

U. S. CONSUMER PRODUCT SAFETY COMMISSION (CPSC)

Report for Fiscal Year 2016

The Administration of
The Freedom of Information Act

I. BASIC INFORMATION REGARDING THE REPORT

1. Contact for questions about the report: Todd Stevenson, Director, Secretariat / Office of the Secretary, Office of the General Counsel, U.S. Consumer Product Safety Commission, 4330 East West Highway, Suite 820, Bethesda, Maryland 20814-4408, Telephone: 301-504-7923, Facsimile: 301-504-0127. Email: tstevenson@cpsc.gov or cpsc-foia@cpsc.gov
2. Web address for this report: <http://www.cpsc.gov/Global/Newsroom/FOIA/FOIA-Reports/FOIAAnnualReport2016.pdf>
3. A paper copy of the report is available from CPSC's Secretariat / Office of the Secretary at the address above.

II. MAKING A FOIA REQUEST

1. All Freedom of Information Act (FOIA) requests received by the CPSC are processed at CPSC's headquarters. The address is: Freedom of Information Act Request, Secretariat / Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Suite 820, Bethesda, Maryland 20814-4408. Telephone: 301-504-7923, Facsimile: 301-504-0127, Email: amills@cpsc.gov, tstevenson@cpsc.gov or cpsc-foia@cpsc.gov.
2. Requests that are denied or partially denied usually fall under Exemptions 3, 4, 5, 6 and 7.

Exemption 3 denials often relate to provisions of section 6 the Consumer Product Safety Act ("CPSA"), which restrict the release of:

- Trade secrets, confidential or proprietary business information;
- Information that identifies manufacturers of consumer products unless CPSC has taken prescribed statutory steps; and
- Information reported by manufacturers to CPSC under section 37 of the CPSA.

In addition, section 25 of the CPSA restricts release of information that could identify any injured person or any person treating and injured person without consent of the individual so identified.

The type of information most often withheld under Exemptions 4, 5, 6 and 7 involves confidential business information, intra-agency communications that are protected by legal privileges, information implicating privacy considerations, and enforcement-related records, respectively.

3. Section 6 of CPSA, which applies to FOIA requests, generally requires that CPSC notify manufacturers or private labelers before disclosing information from which their identities can be readily ascertained by the public. This statutory provision specifies time periods for the prior notice and time periods for the manufacturer's or private labeler's response. Adherence to the notification requirements of section 6, CPSA, may delay CPSC's responses to FOIA requests for information within the scope of section 6.

III. ACRONYMS, DEFINITIONS AND EXEMPTIONS

1. Agency-Specific Acronyms or Other Terms.
 - a. CPSA • Consumer Product Safety Act, 15 U.S.C. §§ 2051-2084.
 - b. CPSC or Commission • Consumer Product Safety Commission.
2. Definitions Used in This Report:
 - a. **Administrative Appeal** – a request to a federal agency asking that it review at a higher administrative level a FOIA determination made by the agency at the initial request level.
 - b. **Average Number** – the number obtained by dividing the sum of a group of numbers by the quantity of numbers in the group. For example, of 3, 7, and 14, the average number is 8.
 - c. **Backlog** – the number of requests or administrative appeals that are pending at an agency at the end of the fiscal year that are beyond the statutory time period for a response.
 - d. **Component** – for agencies that process requests on a decentralized basis, a “component” is an entity, also sometimes referred to as an Office, Division, Bureau, Center, or Directorate, within the agency that processes FOIA requests. The FOIA now requires that agencies include in their Annual FOIA Report data for both the agency overall and for each principal component of the agency.
 - e. **Consultation** – the procedure whereby the agency responding to a FOIA request first forwards a record to another agency for its review because that other agency has an interest in the document. Once the agency in receipt of the consultation finishes its review of the record, it responds both to the agency that forwarded it. That agency, in turn, will then respond to the FOIA requester.
 - f. **Exemption 3 Statute** – a federal statute that exempts information from disclosure and which the agency relies on to withhold information under subsection (b)(3) of the FOIA.
 - g. **FOIA Request** – a FOIA request is generally a request to a federal agency for access to records concerning another person (i.e., a “*third-party*” request), an organization, or a

particular topic of interest. FOIA requests also include requests made by requesters seeking records concerning themselves (i.e., “*first-party*” requests) when those requesters are not subject to the Privacy Act, such as non-U.S. citizens. Moreover, because all first-party requesters should be afforded the benefit of the access provisions of the FOIA as well as those of the Privacy Act, FOIA requests also include any first-party requests where an agency determines that it must search beyond its Privacy Act “systems of records” or where a Privacy Act exemption applies, and the agency looks to FOIA to afford the greatest possible access. All requests which require the agency to use the FOIA in responding to the requester are included in this report.

Additionally, a FOIA request includes records referred to the agency for processing and direct response to the requester. It does not, however, include records for which the agency has received a consultation from another agency. (Consultations are reported separately in Section XII of this report.)

- h. **Full Grant** – an agency decision to disclose all records in full in response to a FOIA request.
- i. **Full Denial** – an agency decision not to release any records in response to a FOIA request because the records are exempt in their entirety under one or more of the FOIA exemptions, or because of a procedural reason, such as when no records could be located.
- j. **Median Number** – the middle, not average, number. For example, of 3, 7, and 14, the median number is 7.
- k. **Multi-Track Processing** – a system in which simple requests requiring relatively minimal review are placed in one processing track and more voluminous and complex requests are placed in one or more other tracks. Requests granted expedited processing are placed in yet another track. Requests in each track are processed on a first in/first out basis.
 - i. **Expedited Processing** – an agency will process a FOIA request on an expedited basis when a requester satisfies the requirements for expedited processing as set forth in the statute and in agency regulations.
 - ii. **Simple Request** – a FOIA request that an agency using multi-track processing places in its fastest (non-expedited) track based on the low volume and/or simplicity of the records requested.
 - iii. **Complex Request** – a FOIA request that an agency using multi-track processing places in a slower track based on the high volume and/or complexity of the records requested.
- l. **Partial Grant/Partial Denial** – in response to a FOIA request, an agency decision to disclose portions of the records and to withhold other portions that are exempt under the FOIA, or to otherwise deny a portion of the request for a procedural reason.
- m. **Pending Request or Pending Administrative Appeal** – a request or administrative appeal for which an agency has not taken final action in all respects.

- n. **Perfect Request** – a request for records that reasonably describes such records and is made in accordance with published rules stating the time, place, fees (if any), and procedures to be followed.
 - o. **Processed Request or Processed Administrative Appeal** – a request or administrative appeal for which an agency has taken final action in all respects.
 - p. **Range in Number of Days** – the lowest and highest number of days to process requests or administrative appeals.
 - q. **Time Limits** – the time period in the statute for an agency to respond to a FOIA request (ordinarily 20 working days from receipt of a perfected FOIA request).
3. The FOIA Exemptions from Disclosure:
- a. **Exemption 1:** classified national defense and foreign relations information
 - b. **Exemption 2:** internal agency rules and practices
 - c. **Exemption 3:** information that is prohibited from disclosure by another federal law
 - d. **Exemption 4:** trade secrets and other confidential business information
 - e. **Exemption 5:** inter-agency or intra-agency communications that are protected by legal privileges
 - f. **Exemption 6:** information involving matters of personal privacy
 - g. **Exemption 7:** records or information compiled for law enforcement purposes, to the extent that the production of those records (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions, or (F) could reasonably be expected to endanger the life or physical safety of any individual
 - h. **Exemption 8:** information relating to the supervision of financial institutions
 - i. **Exemption 9:** geological information on wells

3. Agency Component Abbreviations

Component Abbreviation	Component Name
CPSC	United States Consumer Product Safety Commission

IV. EXEMPTION 3 STATUTES

A. Exemption 3 Statutes Relied Upon to Withhold Information

Statute	Type of Information Withheld	Case Citation	Total Number of Times Relied upon by Agency Overall
15 U.S.C. §§ 2055(a)(2), 2055(b)(1), 2055(b)(5) (Consumer Product Safety Act)	Certain information reported to, or otherwise obtained by, the Consumer Product Safety Commission which either contains or relates to a trade secret or is "subject to section 552(b)(4) of Title 5"		196
15 U.S.C. § 2055(e)(1)	Information submitted under statutory reporting requirement for certain consumer products involved in product liability actions	N/A	1
15 U.S.C. § 2074(c)	Information that identifies injured persons or those treating injured persons, absent consent	N/A	154

V. FOIA REQUESTS

A. Received, Processed, and Pending FOIA Requests

	Number of Requests Pending as of Start of Fiscal Year	Number of Requests Received in Fiscal Year	Number of Requests Processed in Fiscal Year	Number of Requests Pending as of End of Fiscal Year
AGENCY OVERALL	199	702	697	204

B. (1) Disposition of FOIA Requests – All Processed Requests

	Number of Full Grants	Number of Partial Grants/ Partial Denials	Number of Full Denials Based on Exemptions	Number of Full Denials Based on Reasons Other than Exemptions									TOTAL
				No Records	All Records Referred to Another Component or Agency	Request Withdrawn	Fee-Related Reason	Records not Reasonably Described	Improper FOIA Request for Other Reason	Not Agency Record	Duplicate Request	Other *Explain in chart below	
AGENCY OVER-ALL	213	292	10	107	5	31	2	17	0	2	18	0	697

B. (2) Disposition of FOIA Requests – “Other” Reasons for “Full Denials Based on Reasons Other than Exemptions” from Section V, B (1) Chart

Component	Description of “Other” Reasons for Denials from Section V, Chart B.(1) Chart	Number of Times Those Reasons Were Relied Upon	TOTAL
Not Applicable			
AGENCY OVERALL		0	0

B. (3) Disposition of FOIA Requests – Number of Times Exemptions Applied

	Ex. 1	Ex. 2	Ex. 3	Ex. 4	Ex. 5	Ex. 6	Ex. 7(A)	Ex. 7(B)	Ex. 7(C)	Ex. 7(D)	Ex. 7(E)	Ex. 7(F)	Ex. 8	Ex. 9
AGENCY OVERALL	0	0	237	119	219	191	22	0	2	21	0	0	0	0

VI. ADMINISTRATIVE APPEALS OF INITIAL DETERMINATIONS OF FOIA REQUESTS

A. Received, Processed and Pending Administrative Appeals

Number of Appeals Pending as of Start of Fiscal Year	Number of Appeals Received in Fiscal Year	Number of Appeals Processed in Fiscal Year	Number of Appeals Pending as of End of Fiscal Year
0	16	16	0

B. Disposition of Administrative Appeals – All Processed Appeals

Number Affirmed on Appeal	Number Partially Affirmed & Partially Reversed/Remanded on Appeal	Number Completely Reversed/Remanded on Appeal	Number of Appeals Closed for Other Reasons	TOTAL
5	9	1	1	16

C. (1) Reasons for Denial on Appeal – Number of Times Exemptions Applied

Ex. 1	Ex. 2	Ex. 3	Ex. 4	Ex. 5	Ex. 6	Ex. 7(A)	Ex. 7(B)	Ex. 7(C)	Ex. 7(D)	Ex. 7(E)	Ex. 7(F)	Ex. 8	Ex. 9
0	0	13	11	9	3	0	0	0	0	0	0	0	0

C. (2) Reasons for Denial on Appeal – Reasons Other than Exemptions

No Records	Records Referred at Initial Request Level	Request Withdrawn	Fee-Related Reason	Records not Reasonably Described	Improper Request for Other Reasons	Not Agency Record	Duplicate Request or Appeal	Request in Litigation	Appeal Based Solely on Denial of Request for Expedited Processing	Other *Explain in chart below
0	0	0	0	0	0	0	1	0	0	0

C. (3) Reasons for Denial on Appeal – “Other” Reasons from Section VI, C (2) Chart

Description of “Other” Reasons for Denial on Appeal from Chart C (2) & Number of Times Those Reasons Were Relied Upon	TOTAL
	0

C. (4) Response Time for Administrative Appeals

Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days
30	36	12	90

C. (5) Oldest Pending Administrative Appeals

Not Applicable – No Pending Administrative Appeals

	10 th Oldest Appeal	9 th	8 th	7 th	6 th	5 th	4 th	3 rd	2 nd	Oldest Appeal
Date of Receipt of Ten Oldest Appeals Date	0	0	0	0	0	0	0	0	0	0
Number of Days Pending	0	0	0	0	0	0	0	0	0	0

VII. FOIA REQUESTS: RESPONSE TIME FOR PROCESSED AND PENDING REQUESTS

A. Processed Requests – Response Time for All Processed Perfected Requests

	SIMPLE				COMPLEX				EXPEDITED PROCESSING			
	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days
AGENCY OVERALL	14	28	1	392	46	114	1	1,665	N/A	N/A	N/A	N/A

B. Processed Requests – Response Time for Perfected Requests in Which Information Was Granted

	SIMPLE				COMPLEX				EXPEDITED PROCESSING			
	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days
AGENCY OVERALL	15	26	1	312	46	96	1	1,665	N/A	N/A	N/A	N/A

C. Processed Requests – Response Time in Day Increments

Simple Requests

	1-20 Days	21-40 Days	41-60 Days	61-80 Days	81-100 Days	101-120 Days	121-140 Days	141-160 Days	161-180 Days	181-200 Days	201-300 Days	301-400 Days	401+ Days	TOTAL
AGENCY OVERALL	94	22	23	6	3	0	4	0	0	0	0	2	0	154

Complex Requests

	1-20 Days	21-40 Days	41-60 Days	61-80 Days	81-100 Days	101-120 Days	121-140 Days	141-160 Days	161-180 Days	181-200 Days	201-300 Days	301-400 Days	401+ Days	TOTAL
AGENCY OVERALL	126	119	78	46	27	24	21	13	17	6	28	5	33	543

Requests Granted Expedited Processing

	1-20 Days	21-40 Days	41-60 Days	61-80 Days	81-100 Days	101-120 Days	121-140 Days	141-160 Days	161-180 Days	181-200 Days	201-300 Days	301-400 Days	401+ Days	TOTAL
AGENCY OVERALL	0	0	0	0	0	0	0	0	0	0	0	0	0	0

D. Pending Requests – All Pending Perfected Requests

	SIMPLE			COMPLEX			EXPEDITED PROCESSING		
	Number Pending	Median Number of Days	Average Number of Days	Number Pending	Median Number of Days	Average Number of Days	Number Pending	Median Number of Days	Average Number of Days
AGENCY OVERALL	12	12	67	198	24	96	0	0	0

E. Pending Requests – Ten Oldest Pending Perfected Requests

Agency Overall	10 th Oldest Request and Number of Days Pending	9 th	8 th	7 th	6 th	5 th	4 th	3 rd	2 nd	Oldest Request and Number of Days Pending
Date	Jun. 1, 2015	Jun. 1, 2015	May 14, 2015	Mar. 26, 2015	Nov. 3, 2014	Mar. 14, 2014	Jul. 29, 2013	Sep. 28, 2011	Jul. 21, 2009	Jun. 30, 2009
Number of Days	337	337	348	383	480	642	798	1,257	1,807	1,821

VIII. REQUESTS FOR EXPEDITED PROCESSING AND REQUESTS FOR FEE WAIVER

A. Requests for Expedited Processing

	Number Granted	Number Denied	Median Number of Days to Adjudicate	Average Number of Days to Adjudicate	Number Adjudicated Within Ten Calendar Days
AGENCY OVERALL	0	2	3	3	2

B. Requests for Fee Waiver

	Number Granted	Number Denied	Median Number of Days to Adjudicate	Average Number of Days to Adjudicate
AGENCY OVERALL	1	2	1	1

IX. FOIA PERSONNEL AND COSTS

	PERSONNEL			COSTS		
	Number of “Full-Time FOIA Employees”	Number of “Equivalent Full-Time FOIA Employees”	Total Number of “Full-Time FOIA Staff” (The sum of Columns 1 & 2)	Processing Costs (At initial request and appeal levels)	Litigation- Related Costs	Total Costs
AGENCY OVERALL	7	2	9	\$845,149	\$16,500	\$861,649

X. FEES COLLECTED FOR PROCESSING REQUESTS

	Total Amount of Fees Collected	Percentage of Total Costs
AGENCY OVERALL	\$3,151	0.37

XI. FOIA REGULATIONS

- Title 16, Code of Federal Regulations, Part 1015 – Procedures for Disclosure or Production of Information under the FOIA, which includes the fee schedule, is electronically located at: <http://www.cpsc.gov/cpsc/pub/pubs/reports/16cfr1015.pdf>
- Title 16, Code of Federal Regulations, Part 1101 – Information Disclosure under Section 6(b) of the Consumer Product Safety Act is electronically located at: <http://www.cpsc.gov/cpsc/pub/pubs/reports/6b1101.pdf>

XII. BACKLOGS, CONSULTATIONS, AND COMPARISONS

A. Backlogs of FOIA Requests and Administrative Appeals

	Number of Backlogged Requests as of End of Fiscal Year	Number of Backlogged Appeals as of End of Fiscal Year
AGENCY OVERALL	171	0

B. Consultations on FOIA Requests – Received, Processed, and Pending Consultations

	Number of Consultations Received from Other Agencies that Were <u>Pending</u> at CPSC as of <u>Start</u> of the Fiscal Year	Number of Consultations <u>Received</u> from Other Agencies During the Fiscal Year	Number of Consultations Received from Other Agencies that Were <u>Processed</u> by CPSC During the Fiscal Year	Number of Consultations Received from Other Agencies that Were <u>Pending</u> at CPSC as of <u>End</u> of the Fiscal Year
AGENCY OVERALL	0	0	0	0

C. Consultations on FOIA Requests – Ten Oldest Consultations Received from Other Agencies and Pending at CPSC

Not Applicable - No Consultations Pending at the End of the Year

AGENCY OVERALL	10 th Oldest Consultation and Number of Days Pending	9 th	8 th	7 th	6 th	5 th	4 th	3 rd	2 nd	Oldest Consultation and Number of Days Pending
	Date									
Number of Days		0	0	0	0	0	0	0	0	0

D. Comparison of Numbers of Requests from Previous and Current Annual Report – Requests Received, Processed, and Backlogged

	NUMBER OF REQUESTS <u>RECEIVED</u>		NUMBER OF REQUESTS <u>PROCESSED</u>	
	Number Received During Fiscal Year from Last Year's Annual Report	Number Received During Fiscal Year from Current Annual Report	Number Processed During Fiscal Year from Last Year's Annual Report	Number Processed During Fiscal Year from Current Annual Report
AGENCY OVERALL	715	702	770	697

	Number of Backlogged Requests as of End of the Fiscal Year from Previous Annual Report	Number of Backlogged Requests as of End of the Fiscal Year from Current Annual Report
AGENCY OVERALL	188	171

E. Comparison of Numbers of Administrative Appeals from Previous and Current Annual Report – Appeals Received, Processed, and Backlogged

	NUMBER OF APPEALS <u>RECEIVED</u>		NUMBER OF APPEALS <u>PROCESSED</u>	
	Number Received During Fiscal Year from Last Year's Annual Report	Number Received During Fiscal Year from Current Annual Report	Number Processed During Fiscal Year from Last Year's Annual Report	Number Processed During Fiscal Year from Current Annual Report
AGENCY OVERALL	19	16	16	16

	Number of Backlogged Appeals as of End of the Fiscal Year from Previous Annual Report	Number of Backlogged Appeals as of End of the Fiscal Year from Current Annual Report
AGENCY OVERALL	0	0

This report is also available in XML format.