FOIA request.

b. What types of records have been posted?

The types of records posted are contractor and CPSC laboratory testing, investigation reports of individual incidents, updates of CPSC overall activities for that product subject, area of safety, guidance to the public, frequent questions and answers, and activities with other agencies, federal and local. Records of Commission Actions on public matters, which include minutes of public decision-making meetings, are posted on the website within days, or sometimes, immediately after the decisions are taken by the Commission. All public statements of Commissioners about public decisions are posted on the website. The CPSC also posts all information relating to CPSC *Federal Register* notices, including drafts of the notices for regulatory and rulemaking activities, Sunshine Act meeting notices, and Paperwork Reduction Act matters. This year, the CPSC began to post webcasts of the Commission public hearings and meetings on the agency's website, www.cpsc.gov,

The Commission posts on its website numerous staff technical reports, summaries of meetings with the public, and all of its contracts with the public, as well as, interagency agreements. Commission guidance and staff guidance for the application of new legislation are posted proactively and provided to the public.

c. Give examples of the types of records your agency now posts that used to be available only by making a FOIA request for them.

Records that are now posted that used to be available only by making a FOIA request include staff briefing packages, staff technical and statistical reports, incident investigation reports, agency contracts and purchases, interagency agreements with other agencies or governments, and guidance on the application of new legislation affecting the CPSC, namely, the Consumer Product Safety Improvement Act of 2008.

d. What system do you have in place to routinely identify records that are appropriate for posting?

The CPSC has a policy of proactively disclosing on the CPSC website all materials distributed to the Commission with a few exceptions that involve active investigative or legal matters. Supervisors place all technical reports and documents created by CPSC staff or CPSC contractors on the website upon completion. All such records undergo an internal clearance by the professional staff and a Web clearance process that includes review and approval by upper management.

e. How do you utilize social media in disseminating information?

The CPSC is engaging the public through social media, including Facebook, Twitter, the OnSafety blog, Flickr, YouTube, recall widgets, email announcements and Podcasts, as well as specific pages or sections of the website devoted to particular product areas.

f. Describe any other steps taken to increase proactive disclosures at your agency.

The CPSC Open Government Plan provides descriptions and guidelines for the use of the CPSC website and links to much of the information on the website. See: <http://www.cpsc.gov/open/open.pdf>. Pursuant to the Consumer Product Safety Improvement Act of 2008, the Commission is working on a publically available searchable database on reports of harm received from consumers and other stakeholders. The database will be accessed at <http://www.SaferProducts.gov/>. This database is scheduled to be up and running by March 2011, and will help the public by providing direct access to reports received by the Commission without a FOIA request. <http://www.cpsc.gov/about/cpsia/sect212.html>.

IV. Steps Taken to Greater Utilize Technology

1. Electronic receipt of FOIA requests:

a. What proportion of the components within your agency which receive FOIA requests have the capability to receive such requests electronically?

Within the CPSC, the processing of FOIA requests is centralized in the Office of the Secretary. There are no other agency components that process FOIA requests. The Office of the Secretary has the capability to receive FOIA requests electronically.

b. To what extent have you increased the number of components doing so since the filing of your last Chief FOIA Officer Report?

Within the CPSC, the processing of FOIA requests is centralized in the Office of the Secretary. There are no other agency components that process FOIA requests.

c. What methods does your agency use to receive requests electronically?

The CPSC receives FOIA requests at its website page, <http://www.cpsc.gov/library/foia/foiaonline.html>; by email at several email addresses, including CPSC-FOIA@cpsc.gov, and CPSC-OS@cpsc.gov; and the addresses of the FOIA Public Liaison Officers, Deborah Acosta - dacosta@cpsc.gov and Lynn Carter - lcarter@cpsc.gov; and the FOIA Officer, Alberta Mills – amills@cpsc.gov; and the Chief FOIA Officer, Todd Stevenson – tstevenson@cpsc.gov; at the CPSC website Contact Information automated form at <http://www.cpsc.gov/cgibin/info.aspx>; and by facsimile at 301-504-0127.

2. Electronic tracking of FOIA requests:

a. What proportion of components within your agency which receive FOIA requests have the capability to track such requests electronically?

Within the CPSC, the processing of FOIA requests is centralized in the Office of the Secretary. There are no other agency components that process FOIA requests. The Office of the Secretary has the capability to track FOIA requests electronically.

b. To what extent have you increased the number of components doing so since the filing of your last Chief FOIA Officer Report?

Within the CPSC, the processing of FOIA requests is centralized in the Office of the Secretary. There are no other agency components that process FOIA requests.

c. What methods does your agency use to track requests electronically?

The CPSC tracks FOIA requests using the electronic FOIA processing application system.

3. Electronic processing of FOIA requests:

a. What proportion of components within your agency which receive FOIA requests have the capability to process such requests electronically?

Within the CPSC, the processing of FOIA requests is centralized in the Office of the Secretary. There are no other agency components that process FOIA requests. The Office of the Secretary has the capability to process FOIA requests electronically.

b. To what extent have you increased the number of components doing so since the filing of your last Chief FOIA Officer Report?

Within the CPSC, the processing of FOIA requests is centralized in the Office of the Secretary. There are no other agency components that process FOIA requests.

c. What methods does your agency use to process requests electronically?

The CPSC processes FOIA requests using the electronic FOIA processing application system and an electronic filing system that makes file searching and retrieval quicker and more efficient. The records can be retrieved into the FOIA processing application system where the materials can be copied to individual FOIA request files to be reviewed and redacted electronically.

4. Electronic preparation of your Annual FOIA Report

a. What type of technology does your agency use to prepare your agency Annual FOIA Report, i.e., specify whether the technology is FOIA-specific or a generic data-processing system?

The CPSC uses the electronic FOIA processing application system to prepare the agency's Annual FOIA Report along with some manual calculations.

b. If you are not satisfied with your existing system to prepare your Annual FOIA Report, describe the steps you have taken to increase your use of technology for next year.

We are satisfied with our existing system.

V. Steps Taken to Reduce Backlogs and Improve Timeliness in Responding to Requests

1. If your agency has a backlog, report here whether that backlog is decreasing. That reduction should be measured in two ways. First, report whether the number of backlogged requests and backlogged administrative appeals that remain pending at the end of the fiscal year decreased or increased, and by how many, when compared with last fiscal year. Second, report whether your agency closed in fiscal year 2010 the ten oldest of those pending requests and appeals from fiscal year 2009, and if not, report how many of them your agency did close.

The backlog of FOIA requests increased by 43 requests at the end of fiscal year 2010, to 306 requests, up from 263 requests at the end of fiscal year 2009. (As of this writing, March 1, 2011, the backlog is 237 requests.) There was no backlog of administrative appeals. The FOIA office has developed a plan to process this backlog and prioritize the requests so that they can be completed.

During fiscal year 2010, the CPSC closed all 10 of the oldest FOIA requests reported in the fiscal year 2009 Annual FOIA Report. There were no pending administrative appeals. The FOIA office is focusing its efforts on the oldest requests. Most of these requests have been compiled and are in other Commission offices for review. The FOIA office encourages these offices to complete their reviews in a timely fashion for prompt release and completion of the requests.

2. If there has not been a reduction in the backlog as measured by either of these metrics, describe why that has occurred.

a. Is the backlog increase a result of an increase in the number of incoming requests or appeals?

The backlog increase is not a result of an increase in the number of incoming requests or appeals. The number of incoming requests decreased in fiscal year 2010 to 3,220, down from 3,435 requests in fiscal year 2009.

b. Is the backlog increase caused by a loss of staff?

The backlog increase is not a result of a loss of staff. During Fiscal Year 2010, the FOIA professional staff was increased by two FOIA Paralegal Specialists, two administrative assistants, and two paralegal contractors.

c. Is the backlog increase caused by an increase in the complexity of the requests received?

The backlog increase was partially the result of an increase in complex requests, including several requests seeking all the records concerning the CPSC's investigation of imported drywall manufacturers and importers, where the drywall was alleged to be causing problems in thousands of homes. The files regarding the matter involved more than over 100,000 documents and at times were being processed by several FOIA Paralegal Specialists. The FOIA office has developed a process for prioritizing these requests and completing them as expeditiously as possible.

d. What other causes, if any, contributed to the increase in backlog?

During fiscal year 2010, FOIA request processing was diverted for the training of the recently hired FOIA Paralegal Specialists and paralegal contractors.

3. Describe the steps your agency is taking to reduce any backlogs and to improve timeliness in responding to requests and administrative appeals.

a. Does your agency routinely set goals and monitor the progress of your FOIA caseload?

Yes, the CPSC sets monthly goals of reducing the backlog and monitors the progress of the FOIA caseload daily.

b. Has your agency increased its FOIA staffing?

Yes, in fiscal year 2010, the CPSC increased the FOIA staffing by two FOIA Paralegal Specialists, two paralegal contractors, and two administrative clerks.

c. Has your agency made IT improvements to increase timeliness?

Yes, in fiscal year 2010, we reviewed the latest updates to the FOIA processing application system and will be purchasing those updates in fiscal year 2011. The updates will allow for more accurate searching, processing of multiple pages, improved redacting of information, and enhancements to the FOIA reporting function.

d. Has your agency Chief FOIA Officer been involved in overseeing your agency's capacity to process requests?

Yes, the Chief FOIA Officer oversees the agency's capacity to process requests.

Spotlight on Success

In response to the requirements of Section 212 of the Consumer Product Safety Improvement Act of 2008, over the last two years, the CPSC has been preparing to establish a Publicly Available Consumer Product Safety Information Database that will be accessible and searchable through the CPSC's Internet website. This will be a database of consumer product reports of harm. Beginning in March 2011, through the website, SaferProducts.gov, consumers can report product safety incidents or potential incidents, and search for other reports and recalls on products they own, or may be thinking about buying. SaferProducts.gov provides the CPSC and the American public with powerful new tools to report, review, analyze, and respond to reports on the safety of consumer products.

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