

**U.S. Consumer Product Safety Commission
Chief FOIA Officer Report
March 2013-March 2014**

The Consumer Product Safety Commission (CPSC or Commission) is an independent regulatory agency established by the Consumer Product Safety Act. CPSC is charged with protecting the public from unreasonable risks of injury or death associated with the use of the thousands of types of consumer products under the agency's jurisdiction. Deaths, injuries, and property damage from consumer product incidents cost the nation more than \$1 trillion annually. CPSC is committed to protecting consumers and families from products that pose a fire, electrical, chemical, or mechanical hazard. CPSC's work to ensure the safety of consumer products - such as toys, cribs, power tools, cigarette lighters, and household chemicals - contributed to a decline in the rate of deaths and injuries associated with consumer products over the past 40 years.

The general reporting period for the Chief FOIA Officer Report is March 2013 to March 2014. The CPSC Chief FOIA Officer conducted a review of the administration of the FOIA and analyzed the data from its FOIA Annual Report from Fiscal Year 2013 supplemented by data gathered for the period October 1, 2012 to September 30, 2013.

I. Steps Taken to Apply the Presumption of Openness

The guiding principle underlying the President's FOIA Memorandum and the Attorney General's FOIA Guidelines is 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. To do so, you should answer the questions listed below and then include any additional information you would like to describe how your agency is working to apply the presumption of openness.

FOIA Training:

1. Did your agency hold an agency FOIA conference, or otherwise conduct training during this reporting period?

The CPSC did train staff throughout the agency who are responsible for performing file searches for FOIA requests and we gave additional training to the FOIA Government Information Specialists (FOIA Professionals) who process FOIA requests.

2. Did your FOIA professionals attend any FOIA training, such as that provided by the Department of Justice?

FOIA request processing is centralized in the CPSC's Secretariat or Office of the Secretary, a division of the Office of the General Counsel. We have provided specialized training to two FOIA professionals and two clerical staff responsible for FOIA processing (or approximately 44% or 4 of 9 employees. CPSC FOIA professionals also attended training sessions conducted by a contractor that administers the CPSC FOIA electronic

processing system. We plan to require each FOIA professional to attend DOJ training during 2014.

Outreach:

3. *Did your FOIA professionals engage in any outreach and dialogue with the requester community or open government groups regarding your administration of the FOIA?*

Although the FOIA professionals did not engage in a formal outreach program, they speak and correspond with requesters daily about FOIA issues on specific requests and general FOIA matters and policies. Requesters frequently contact our FOIA Public Liaisons through the FOIA Requester Service Center on the CPSC website.

<http://www.cpsc.gov/Newsroom/FOIA/FOIA-Requester-Service-Center-and-FOIA-Public-Liaisons--Check-Status-of-a-FOIA-Request/>

Discretionary Disclosures:

In his 2009 FOIA Guidelines, the Attorney General strongly encouraged agencies to make discretionary releases of information even when the information might be technically exempt from disclosure under the FOIA. OIP encourages agencies to make such discretionary releases whenever there is no foreseeable harm from release.

4. *Does your agency have a formal process in place to review records for discretionary release? If so, briefly describe this process.*

Yes. The CPSC FOIA regulations at 16 C.F.R. § 1015.1(b) states the Commission's policy that with respect to requests for records is that disclosure is the rule and withholding is the exception. All records not exempt from disclosure will be made available. The FOIA professionals have been trained and instructed on the discretionary 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. The FOIA professionals frequently consult with the attorneys of the CPSC Office of General Counsel on whether to release certain records.

5. *During the reporting period did your agency make any discretionary releases of otherwise exempt information?*

Yes.

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

5 U.S.C. § 552(b)(5).

7. *Provide a narrative description, or some examples of the types of information that your agency released as a matter of discretion.*

During the reporting period the CPSC made numerous discretionary releases. Most records previously withheld would have been covered by exemption 5. Records released on a discretionary basis are usually from investigative files involving completed corrective actions and recalls that remain open for staff to monitor the corrective action. Discretionary releases are also applied to draft documents and advice in closed investigative files where no further action will be taken.

Other initiatives:

8. Did your agency post all of the required quarterly FOIA reports for Fiscal Year 2013?

Yes.

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

The presumption of openness is the central policy of the CPSC's Secretariat and Office of the General Counsel for the processing of FOIA requests and, with respect to requests for records, disclosure is the rule and withholding is the exception. *See* 16 C.F.R. § 1015.1(b). All records that are not subject to an exemption are disclosed. Records that may be subject to exemption from disclosure are made available as a matter of discretion except when prohibited by law. *See also* the CPSC Open Government plan on the CPSC website at:

<http://www.cpsc.gov/en/About-CPSC/Agency-Reports/open/>

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

As the Attorney General emphasized in his FOIA Guidelines, "[a]pplication of the proper disclosure standard is only one part of ensuring transparency. Open government requires not just a presumption of disclosure, but also an effective system for responding to FOIA requests." This section should include a discussion of how your agency has addressed the key roles played by the broad spectrum of agency personnel who work with FOIA professionals in responding to requests, including, in particular, steps taken to ensure that FOIA professionals have sufficient IT support.

Describe here the steps your agency has taken to ensure that its system for responding to requests is effective and efficient. To do so, answer the questions below and then include any additional information that you would like to describe how your agency ensures that your FOIA system is efficient and effective.

Personnel:

1. Has your agency converted all of its FOIA professionals to the new Government Information Specialist job series?

Yes. All of our FOIA professional positions have been converted to the new Government Information Specialist job series, and CPSC employs INSERT FOIA professionals in this series

Processing Procedures:

2. For Fiscal Year 2013 did your agency maintain an average of ten or less calendar days to adjudicate requests for expedited processing?

CPSC did not process any expedited requests.

3. Has your agency taken any steps to make the handling of consultation and referrals more efficient and effective?

CPSC did not process any consultations or referrals.

Requester Services:

4. Do you use e-mail or other electronic means to communicate with requesters when feasible?

Acknowledgements of FOIA requests, notifications to requesters and to manufacturers required by sections 6(a) and 6(b) of the Consumer Product Safety Act, and final responses are frequently communicated by email.

5. Does your agency notify requesters of the mediation services offered by the Office of Government Information Services (OGIS) at NARA?

No, but we will in the future.

6. Describe any other steps your agency has undertaken to ensure that your FOIA system operates efficiently and effectively, such as conducting self-assessments to find greater efficiencies, improving search processes, eliminating redundancy, etc.

CPSC FOIA professionals are currently working with a contractor to develop an online system that will allow CPSC to communicate electronically with requesters and manufacturers for all aspects of FOIA request processing, eliminating all paper and postal mailing.

III. Steps Taken to Increase Proactive Disclosures

Both the President and Attorney General focused on the need for agencies to work proactively to post information online without waiting for individual requests to be received. Describe here the steps your agency has taken both to increase the amount of material that is available on your agency website, and the usability of such information, including providing examples of proactive disclosures that have been made during this past reporting period (i.e., from March 2012 to March 2013). In doing so, answer the questions listed below and describe any additional steps taken by your agency to make and improve proactive disclosures of information.

Posting Material:

1. Do your FOIA professionals have a system in place to identify records for proactive disclosures?

Yes.

2. If so, describe the system that is in place.

CPSC's FOIA professionals have a system in place to identify records for proactive disclosure, as reflected by CPSC's policy of proactively disclosing on the CPSC website several different categories of records or information

3. Provide examples of material that your agency has posted this past year, including links to where this material can be found online.

The following types of records or information are subject to proactive disclosure on the CPSC's website:

- Materials and briefing packages distributed to the Commission, except for matters that involve active investigations or legal advice, or other exempt matters. <http://www.cpsc.gov/Newsroom/FOIA/Commission-Briefing-Packages/>
- Records required under 5 U.S.C. § 552(a)(2) and Commission regulations at 16 C.F.R. §1015.2 to be made available to the public for inspection and copying as well as those that have or are likely to become the subject of frequent FOIA requests. <http://www.cpsc.gov/en/Newsroom/FOIA/>
- Final technical reports and documents created by CPSC staff or CPSC contractors (See <http://www.cpsc.gov/en/Research--Statistics/-Technical-Reports-/>).

- Summaries of CPSC staff meetings with the public.
<http://www.cpsc.gov/en/Newsroom/Public-Calendar/>
- CPSC contracts with the public and interagency agreements.
<http://www.cpsc.gov/en/About-CPSC/Agency-Reports/Interagency-Agreements-and-Contracts/>
- Information concerning ongoing activities such as agency rulemakings.
<http://www.cpsc.gov/en/Regulations-Laws--Standards/Rulemaking/>
- Topics of high interest such as all terrain vehicles, cribs, pools and spas, carbon monoxide, window cords, magnets and resale and thrift stores.
<http://www.cpsc.gov/en/>
- Filings in adjudicative proceedings where the CPSC has filed a Complaint against a manufacturer. <http://www.cpsc.gov/en/Recalls/Recall-Lawsuits/Adjudicative-Proceedings/>
- Records of Commission Actions on public matters, which include minutes of public decision-making meetings, are posted on the website almost immediately after decisions are taken by the Commission.
<http://www.cpsc.gov/Newsroom/FOIA/Records-of-Commission-Action-and-Commission-Meeting-Minutes/>
- Public statements of Commissioners. <http://www.cpsc.gov/en/About-CPSC/Commissioners/>
- Information relating to CPSC *Federal Register* notices, the notices for regulatory and rulemaking activities, Sunshine Act meeting notices, and Paperwork Reduction Act matters. <http://www.cpsc.gov/en/Regulations-Laws--Standards/Federal-Register-Notices/>
- Webcasts of public hearings and meetings of the Commission and videos of those webcasts.
<http://www.cpsc.gov/en/Newsroom/Multimedia/?filter=60592>
- Commission and staff guidance documents informing the public of new legislation and the implications of such legislation.
<http://www.cpsc.gov/en/Regulations-Laws--Standards/>

Making Posted Material More Useful:

- 4. Beyond posting new material, is your agency taking steps to make the posted information more useful to the public, especially to the community of individuals who regularly access your agency's website, such as soliciting**

feedback on the content and presentation of the posted material, improving search capabilities on the site, creating mobile applications, providing explanatory material, etc.?

The CPSC redesigned its website to improve its usability, partly based on comments from the public and agency stakeholders. The CPSC directs the public to post their comments on regulatory matters on www.Regulations.gov, which allows the public to review all comments on a given matter

5. *If so, provide examples of such improvements.*

The website also offers a way for consumers or businesses to contact the agency by email.

6. *Did your agency use any means to publicize or highlight important proactive disclosures for public awareness? If so, is social media utilized?*

The CPSC is engaging the public through social media, including 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. The Commission launched efforts to connect to the public and stakeholders through some popular current social media technologies in order to keep them informed about CPSC events and issues with which the agency is engaged. These include an account at Twitter, Flickr and a channel at YouTube through which users can view video of important public service announcements.

7. *Has your agency encountered challenges that make it difficult to post records you otherwise would like to post? If so, please briefly explain what those challenges are.*

Section 6(b) of the Consumer Product Safety Act, 15 U.S.C. § 2055 6(b), requires that the CPSC notify each manufacturer, importer or private labeler identified in the records to be released to allow them to comment on the accuracy of the information and the fairness of the release. The CPSC regulation for section 6(b), 16 C.F.R. part 1101, allows firms to request that the CPSC re-notify them for every release of the same information. CPSC cannot post that information on the website.

8. *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>. Also during this year the Commission held Open Government meetings for its stakeholders at its headquarters and by webcast on Testing Procedures, All Terrain Vehicle Safety, CPSC Safety Academy, Workshops on children's products, Small Business Ombudsman Webcasts on Third Party Toy Testing and Small

Batch Manufacturer Registration and the Chronic Hazard Advisory Panel (CHAP) on Phthalates and Testing Methods.

Pursuant to the Consumer Product Safety Improvement Act of 2008, the Commission added a publicly available searchable database on reports of harm received from consumers and other stakeholders. The database is accessed at <http://www.SaferProducts.gov/>. This database helps 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

A key component of the President's FOIA Memorandum was the direction to "use modern technology to inform citizens about what is known and done by their Government." In addition to using the internet to make proactive disclosures, agencies should also be exploring ways to utilize technology in responding to requests. In 2010 and 2011, agencies reported widespread use of technology in receiving and tracking FOIA requests and preparing agency Annual FOIA Reports.

Online tracking of FOIA requests:

1. Can a FOIA requester track the status of his/her request electronically?

Requesters cannot currently electronically track their requests; however, CPSC has contracted, and anticipates having the capability, for electronic tracking in FY 2015. CPSC has a FOIA page <http://www.cpsc.gov/library/foia/requeststatus.html> that provides the email addresses for the FOIA Public Liaisons, where the requesters can send an email to request the status of their requests.

2. If yes, how is this tracking function provided to the public? For example, is it being done through regularly updated FOIA logs, online portals, or other mediums?

Not applicable to CPSC.

3. Describe the information that is provided to the requester through the tracking system.

Not applicable to CPSC.

4. In particular, does your agency tracking system provide the requester with an estimated date of completion for his/her request?

Not applicable to CPSC.

5. *If your agency does not provide online tracking of requests, is your agency taking steps to establish this capability?*

Yes. We are working with the contractor of our electronic tracking system and our computer technical staff to develop a user-friendly online tracking system for FOIA requesters. The system is expected to be operational by FY 2015.

Use of technology to facilitate processing of requests:

6. *Beyond using technology to redact documents, is your agency taking steps to utilize more advanced technology to facilitate overall FOIA efficiency, such as improving record search capabilities, utilizing document sharing platforms for consultations and referrals, or employing software that can sort and de-duplicate documents?*

Yes.

7. *If so, describe the technological improvements being made*

CPSC FOIA professionals are working with our computer technical experts and contractors to develop and obtain document sharing platforms for all of our correspondence and records with requesters, other agencies and our stakeholders.

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

The President and the Attorney General have emphasized the importance of improving timeliness in responding to requests. This section addresses both time limits and backlog reduction. Backlog reduction is measured both in terms of numbers of backlogged requests or appeals and by looking at whether agencies closed their ten oldest requests and appeals. For the figures required in this Section, please use those contained in the specified sections of your agency's 2012 Annual FOIA Report.

Simple Track Requests:

- 1. Section VII.A of your agency's Annual FOIA Report, entitled "FOIA Requests – Response Time for All Processed Requests," includes figures that show your agency's average response times for processed requests. For agencies utilizing a multi-track system to process requests, there is a category for "simple" requests, which are those requests that are placed in the agency's fastest (non-expedited) track, based on the low volume and/or simplicity of the records requested. If your agency does not utilize a separate track for processing simple requests, answer the question below using the figure provided in your report for your non-expedited requests.**

a. Does your agency utilize a separate track for simple requests?

Yes. The CPSC uses a separate track for simple requests.

b. If so, for your agency overall, for Fiscal Year 2013, was the average number of days to process simple requests twenty working days or fewer?

The average number of days to process perfected simple requests was 27 days, which is within the timer permitted by statute considering authorized extensions of time..

c. If your agency does not track simple requests separately, was the average number of days to process non-expedited requests twenty working days or fewer?

Not applicable to CPSC since the agency utilizes a separate track for simple requests.

Backlogs and “Ten Oldest” Requests, Appeals and Consultations:

2. Sections XII.A of your agency’s Annual FOIA Report, entitled “Backlog of FOIA Requests and Administrative Appeals” shows the numbers of any backlogged requests or appeals from the fiscal year. Section VII.E, entitled “Pending Requests – Ten Oldest Pending Request,” Section VI.C(5), entitled “Ten Oldest Pending Administrative Appeals,” and Section XII.C, entitled “Consultations on FOIA Requests – Ten Oldest Consultations Received from Other Agencies and Pending at Your Agency,” show the ten oldest pending requests, appeals, and consultations. You should refer to these numbers from you Annual FOIA Reports for both Fiscal Year 2012 and Fiscal Year 2013 when completing this section of your Chief FOIA Officer Report.

Backlogs:

a. If your agency had a backlog of requests at the close of Fiscal Year 2013, did that backlog decrease as compared to Fiscal Year 2012?

The backlog of requests at CPSC decreased from 232 in Fiscal Year 2012 to 230 in Fiscal Year 2013.

b. If your agency had a backlog of administrative appeals in Fiscal Year 2013, did that backlog decrease as compared to Fiscal Year 2012?

CPSC did not have a backlog of administrative appeals in Fiscal Year 2012 or Fiscal Year 2013.

Ten Oldest Requests

c. In Fiscal Year 2013, did your agency close the ten oldest requests that were pending as of the end of Fiscal Year 2012?

CPSC closed five of the ten oldest requests.

d. If no, please provide the number of these requests your agency was able to close by the end of the fiscal year, as listed in Section VII.E of your Fiscal Year 2012 Annual FOIA Report. If you had less than ten total oldest requests to close, please indicate that.

CPSC closed five of the ten oldest requests that were pending as of the end of Fiscal Year 2012. CPSC did not have fewer than ten total oldest requests. CPSC had INSERT NUMBER total oldest requests.

Ten Oldest Appeals

e. In Fiscal Year 2013, did your agency close the ten oldest administrative appeals that were pending as of the end of Fiscal Year 2012?

CPSC did not have any pending administrative appeals as of the end of Fiscal Year 2012.

f. If no, please provide the number appeals your agency was able to close.

CPSC did not have any pending administrative appeals as of the end of Fiscal Year 2012.

Ten Oldest Consultations

g. In Fiscal Year 2013, did you agency close the ten oldest consultations received by your agency and pending as of the end of Fiscal Year 2101?

CPSC did not have any pending consultations as of the end of Fiscal Year 2012.

h. If no, please provide the number of these consultations your agency did close.

CPSC did not have any pending consultations as of the end of Fiscal Year 2012.

Reasons for Any Backlogs:

3. If you answered “no” to any of the above questions, describe why your agency was not able to reduce the backlogs and/or close the ten oldest pending requests, appeals, and consultations. In doing so, answer the following questions then include any additional explanation:

Request and/or Appeal Backlog

a. ***Was the lack of a reduction in the request and/or appeal backlog a result of an increase in the number of incoming requests?***

Not applicable to CPSC.

b. ***Was the lack of a reduction in the request and/or appeal backlog caused by a loss of staff?***

Not applicable to CPSC.

c. ***Was the lack of a reduction in the request and/or appeal backlog caused by an increase in the complexity of the requests received?***

Not applicable to CPSC.

d. ***What other causes, if any, contributed to the lack of a decrease in the request and/or appeal backlog?***

Not applicable to CPSC.

“Ten Oldest” Not Closed

e. ***Briefly explain the obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2013.***

The ten oldest requests seek voluminous complicated records, file searching issues and processing issues. They also require numerous notifications to manufacturers or retailers for confidential claims on information those firms submitted to the CPSC. Most FOIA requests received at the CPSC seek information that identifies specific consumer products. CPSC must process such requests according to section 6(b) of the Consumer Product Safety Act, which requires that the CPSC notify each manufacturer, importer or private labeler identified in the records to be released to allow them to comment on the accuracy of the information and the fairness of the release.

f. ***If your agency was unable to close any of its ten oldest requests or appeals because you were waiting to hear back from other agencies on consultations you sent.***

Not applicable to CPSC.

Plans for Closing of Ten Oldest Pending Requests, Appeals, and Consultations and Reducing Backlogs:

4. If your agency did not close its ten oldest pending requests, appeals, and consultations, please provide a plan describing how your agency intends to close those “ten oldest” requests, appeals, and consultations during Fiscal Year 2014.

The CPSC FOIA Specialists will be focusing attention to the ten oldest requests, contacting requesters for clarification of their requests and consulting with our General Counsel staff to resolve any legal issues involved with the requests.

5. If your agency had a backlog of more than 1000 pending requests and did not reduce that backlog in Fiscal Year 2013, provide your agency’s plan for achieving backlog reduction in the year ahead.

Not applicable to CPSC.

Interim Responses:

6. Does your agency have a system in place to provide interim responses to requesters whenever possible.

Yes, CPSC has a system in place to provide partial releases to requesters whenever possible. CPSC FOIA professionals also maintain frequent contact with requesters to update requesters on the status of a FOIA request.

7. If your agency had a backlog in Fiscal Year 2013, please provide an estimate of the number or percentage of cases in the backlog where a substantive, interim response was provided during the fiscal year.

All requests have received an acknowledgement of the receipt of the request and approximately forty percent have received substantive interim response or notification explaining the delay in the final response.

VI. Use of FOIA’s Law Enforcement “Exclusions”

To increase transparency regarding the use of the FOIA’s statutory law enforcement exclusions, which authorize agencies under certain exceptional circumstances to “treat the records as not subject to the requirements of [the FOIA], 5 U.S.C. § 552(c)(1), (2), (3), please answer the following questions:

1. Did your agency invoke a statutory exclusion during Fiscal Year 2013?

CPSC did not invoke the statutory exclusion during Fiscal Year 2013.

2. If so, what is the total number of times exclusions were invoked?

CPSC did not invoke the statutory exclusion during Fiscal Year 2013.

VII. Spotlight on Success

CPSC is working with contractors and technical staff to develop an electronic document sharing system that will allow the FOIA professionals to electronically handle all correspondence and notifications to consumer product manufacturers, eliminating printing, paperwork and mailing costs.

The CPSC website, www.cpsc.gov, has been redesigned to improve ease of use. These enhancements better facilitate the proactive disclosure of information under the FOIA by providing users with more navigational choices to find information within a more dynamic framework. The website is built using a Content Management System, which allows the agency to better organize, automate and display content on multiple webpages and on other technology platforms, such as smartphones and tablets.

Additionally, agency staff developed a website posting request form and procedure that allows any CPSC staff to request that reports or documents cleared for public release be placed on the website for public availability. This, in turn, facilitates proactive disclosure of information or records under the FOIA.

Finally, the CPSC website contains the complete dockets in CPSC adjudicative proceedings. See <http://www.cpsc.gov/library/foia/adjudicative.html>. For each of the ongoing adjudicative proceedings, filings by Complaint Counsel (CPSC staff) and Respondents, and orders issued by the Administrative Law Judge, become publicly available as soon as possible after being filed with the Secretariat; the CPSC Secretariat serves as the “Clerk of the Court” in the CPSC’s adjudications. This expedites the proactive disclosure of information by the CPSC.

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