



# U.S. Consumer Product Safety Commission

## Chief FOIA Officer Report for 2019

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 2018 to generate this report.

### High-Volume Agencies Receiving More Than 50 Requests in FY17

#### Content of 2019 Chief FOIA Officer Reports

#### **Section 1: Steps Taken to Apply the Presumption of Openness**

The guiding principle underlying DOJ’s **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 Leadership**

1. The FOIA requires each agency to designate a Chief FOIA Officer who is a senior official at least at the Assistant Secretary or equivalent level. Is your agency’s Chief FOIA Officer at or above this level?

Yes.

2. Please provide the name and title of your agency's Chief FOIA Officer.

*Abioye Ella Mosheim, Chief FOIA Officer, and Assistant General Counsel.*

## **B. FOIA Training**

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

Yes.

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

*On a near-monthly basis, each CPSC FOIA staff member was required to train the rest of our FOIA office staff on a FOIA topic, e.g., the history of the FOIA, Exemption (b)(6), etc. Additionally, each FOIA staff member was required to attend at least one DOJ FOIA training session. FOIA staff that required additional training took substantive FOIA courses through ASAP, and training on our FOIA electronic system, FOIAXpress, through AINS.*

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

*100 percent.*

6. 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 question is that less than 80% of your FOIA professionals attended training, please explain your agency's plan to ensure that all FOIA professionals receive or attend substantive FOIA training during the next reporting year.

N/A.

## **C. Outreach**

7. Did your FOIA professionals engage in any outreach or dialogue with the requester community or open government groups regarding your administration of the FOIA? Please describe any such outreach or dialogue, and, if applicable, any specific examples of how this dialogue has led to improvements in your agency's FOIA administration.

*CPSC FOIA staff regularly engages via telephone and email with members of the requester community regarding the administration of the FOIA. Our FOIA office makes direct contact information available on the CPSCS website and FOIA.gov for the Chief FOIA Officer, as well as its two FOIA Public Liaisons. Additionally, in 2018, our Chief FOIA Officer was appointed to the FOIA Advisory Committee, which engages in outreach and dialogue with the requester community.*

## **D. Other Initiatives**

8. Describe any efforts your agency has undertaken to inform non-FOIA professionals of their obligations under the FOIA. In 2016, the Department **publicized** FOIA-related performance standards for employees that have any role in administering the FOIA, including non-FOIA professionals. Please also indicate whether your agency has considered including FOIA-related performance standards in employee work plans for employees who have any role in administering the FOIA.

*In 2018, the CPSC FOIA office revamped its FOIA liaison program, which comprises the appointment of at least one staff member in each CPSC program office to liaise with the CPSC FOIA office regarding requests for records under the FOIA. Our office retired some liaisons, and appointed new ones. We also created a FOIA Liaison Designation Letter for each liaison to sign; this letter spells out the duties of the FOIA liaison and sets standards for performing the role. The FOIA liaison training program was also revamped, with new leadership (a dedicated FOIA office attorney advisor) revising and overseeing the training.*

*In late December 2018, shortly before the 35-day government furlough, the Chief FOIA Officer met with Human Resources' staff to plan new hire and agency-wide FOIA training to launch late January 2019. That launch has been delayed until March 2019 because of the government shutdown.*

*All CPSC FOIA office staff have FOIA-related performance standards in their position descriptions (i.e., work plans). FOIA liaisons have FOIA-related performance standards by incorporation of the FOIA Liaison Designation Letter in their Other Duties as Assigned section of their position descriptions. In FY19, the agency will consider adding FOIA-related performance standards to other employee's position descriptions.*

9. 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 FOIA office. 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 in Place for Responding to Requests**

DOJ's **FOIA Guidelines** emphasize that "[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." It is essential that agencies effectively manage their FOIA program.

Please answer the following questions to describe the steps your agency has taken to ensure that the 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 2018, 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 2018 Annual FOIA Report.

6.

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.

N/A.

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 2018, the Chief FOIA Officer focused attention on reducing the number of days it took to process intakes (i.e., from the receipt of the request, to the assignment of the request to a FOIA specialist). She interviewed FOIA intake staff to understand the current state of intakes at CPSC, benchmarked intake processing at other agencies, drafted workflows and SOPs for the current state, then revised those workflows and SOPs to improve timing and efficiency. She implemented the workflows, working one-on-one with intake staff to ensure that the new practice was firmly implemented. She also informed intake staff of the importance of processing requests in a timely manner, explaining the statutory deadlines implicated for expedited processing, fee waivers, etc.*

*In addition to focusing on intakes, the Chief FOIA Officer also reviewed the FOIA request processing practices by interviewing FOIA specialists to determine the current state of FOIA processing, then mapping those practices out in a workflow, discussing the existing workflow with the specialists, benchmarking processing practices at other agencies, eliminating antiquated practices (e.g., printing 5 copies of each document related to a request and moving all correspondence to the electronic processing system that was already in place revising the workflow for efficiency; printing voluminous records rather than providing them on flash or CD, etc.), inviting comment from the specialists on the new workflow, then implementing the new workflow.*

Note: In September 2017, OIP released a FOIA Self-Assessment Toolkit as a resource for agencies conducting a self-assessment of their FOIA program. The Toolkit is available on OIP's website for all agencies to use.

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 the number of times requesters sought assistance from your agency's FOIA Public Liaison during FY 2018 (please provide a total number or an estimate of the number).

*Estimate: 800 to 900 times per year.*

5. Please describe the best practices used to ensure that your FOIA system operates efficiently and effectively and any challenges your agency faces in this area.

*To ensure that our FOIA system operates efficiently and effectively, our office has several established work flows, checklists, and standard operating procedures that all FOIA specialists adhere to, and, in FY19, we are working on drafting several more such efficiency documents. FOIA office staff meet on a regular basis to go over challenges in the system in an effort to resolve any challenges as they arise. The FOIA office is also in the process of drafting best practices for FOIA liaisons and all agency employees to use when responding to requests for records pursuant to a FOIA request.*

### **Section III: Steps Taken to Increase Proactive Disclosures**

The Department of Justice has long focused on the need for agencies to work proactively to post information online without waiting for individual requests to be received.

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.

*CPSC began posting monthly progress reports (MPRs); these are currently posted on the CPSC data page (<https://www.cpsc.gov/Newsroom/Downloadable-Data>).*

2. Please describe how your agency identifies records that have been requested and released three or more times (and are therefore required to be proactively disclosed pursuant to 5 U.S.C. § 552(a)(2)(D)).

*The CPSC FOIA office recently ran a report through its electronic processing systems to determine which requests have been requested and released three or more times.*

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 FOIA office made some changes to its FOIA webpage in 2018, including providing direct email contact information for the Chief FOIA Officer and FOIA Public Liaisons; updating information sheets, etc. The CPSC FOIA office was planning on launching a revamped FOIA webpage in January 2019 but because of the 35-day government shutdown, those plans have been delayed until April 2019.*

5. Please describe the best practices used to improve proactive disclosures and any challenges your agency faces in this area.

*The CPSC FOIA office recently ran a report through its electronic processing systems to determine which requests have been requested and released three or more times. We will review the list to determine whether any of the requests implicate Section 6 of the Consumer Product Safety Act, an Exemption 3 statute. Requests that implicate Section 6 of the CPSA must be reviewed by the General Counsel and go out for comment to the manufacturer. In April 2019, we plan on launching a new webpage that includes the posting of all non-Section 6 FOIA requests that have been requested and released three or more times, and any Section 6 FOIA requests that the manufacturer agrees to posting.*

#### **Section IV: Steps Taken to Greater Utilize Technology**

A key component of FOIA administration is using technology to make information more accessible. In addition to using the internet to make proactive disclosures, agencies should also be exploring ways to utilize technology in responding to requests.

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. Is your agency leveraging technology to facilitate efficiency in conducting searches, including searches for emails? If so, please describe the type of technology used. If not, please explain why and please describe the typical search process used instead.

*Yes. In the fall of 2018 we implemented a new notification system to allow manufacturers to electronically provide comments on records proposed for release pursuant to Section 6 of the*

*CPSC. In February 2019 we will receive an upgrade to our electronic FOIA system that includes being able to load and sort PDFs of emails directly into the system; implement a records retention policy; and deduplication which will bring our processing times down by 40%.*

2. OIP issued **guidance** in 2017 encouraging agencies to regularly review their FOIA websites to ensure that they contain essential resources and are informative and user-friendly. Has your agency reviewed its FOIA website(s) during the reporting period to ensure it addresses the elements noted in the guidance?

*Yes.*

3. Did your agency successfully post all four quarterly reports for Fiscal Year 2018?

*Yes.*

4. 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 2019.

*N/A.*

5. 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 2017 Annual FOIA Report and, if available, for your agency's Fiscal Year 2018 Annual FOIA Report.

*Here is the link for the 2017 Annual FOIA Report: [https://www.cpsc.gov/s3fs-public/CPSC%20FY17%2001302018xltm.xml?ndx5JqJ0Kr6Do7Op\\_CoEe00hui1zj94V](https://www.cpsc.gov/s3fs-public/CPSC%20FY17%2001302018xltm.xml?ndx5JqJ0Kr6Do7Op_CoEe00hui1zj94V).*

*The 2018 Annual FOIA Report is also now posted in that location.*

*CPSC's web system is not compatible with the raw data document that DOJ requires each agency to post. Our Office of Communications is working on resolving that compatibility issue.*

6. Please describe the best practices used in greater utilizing technology and any challenges your agency faces in this area.

*The FOIA office has a dedicated Technology Information Specialist (Specialist) who handles all of our technology challenges. The Specialist works in conjunction with CPSC's Office of Information Technology and directly with our FOIA technology service provider, AINS. The Specialist and the Chief FOIA Officer meet regularly to discuss any challenges in the area of technology and to resolve those challenges. The Specialist and Chief FOIA Officer also work closely with the FOIA specialists and requesters to resolve technology challenges that arise on a daily basis.*

## **Section V: Steps Taken to Improve Timeliness in Responding to Requests and Reducing Backlogs**

The Department of Justice has emphasized the importance of improving timeliness in responding to requests. This section of your Chief FOIA Officer Report 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, appeals, and consultations.

For the figures required in this Section, please use the numbers contained in the specified sections of your agency's 2018 Annual FOIA Report and, when applicable, your agency's 2017 Annual FOIA Report.



## A. Simple Track

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.

1. Does your agency utilize a separate track for simple requests? If your agency uses a multi-track system beyond simple, complex, and expedited to process requests, please describe the tracks you use and how they promote efficiency.

*Yes – we use a separate track for simple requests.*

2. If your agency uses a separate track for simple requests, was the agency overall average number of days to process simple requests twenty working days or fewer in Fiscal Year 2018?

No.

3. Please provide the percentage of requests processed by your agency in Fiscal Year 2018 that were placed in your simple track.

*Approximately 22.73%.*

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?

*N/A.*

## B. Backlogs

Section XII.A of your agency's Annual FOIA Report, entitled "Backlogs of FOIA Requests and Administrative Appeals" shows the numbers of any backlogged requests or appeals from the fiscal year. You should refer to these numbers from your Annual FOIA Reports for both Fiscal Year 2016 and Fiscal Year 2017 when completing this section of your Chief FOIA Officer Report.

### BACKLOGGED REQUESTS

5. If your agency had a backlog of requests at the close of Fiscal Year 2018, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2017?

No.

6. If not, did your agency process more requests during Fiscal Year 2018 than it did during Fiscal Year 2017?

No.

7. If your agency's request backlog increased during Fiscal Year 2018, please 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:

*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 CPSC v. GTE Sylvania, Inc., 447 U.S. 102, 121 (1980). In the past, certain records that should have been sent for notice and comment were not being sent. Under our new practices, we are sending these records for notice and comment, and this increases the response time and consequently the number of cases pending.*

*Also, under current practices, we are working to reduce from previous years the number of erroneous releases of personally identifiable information, trade secrets, and commercial business information, which may increase the processing time.*

8. 8. 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 2018. If your agency has no request backlog, please answer with "N/A."

*47.8%.*

## **BACKLOGGED APPEALS**

9. If your agency had a backlog of appeals at the close of Fiscal Year 2018, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2017?

*No.*

10. If not, did your agency process more appeals during Fiscal Year 2018 than it did during Fiscal Year 2017?

*No. We processed the same number of appeals in FY2018 as we did in FY2017.*

11. If your agency's appeal backlog increased during Fiscal Year 2018, please 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 reason is unclear; perhaps because in FY2017 of the 15 appeals received, 3 were not completed by the end of that fiscal year, and instead rolled over into FY2018.*

12. 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 2018. If your agency did not receive any appeals in Fiscal Year 2018 and/or has no appeal backlog, please answer with "N/A."

*10%.*

## **C. Backlog Reduction Plans**

13. In the 2018 guidelines for Chief FOIA Officer Reports, any agency with a backlog of over 1000 requests in Fiscal Year 2017 was asked to provide a plan for achieving backlog reduction in the year ahead. Did you 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 2018?

*CPSC did not have a backlog of over 1000 requests in Fiscal Year 2017.*



14. If your agency had a backlog of more than 1,000 requests in Fiscal Year 2018, what is your agency's plan to reduce this backlog during Fiscal Year 2019?

*CPSC did not have a backlog of over 1000 requests in Fiscal Year 2018.*

#### **D. Status of Oldest Requests, Appeals, and Consultations**

Section VII.E, entitled "Pending Requests – Ten Oldest Pending Requests," 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 your Annual FOIA Reports for both Fiscal Year 2017 and Fiscal Year 2018 when completing this section of your Chief FOIA Officer Report.

#### **OLDEST REQUESTS**

15. In Fiscal Year 2018, did your agency close the ten oldest requests that were reported pending in your Fiscal Year 2017 Annual FOIA Report?

*Yes.*

16. 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 fewer than ten total oldest requests to close, please indicate that.

*N/A*

17. 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?

*None that we recall were closed because the requester withdrew.*

18. Beyond work on the ten oldest requests, please describe any steps your agency took to reduce the overall age of your pending requests.

*Every week our the Chief FOIA Officer and the FOIA Program Assistant review the list of pending cases for the ten oldest cases, and ask the FOIA specialists assigned to those cases where there are in each case and what the next steps are. The Chief FOIA Officer consults with the FOIA specialists who own the 10 oldest cases to determine how they can begin moving those cases to resolution. For example, if the request contains a voluminous amount of records, the specialist is told to contact the requester to obtain consent to produce the records on a rolling basis, which breaks the review and redaction into manageable sizes, and allows the requester to receive some records while the specialist works on others.*

#### **TEN OLDEST APPEALS**

19. In Fiscal Year 2018, did your agency close the ten oldest appeals that were reported pending in your Fiscal Year 2017 Annual FOIA Report?

*Yes – we currently do not have any pending appeals.*

20. 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 2017 Annual FOIA Report. If you had fewer than ten total oldest appeals to close, please indicate that.

*N/A*

21. Beyond work on the ten oldest appeals, please describe any steps your agency took to reduce the overall age of your pending appeals.

N/A

## **TEN OLDEST CONSULTATIONS**

22. In Fiscal Year 2018, did your agency close the ten oldest consultations that were reported pending in your Fiscal Year 2017 Annual FOIA Report?

N/A

23. 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 fewer than ten total oldest consultations to close, please indicate that.

N/A

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

24. Briefly explain any obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2018.

*Most of the ten oldest requests contained voluminous amounts of records. Under a new practice, FOIA specialists are told to contact the requester to obtain consent to produce the records on a rolling basis, which breaks the review and redaction into manageable sizes, and allows the requester to receive some records while the specialist works on others.*

25. 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.

N/A

26. 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 2018.

N/A

## **F. Success Stories**

Out of all the activities undertaken by your agency since March 2018 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, OIP will highlight these agency success stories during Sunshine Week. 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 key achievements. A complete description of all your efforts will be contained in the body of your Chief FOIA Officer Report.

*In 2018, the Chief FOIA Officer focused attention on reducing the number of days it took to process intakes (i.e., from the receipt of the request, to the assignment of the request to a FOIA specialist). She interviewed FOIA intake staff to understand the current state of intakes at CPSC, benchmarked intake processing at other agencies, drafted workflows and SOPs for the current state, then revised those workflows and SOPs to improve timing and efficiency. She*

*implemented the workflows, working one-on-one with intake staff to ensure that the new practice was firmly implemented. She also informed intake staff of the importance of processing requests in a timely manner, explaining the statutory deadlines implicated for expedited processing, fee waivers, etc.*

*In addition to focusing on intakes, the Chief FOIA Officer also reviewed the FOIA request processing practices by interviewing FOIA specialists to determine the current state of FOIA processing, then mapping those practices out in a workflow, discussing the existing workflow with the specialists, benchmarking processing practices at other agencies, eliminating antiquated practices (e.g., printing 5 copies of each document related to a request and moving all correspondence to the electronic processing system that was already in place revising the workflow for efficiency; printing voluminous records rather than providing them on flash or CD, etc.), inviting comment from the specialists on the new workflow, then implementing the new workflow.*