



# U.S. Consumer Product Safety Commission

## Chief FOIA Officer Report for 2020

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 2019 to generate this report.

### 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 the Assistant Secretary or equivalent level. Is your agency’s Chief FOIA Officer at this level?** Yes, similar to the structure at the Department of Justice (i.e., the associate attorney general is the Chief FOIA Officer, and s/he reports to the Deputy Attorney General, who reports to the Attorney General). At the Consumer Product Safety Commission, the assistant

general counsel is the Chief FOIA Officer; she reports to the General Counsel, who reports directly to the Chairman of the Commission.

**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.** All FOIA Office staff attended one mandatory Department of Justice FOIA training (topics varied). Additionally, and FOIA Office staff attend monthly meetings to discuss various FOIA exemptions and processing issues.

**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%

**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.** The Chief FOIA Officer is a member of the FOIA Advisory Committee and through this work maintains an ongoing dialogue with the requester community regarding the administration of the FOIA.

#### D. Other Initiatives

**8. Describe any efforts your agency has undertaken to inform non-FOIA professionals of their obligations under the FOIA.** All agency staff receive annual mandatory FOIA training regarding their obligations under the FOIA. All agency FOIA liaisons receive additional mandatory annual FOIA training to refresh them on the basics of the FOIA, how to respond to requests for documents, and how to conduct proper searches for records.

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

## 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 2019, 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 2019 Annual FOIA Report. 16.52**

**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.** In late FY19 we implemented a new intake process: A senior attorney performs all intakes now; s/he immediately assigns expedited requests to one of three junior attorneys specifically trained in processing expedited responses within the 10 calendar day statutory deadline.

**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.** The FOIA Office performs continuous self-assessments of various aspects of the CPSC FOIA program. In FY19, we reviewed all of our directives documents (directive, implementing procedures, SOPs) to see if they were consistent with current practices and published revisions. Notable improvements were made to the way we gather records in response to FOIA requests, including the creating of an electronic system for responding to requests for records.

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 2019 (please provide a total number or an estimate of the number).** We estimate members of the public sought the advice of our FOIA Public Liaisons 240 times in FY19.

**5. Optional -- Please describe:**

Best practices used to ensure that your FOIA system operates efficiently and effectively

Any challenges your agency faces in this area

### 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 any material that your agency has proactively disclosed during the past reporting year, including records that have been requested and released three or more times in accordance with 5 U.S.C. § 552(a)(2)(D). Please include links to these materials as well.** Public calendar notices, <https://www.cpsc.gov/Newsroom/Public-Calendar>; records of commission actions,

[https://www.cpsc.gov/Newsroom/FOIA/ReportList?field\\_nfr\\_date\\_value%5Bvalue%5D%5Bmonth%5D=&field\\_nfr\\_date\\_value%5Bvalue%5D%5Byear%5D=&field\\_nfr\\_type\\_value=records&title=](https://www.cpsc.gov/Newsroom/FOIA/ReportList?field_nfr_date_value%5Bvalue%5D%5Bmonth%5D=&field_nfr_date_value%5Bvalue%5D%5Byear%5D=&field_nfr_type_value=records&title=); staff meeting logs,

[https://www.cpsc.gov/Newsroom/FOIA/ReportList?field\\_nfr\\_date\\_value%5Bvalue%5D%5Bmonth%5D=&field\\_nfr\\_date\\_value%5Bvalue%5D%5Byear%5D=&field\\_nfr\\_type\\_value=meeting&title=](https://www.cpsc.gov/Newsroom/FOIA/ReportList?field_nfr_date_value%5Bvalue%5D%5Bmonth%5D=&field_nfr_date_value%5Bvalue%5D%5Byear%5D=&field_nfr_type_value=meeting&title=); and directive documents, <https://www.cpsc.gov/Office-of-the-Secretary/Directives>.

We are currently evaluating the tension between Section 6 of the Consumer Product Safety Act and 5 U.S.C. 552(a)(2)(D) with a goal of proactively disclosing more records that have been the subject of three or more requests.

**2. 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?** In FY19, the agency's Office of Communications formed a working group with the goal of improving access to agency information posted on our website.

3. If yes, please provide examples of such improvements. Improvements made to date include a revamp of the agency's homepage, based on three years of visitation data, so the public gets the information they want faster. They also made the site mobile friendly after finding that 51% of web traffic comes from mobile devices. They consolidated safety education information into one section to make finding and downloading such materials easier and faster. They also added an email button on the homepage, as well as to the top of the Recall List and on all individual recall pages (the most visited pages on the website).

4. Optional -- Please describe:

Best practices used to improve proactive disclosures

Any challenges your agency faces in this area

#### 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 or exploring any new technology to facilitate efficiency in its FOIA administration that you have not previously reported? If so, please describe the type of technology.** In FY19 we performed upgrades to FOIAXpress, including a move to the latest version, and the addition of EDR, their deduplication application.

**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 2019?** 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 2020.** 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 2018 Annual FOIA Report and, if available, for your agency's Fiscal Year 2019 Annual FOIA Report.** Here is the link to our FY19 Annual Report, <https://www.cpsc.gov/Newsroom/FOIA/Reports/>. Because of the software that we use for our website, the agency is currently unable to post raw data.

6. Optional -- Please describe:

Best practices used in greater utilizing technology

Any challenges your agency faces in this area

#### 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 2019 Annual FOIA Report and, when applicable, your agency's 2018 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?** Yes.
- 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 2019?** No.
- 3. Please provide the percentage of requests processed by your agency in Fiscal Year 2019 that were placed in your simple track.** 28%.
- 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 2018 and Fiscal Year 2019 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 2019, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2018?** No.
- 6. If not, did your agency process more requests during Fiscal Year 2019 than it did during Fiscal Year 2018?** No.
- 7. If your agency's request backlog increased during Fiscal Year 2019, 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:**

We lost four out of eight full time staff, who left behind a total of 248 unprocessed requests, some dating back to 2016; and one out of three of our part time staff. We received full time staff replacements beginning September 30, 2019 – November 18, 2019. Additionally, during the

government shutdown, from December 21, 2018 to January 26, 2019, federal agencies were not allowed to toll requests, resulting in a backlog of new and pending requests that severely impacted our FY19 processing times. Finally, we moved to a new version of FOIAXpress in June 2019 and introduced a new software, EDR, for deduplication. This introduced a new learning curve for FOIA staff, and came with several technical glitches that were not resolved until FY20. And EDR required us to change the way that we receive records from program offices (program offices had been submitting PDF portfolios which EDR does not accept; so there were delays in searching for documents in native format).

**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 2019. If your agency has no request backlog, please answer with "N/A." 80%.**

#### BACKLOGGED APPEALS

**9. If your agency had a backlog of appeals at the close of Fiscal Year 2019, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2018? It remained the same.**

**10. If not, did your agency process more appeals during Fiscal Year 2019 than it did during Fiscal Year 2018? No.**

**11. If your agency's appeal backlog increased during Fiscal Year 2019, 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 appeal backlog did not increase – it remained the same.

**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 2019. If your agency did not receive any appeals in Fiscal Year 2019 and/or has no appeal backlog, please answer with "N/A." 11%.**

#### C. Backlog Reduction Plans

**13. In the 2019 guidelines for Chief FOIA Officer Reports, any agency with a backlog of over 1000 requests in Fiscal Year 2018 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 2019? We do not have a backlog of over 1000 requests.**

**14. If your agency had a backlog of more than 1,000 requests in Fiscal Year 2019, what is your agency's plan to reduce this backlog during Fiscal Year 2020? N/A**

#### 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 2018 and Fiscal Year 2019 when completing this section of your Chief FOIA Officer Report.

#### OLDEST REQUESTS

**15. In Fiscal Year 2019, did your agency close the ten oldest requests that were reported pending in your Fiscal Year 2018 Annual FOIA Report?** No.

**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 2018 Annual FOIA Report. If you had fewer than ten total oldest requests to close, please indicate that.** In FY19, we closed 9 of the 10 pending oldest requests from FY18.

**17. Beyond work on the ten oldest requests, please describe any steps your agency took to reduce the overall age of your pending requests.** We performed biweekly sweeps of the 10 oldest requests and followed up on a regular basis with the FOIA specialists to whom they were assigned. Also, because of staff reductions, we provided over time hours for five months to two staff members to work on the oldest requests.

#### TEN OLDEST APPEALS

**18. In Fiscal Year 2019, did your agency close the ten oldest appeals that were reported pending in your Fiscal Year 2018 Annual FOIA Report?** Yes – one was reported in FY18 and it was closed in FY19.

**19. 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 2018 Annual FOIA Report. If you had fewer than ten total oldest appeals to close, please indicate that.** N/A.

**20. Beyond work on the ten oldest appeals, please describe any steps your agency took to reduce the overall age of your pending appeals.** We are focusing on the intake of the appeal to ensure that appeals are timely transmitted to the proper division for processing.

#### TEN OLDEST CONSULTATIONS

**21. In Fiscal Year 2019, did your agency close the ten oldest consultations that were reported pending in your Fiscal Year 2018 Annual FOIA Report?** We did not have any consultations pending in FY18.

**22. 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 2018 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

**23. Briefly explain any obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2019.** The biggest obstacle was staffing.

Additionally, technology: We also had major interruptions to production from April to June 2019 in order to implement the upgrades to our FOIA processing system.

**24. 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.

**25. 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 2020.** We closed 9 of our ten oldest pending requests and all of our pending oldest appeals. We did not have any pending consultations.

#### F. Success Stories

**Out of all the activities undertaken by your agency since March 2019 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 FY19, the agency began revising and posting to its public facing website updated agency Directives documents, which describe the agency’s processes.**