



U.S. Consumer Product Safety Commission

Chief FOIA Officer Report for 2018

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 help ensure the safety of consumer products – such as toys, cribs, power tools, cigarette lighters, and household chemicals – has contributed to a decline in the rate of deaths and injuries associated with consumer products over the past 40 years.

As required by the Department of Justice’s FOIA Guidelines, 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 2017 to generate this report.

Section I. Steps Taken to Apply the Presumption of Openness

The guiding principle underlying the FOIA memoranda and Department of Justice FOIA Guidelines is the presumption of openness.

Please answer the following questions in order to describe the steps your agency has taken to ensure that the presumption of openness is being applied to all decisions involving the FOIA. You may also include any additional information that illustrates how your agency is working to apply the presumption of openness.

A. FOIA Training:

1. Did your FOIA professionals or the personnel at your agency who have FOIA responsibilities attend any FOIA training or conference during the reporting period such as that provided by the Department of Justice?

Yes.

2. If yes, please provide a brief description of the type of training attended and the topics covered.

Although FOIA request processing is centralized in the CPSC's Secretariat, a division of the Office of the General Counsel ("OGC"), FOIA liaisons in agency units and divisions are responsible for locating and forwarding to the FOI Officer potentially responsive records. FOIA Program Office Liaison training is conducted annually. Four training sessions were held in February 2017 for the Program Office FOIA Liaisons so that they fully understand and comprehend their responsibilities and duties in searching for and providing responsive information to the FOIA office as expeditiously as possible. In addition, the Secretariat conducted in-house training for a new Government Information Specialist focusing on the FOIA and the Privacy Act. The topics addressed in the training included automatic disclosures of records, methods for identifying and locating records, procedural aspects of FOIA requests, appropriate use of FOIA exemptions, and protection of personal privacy in the context of FOIA requests.

3. Provide an estimate of the percentage of your FOIA professionals and staff with FOIA responsibilities who attended substantive FOIA training during this reporting period.

Training for 100 % of the agency FOIA professional staff and Program Office Liaisons was held by the agency in Fiscal Year 2017. As mentioned above, training will occur annually for the FOIA professional staff and Program Office Liaisons.

4. OIP has directed agencies to "take steps to ensure that all of their FOIA professionals attend substantive FOIA training at least once throughout the year." If your response to the previous questions that less than 80% of your FOIA professionals attended training, please explain your agencies plan to ensure that all FOIA professionals receive or attend substantive FOIA training during the next reporting year.

While 100% of CPSC's FOIA professionals and staff attending training in FY2017, going forward, to further empower staff with in-depth FOIA knowledge, all OGC/Secretariat FOIA staff will be required to annually attend at least one DOJ FOIA training course, and all FOIA liaisons will be strongly encouraged to annually attend at least one DOJ FOIA training course, as well take advantage of DOJ's electronic FOIA training materials.

B. Outreach

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

FOIA professionals speak and correspond with requesters daily about FOIA issues relating to specific requests as well as general FOIA matters and policies. The scientific nature and complexity of many of the agency's records result in frequent dialogue

between FOIA professionals and requesters. To facilitate this dialogue, the FOIA professionals provide requesters with their direct contact information.

In addition, requesters frequently contact our FOIA Public Liaisons through the FOIA Requester Service Center on the CPSC website,
at <http://www.cpsc.gov/Newsroom/FOIA/FOIA-Requester-Service-Center-and-FOIA-Public-Liaisons--Check-Status-of-a-FOIA-Request/>.

C. Other Initiatives

6. Describe any efforts your agency has undertaken to inform non-FOIA professionals of their obligations under the FOIA.

The Office of the General Counsel provided detailed training on FOIA and related obligations to non-FOIA staff. The training involved topics including interpreting the scope of a FOIA request, the obligations involved in searching for agency records and the CPSC's Exemption 3 statutory obligations with respect to 15 U.S.C. § 2055(b)(1) (referred to as "section 6(b)" or "section 6(b)(1)").

This year the Secretariat FOIA office and Office of General Counsel conducted in-house training for the program office designees or liaisons on the requirements for conducting FOIA searches and to provide all responsive information, regardless of sensitivity, to the FOIA office for a final determination on release.

Additionally, within one week of arriving at CPSC, all new employees are also required to complete a privacy awareness training that includes substantive information on the purpose of the FOIA, including a listing of the FOIA exemptions and exclusions, and information on what to do in the event they receive a FOIA request.

7. If there are any other initiatives undertaken by your agency to ensure that the presumption of openness is being applied, please describe them here.

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. 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 if there is no foreseeable harm in release, except when prohibited by law. *See also* The CPSC Open Government Plan, <http://www.cpsc.gov/About-CPSC/Agency-Reports/open/>.

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

Please answer the following questions to describe the steps your agency has taken to

ensure that your management of your FOIA program is effective and efficient. You should also include any additional information that describes your agency's efforts in this area.

1. For Fiscal Year 2017, what was the average number of days your agency reported for adjudicating requests for expedited processing? Please see Section VIII.A of your agency's Fiscal Year 2017 FOIA Annual Report.

CPSC did not receive any requests for expedited processing in FY2017.

2. If your agency's average number of days to adjudicate requests for expedited processing was above ten calendar days, please describe the steps your agency will take to ensure that requests for expedited processing are adjudicated within ten calendar days or less.

CPSC did not receive any requests for expedited processing in FY2017.

3. During the reporting period, did your agency conduct a self-assessment of its FOIA program? If so, please describe the methods used, such as reviewing Annual Report data, using active workflows and track management, reviewing and updating processing procedures, etc.

In FY 2015 the FOIA Directive was comprehensively revised as a result of an audit by the CPSC's Office of the Inspector General ("OIG"). The Directive established new processes and procedures designed to implement effective processing and review of information subject to FOIA, including conducting annual training for CPSC FOIA liaisons that have FOIA duties. The CPSC is implementing all the requirements in the new Directive. As a result a number of new procedures and processes have been implemented to expedite FOIA processing and to enhance responsiveness. Additionally, the FOIA office has implemented a number of standard operating procedures to the same end, including a processing checklist, and has developed templates for FOIA correspondence. The agency is also committed to expanding its online technology tool FOIAXpress to increase efficiencies in FOIA request document processing.

CPSC began developing a FOIAXpress portal to expedite the process for review of responsive records by manufacturers and private labelers pursuant to section 6(b) of the Consumer Product Safety Act ("CPSA").

4. The FOIA Improvement Act of 2016 requires additional notification to requesters about the services provided by the agency's FOIA Public Liaison. Please provide an estimate of how often requesters sought assistance from your agency's FOIA Public Liaison.

Requesters sought advice on the status of their request an estimated 70 times in FY 2017.

5. Optional Survey Questions: If possible, please provide an estimate of the average number of pages that your agency processes for each request. You may provide estimates for each track.

On average, CPSC processes 40 pages for each simple request, and 500 pages for each complex request.

6. If there are any other steps your agency has undertaken to ensure that your FOIA system operates efficiently and effectively, such as improving search processes, eliminating redundance, etc., please describe them here.

As stated above, FOIA training of agency staff has improved the CPSC FOIA process tremendously. CPSC's Program Office FOIA liaisons are acutely aware of the importance of conducting proper file searches and preparing responses to the FOIA staff's requests for agency records. The FOIA liaisons maintain an open dialogue with the FOIA staff to ensure that all FOIA related concerns are addressed expeditiously.

Section III. Steps Taken to Increase Proactive Disclosures

Please answer the following questions to describe the steps your agency has taken to increase the amount of material that is available on your agency websites. In addition to the questions below, you should also describe any additional steps taken by your agency to make and improve proactive disclosures of information.

1. Provide examples of material that your agency has proactively disclosed during the past reporting year, including links to the posted material.

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

- Materials and briefing packages distributed to the Commission, except for matters that involve active investigations or legal advice, or other exempt matters. *See* <http://www.cpsc.gov/Newsroom/FOIA/Commission-Briefing-Packages/>.
- 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. *See* <https://www.cpsc.gov/Newsroom/FOIA/ReportList>. Then, under the "Type" dropdown menu, select "Records of Commission Action and Commission Meeting Minutes."
- Public statements of Commissioners. *See* <https://www.cpsc.gov/About-CPSC/Commissioners/>.
- Records required under 5 U.S.C. § 522(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 been or are likely to become the subject of frequent FOIA requests. *See* <http://www.cpsc.gov/en/Newsroom/FOIA/>.

- Final technical and statistical reports and documents created by CPSC staff or CPSC contractors. *See* <https://cpsc.gov/research--statistics/technical-reports>.
- Summaries of CPSC staff meetings with the public. *See* <http://www.cpsc.gov/en/Newsroom/Public-Calendar/>.
- CPSC contracts with the public and interagency agreements. *See* <http://www.cpsc.gov/en/About-CPSC/Agency-Reports/Interagency-Agreements-and-Contracts/>.
- Topics of high interest, such as ROVs, all-terrain vehicles (ATVs), phthalates, cribs, pools and spas, carbon monoxide, window cords, magnets, and thrift stores. *See* <http://www.cpsc.gov/>.
- Filings in adjudicative proceedings where the CPSC has filed a Complaint against a manufacturer. *See* <http://www.cpsc.gov/Recalls/Recall-Lawsuits/Adjudicative-Proceedings/>.
- Information relating to CPSC *Federal Register* notices, including the notices for regulatory and rulemaking activities and Paperwork Reduction Act matters. *See* <https://www.cpsc.gov/id/Regulations-Laws-Standards/Federal-Register-Notices/>.
- Live webcasts of public hearings and meetings of the Commission, and videos of previous webcasts. *See* <https://www.cpsc.gov/newsroom/multi-media/webcast/live-webcast/>.
- Information concerning ongoing activities, such as agency rulemakings. *See* <http://www.cpsc.gov/id/Regulations-Laws--Standards>.
- Commission and staff guidance documents informing the public of new legislation and the implications of such legislation. *See* <https://www.cpsc.gov/id/Regulations-Laws--Standards/>.

2. Did your agency use any means to publicize or highlight proactive disclosure for public awareness? If yes, please describe these efforts.

The CPSC's FOI Office and Office of Communications coordinate the announcement and posting of high profile subject matters to assure maximum public awareness.

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 CPSC website. *See CPSC Open Government Plan*, <http://www.cpsc.gov/en/About-CPSC/Agency-Reports/open/>; *see also*, and *Guide to Public Information*, <http://www.cpsc.gov/Newsroom/FOIA/Guide-to-Public-Information>. Additionally, during FY2017, the Commission held Open

Government meetings for its stakeholders at its headquarters and aired the meetings by webcast on a number of issues of public interest. Matters of public interest or frequently requested matters the agency is engaging with stakeholders on, such as phthalates in toys and other children's products, window coverings, and crib bumper hazards, are publicized and posted in a specific locations on the website.

In addition, pursuant to the Consumer Product Safety Improvement Act of 2008, the Commission continues to update, publicize and maintain a publicly available searchable database on reports of harm received from consumers and other stakeholders. *See* <http://www.saferproducts.gov/>. This database enables the public to directly access, without a FOIA request, consumer reports of harm related to consumer products received by the Commission.

3. 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?

Yes.

4. If yes, please provide examples of such improvements.

The CPSC regularly updates and redesigns its website to improve its usability, partly based on comments from the public and agency stakeholders. CPSC is in the process of making its website more compatible to consumers who access the Internet through mobile devices, which will improve the usefulness and availability of information found on CPSC.gov. The CPSC website 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. The CPSC's technical staff also solicits comments from the public for draft statistical reports which are of interest to stakeholders, and posts these reports on the CPSC website, thereby eliminating the need for the submission of FOIA requests for this information. Additionally, the website provides a quarterly listing of Letters of Advice (LOAs), which inform manufacturers and importers of violations of safety standards and notify them of the corrective action required. The website also offers a way for consumers or businesses to contact the agency by email.

5. If there are other steps your agency has taken to improve proactive disclosure, please describe them here. For example, has your agency engaged requesters in determining how and what to post? Has your agency used web analytics to inform your proactive disclosures.

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. For example, documents such as statistical and technical reports that are not affected by requirements under Section 6(b) of the CPSA, are posted. Also, as previously mentioned, Commission briefing materials

and other agency staff records and reports are made publicly available in the ordinary course, even though they reasonably could be withheld.

Section IV. Steps Taken to Greater Utilize Technology

Please answer the following questions to describe how your agency is utilizing technology to improve its FOIA administration and the public's access to information. You should also include any additional information that describes your agency's efforts in this area.

1. Has your agency identified any best practices to leverage 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. If yes, please describe the best practices, the types of technology used and the impact on your agency's processing.

CPSC is in the process of identifying best practices to leverage technology to facilitate overall FOIA efficiency.

2. Did your agency successfully post all four quarterly reports for Fiscal Year 2017?

Yes.

3. If your agency did not successfully post all quarterly reports, with information appearing on FOIA.gov, please explain why and provide your agency's plan for ensuring that such reporting is successful in Fiscal Year 2018.

N/A

4. The FOIA Improvement Act of 2016 requires all agencies to post the raw statistical data used to compile their Annual FOIA Reports. Please provide the link to this posting for your agency's Fiscal Year 2016 Annual Report and, if available, for your agency's Fiscal Year 2017 Annual FOIA Report.

The link is: <https://origin.prod.cpsc.gov/Newsroom/FOIA/Reports>

5. If there are any other steps your agency has taken to improve use of technology in FOIA, please describe them here.

The agency implemented a new application, Public Access Link (PAL) in August 2017 which enables the public to solely communicate electronically with the FOIA staff.

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

A. Simple Track

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

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

2. If so, for your agency overall in Fiscal Year 2017 was the average number of days to process simple requests twenty working days or fewer?

No; the average number of days to process simple requests was 25 days. Please note that because of the statutory requirements of section 6(b)(1), an Exemption 3 statute, CPSC's processing times are exempt from 5 U.S.C. 552(a)(6)(A). *See CPSC v. GTE Sylvania, Inc.*, 447 U.S. 102, 121 (1980).

3. Please provide the percentage of requests processed by your agency in Fiscal Year 2017 that were placed in your simple track.

21.5%.

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

Not applicable to CPSC, because the agency tracks simple requests separately.

B. Backlogs:

BACKLOGGED REQUESTS

5. If your agency had a backlog of requests at the close of Fiscal Year 2017, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2016?

No; the backlog of requests at CPSC increased from 171 in FY 2016 to 185 in FY 2017.

6. If not, explain why and describe the causes that contributed to your agency not being able to reduce its backlog. When doing so, please also indicate if any of the following were contributing factors.

The CPSC received a substantial number of FOIA requests towards the end of Fiscal Year 2017. There were instances where multiple requesters submitted 40 or more FOIA requests in one day. CPSC also processed extremely complex and voluminous requests in terms of record searching time and subsequent production of documents.

Additionally, prior to providing records under the FOIA, CPSC's statute, 15 U.S.C. § 2055(b)(1), requires the agency to seek manufacturer review and comment. This notice and comment period, in many cases, significantly increases the processing times for CPSC FOIA requests. *See supra*, Section V, 2.

7. If you had a request backlog please report the percentage of requests that make up the backlog out of the total number of requests received by your agency in Fiscal Year 2017.

27.8%.

BACKLOGGED APPEALS:

8. If your agency had a backlog of appeals at the close of Fiscal Year 2017, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2016?

CPSC did not have a backlog of appeals in FY 2016 or FY 2017.

9. If not, explain why and describe the causes that contributed to your agency not being able to reduce the backlog. When doing so, please also indicate if any of the following were contributing factors.

CPSC did not have a backlog of appeals in FY 2016 or FY 2017.

10. If you had an appeal backlog please report the percentage of appeals that make up the backlog out of the total number of appeals received by your agency in Fiscal Year 2016. If your agency did not receive any appeals in Fiscal Year 2016 and/or has no appeal backlog, please answer with "N/A."

CPSC did not have a backlog of appeals in FY 2016 or FY 2017.

C. Backlog Reduction Plans

11. In the 2017 guidelines for Chief FOIA Officer Reports, any agency with a backlog of over 1,000 requests in Fiscal year 2016 was asked to provide a plan for achieving backlog reduction in the year ahead. Did your agency implement a backlog reduction plan last year? If so, describe your agency's efforts in implementing this plan and note if your agency was able to achieve backlog reduction in Fiscal Year 2017.

CPSC did not implement a backlog reduction plan as the agency did not have a backlog of over 1,000 requests. However, the CPSC strives to maintain as minimum a backlog as possible by processing requests that can be quickly addressed as soon as they are received.

12. If your agency had a backlog of more than 1,000 requests in Fiscal Year 2017, what is your agency's plan to reduce this backlog during Fiscal Year 2018?

N/A

D. Status of Ten Oldest Requests, Appeals and Consultations

TEN OLDEST REQUESTS

13. In Fiscal Year 2017, did your agency close the ten oldest requests that were reported pending in your Fiscal Year 2016 Annual FOIA Report?

Yes.

14. 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 2017 Annual FOIA Report. If you had less than ten total oldest requests to close, please indicate that.

N/A

15. Of the requests your agency was able to close from your ten oldest, please indicate how many of these were closed because the request was withdrawn by the requester. If any were closed because the request was withdrawn, did you provide any interim responses prior to the withdrawal?

Zero requests were closed in FY2017 due to withdrawal by a requester.

TEN OLDEST APPEALS

16. In Fiscal Year 2017, did your agency close the ten oldest appeals that were reported pending in your Fiscal Year 2016 Annual Report?

CPSC did not report any pending appeals as of the end of FY 2016.

17. If no, please provide the number of these appeals your agency was able to close by the end of the fiscal year, as listed in Section VII.C.(5) of your Fiscal Year 2016 Annual FOIA Report. If you had less than ten total oldest appeals to close, please indicate that.

CPSC did not report any pending appeals as of the end of FY 2016.

TEN OLDEST CONSULTATIONS

18. In Fiscal Year 2017, did your agency close the ten oldest consultations that were reported pending in your Fiscal Year 2016 FOIA Annual Report?

CPSC did not report any pending consultations as of the end of FY 2016 or FY 2017.

19. If no, please provide the number of these consultations your agency was able to close by the end of the fiscal year, as listed in Section XII.C of your Fiscal Year 2017 Annual FOIA Report. If you had less than ten total oldest consultations to close, please indicate that.

Not applicable to CPSC.

E. Additional Information on Ten Oldest Requests, Appeals, and Consultations & Plans

20. Briefly explain any obstacles your agency faced in closing its ten oldest requests, appeals and consultations from Fiscal Year 2017.

N/A. *See supra*, Section V, 8-17.

21. If your agency was unable to close any of its ten oldest requests because you were waiting to hear back from other agencies on consultations you sent, please provide the date the request was initially received by your agency, the date when your agency sent the consultation, and the date when you last contacted the agency where the consultation was pending.

Not applicable to CPSC.

22. If your agency did not close its ten oldest pending requests, appeals, or consultations, please provide a plan describing how your agency intends to close those “ten oldest” requests, appeals, and consultations during Fiscal Year 2017.

Not applicable to CPSC.

F. Success Story

Out of all the activities undertaken by your agency since March 2017 to increase transparency and improve FOIA administration, please briefly describe here at least one success story that you would like to highlight as emblematic of your agency’s efforts. The success story can come from any one of the five key areas. As noted above, these agency success stories will be highlighted during Sunshine Week by OIP. To facilitate this process, all agencies should use bullets to describe their success story and limit their text to a half page. The success story is designed to be a quick summary of a key achievement. A complete description of all your efforts will be contained in the body of your Chief FOIA Officer Report.

- CPSC implemented the Public Access Link (PAL) in August 2017. PAL allows the public to submit FOIA requests electronically, as well as check the status of requests and receive responsive information electronically.

- CPSC continued 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 product manufacturers. When deployed, the system will speed up FOIA processing and significantly reduce printing, paperwork and mailing costs. This project is on track for completion in FY 2018.

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