

**U.S. Consumer Product Safety Commission (CPSC)**  
**Chief FOIA Officer Report to the Department of Justice Pursuant to Attorney**  
**General Holder's FOIA Guidelines**  
**March 12, 2012**

**I. Steps Taken to Apply the Presumption of Openness**

Describe the steps your agency has taken to ensure that the presumption of openness is being applied to all decisions involving the Freedom of Information Act ("FOIA").

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

While the CPSC did not hold an agency FOIA conference, we did provide training to staff throughout the agency who are responsible for performing file searches for FOIA requests.

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

FOIA request processing is centralized in the CPSC's Secretariat or Office of the Secretary, a division of the Office of the General Counsel. We have provided specialized training to the professional and clerical staff responsible for FOIA processing. CPSC FOIA professional staff also attended training sessions conducted by the U.S. Department of Justice, Office of Information Policy and a contractor that administrates the CPSC FOIA electronic processing system.

3. Did you make any discretionary release of otherwise exempt information?

Yes. The FOIA professional staff has been trained and instructed on the discretionary release of previously withheld records, such as, the withholding of staff records with internal discussions and draft staff memoranda, draft press releases, draft staff technical reports, and other early versions of reports. Those types of draft materials are now generally released with clear markings that they are draft versions.

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

Most records previously withheld would have been covered by exemptions 5 and 7(A).

5. Describe your agency's process to review records to determine your process to review records to determine whether discretionary releases are possible.

The policy of the CPSC with respect to requests for records is that disclosure is the rule and withholding is the exception. See 16 C.F.R. § 1015.1. All records that are not subject to an exemption are disclosed. Records that are subject to exemption from disclosure are made available as a matter of discretion except when prohibited by law. 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. The CPSC uses a multilayered review system that, in most cases, involves initial reviews and recommendations by the CPSC office conducting the file search. The files are then reviewed by the FOIA Paralegal Specialists in the Secretariat, then reviewed by the FOIA Officer and the Chief FOIA Officer. In many cases, CPSC offices that perform file searches for responsive records, including the Office of the General Counsel, also review requested records prior to providing the information for processing by the Secretariat.

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

With each FOIA request, the FOIA office reminds CPSC offices of the "presumption of openness policy" in the memorandum requesting them to perform file searches for responsive records.

7. Did your agency have an increase in the number of responses where records were released in full?

The number of responses where records were released in full decreased to 1,751 in Fiscal Year 2011, from 2,349 in Fiscal Year 2010 (a decrease of 25%). However, the overall total number of requests processed also decreased to 2,560 in Fiscal Year 2011, from 3,195 in Fiscal Year 2010 (a decrease of 20%).

8. Did your agency have an increase in the number of responses where records were released in part?

The number of partial grants increased to 470 in Fiscal Year 2011, from 407 in Fiscal Year 2010 (an increase of 9%).

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

Describe here the steps your agency has taken to ensure that your system for responding to requests is effective and efficient.

1. Do FOIA professionals within your agency have sufficient IT support?

The FOIA professionals receive sufficient and comprehensive information technology ("IT") support. The CPSC has implemented an electronic FOIA processing application and new document scanning procedures. In addition, the records of the

agency are being systematically scanned into an electronic filing system that makes file searching and retrieval quicker and more efficient. The records can be retrieved into the FOIA processing application system where the materials can be copied to individual FOIA request files to be reviewed and redacted electronically. The Secretariat has procured contractors to scan all official records and records responsive to FOIA requests to make these records more readily available and easier to process. The FOIA office has an Information Technology Specialist, who is dedicated to the maintenance of the FOIA processing application to ensure that the system is functioning at all times. All FOIA professional staff members have desktop scanning equipment and computer software to expedite the scanning needs for individual cases or requests. Shared scanning equipment is used for large files that need to be processed.

2. Is there regular interaction between agency FOIA professionals and the Chief FOIA Officer?

The Chief FOIA Officer has daily interaction with the FOIA professionals, providing advice and assistance with difficult and unusual FOIA issues during the processing of requests.

3. Do your FOIA professionals interact with your agency's Open Government Team?

The FOIA office is an integral part of the Open Government Team. Most records that are placed on the CPSC's website, [www.cpsc.gov](http://www.cpsc.gov), go through a review and clearance process by the FOIA office. The Secretariat manages certain portions of the website, including a Public Calendar of the CPSC's public activities and the FOIA Electronic Reading Room.

4. Describe the steps your agency has taken to assess whether adequate staffing is being devoted to responding to FOIA Requests.

During the last year, CPSC management and the Secretariat reviewed the staffing levels in the FOIA office, resulting a new administrative assistant and the procurement of two Paralegal contractors devoted to processing FOIA requests. As of the end of fiscal year 2011 staff resources for processing FOIA requests were 14 full-time equivalents (FTEs).

5. Describe any other steps your agency has undertaken to ensure that your FOIA system operates efficiently and effectively.

The Secretariat has procured two new paralegal contractors and hired a new administrative assistant to improve management of the official records of the agency. The new staff are indexing, scanning, and filing records. The records are frequently the subject of FOIA requests and are disclosed proactively on the CPSC website.

### III. Steps Taken to Increase Proactive Disclosures

Describe here the steps your agency has taken to both increase the amount of material that is available on your agency website and the usability of such information, including providing examples of proactive disclosures that have been made during this past reporting period.

1. Has your agency added new material to your agency website since last year?

New material is added on an almost daily basis to the CPSC's website at [www.cpsc.gov](http://www.cpsc.gov). The CPSC created or enhanced pages on its website devoted to topics of high interest. Documents pertaining to those subjects are proactively posted without any FOIA request. The home page of the website has been redesigned to improve the ease of use of the website. In April 2011, CPSC established a publicly available database of reports of harm with consumer products at a CPSC website, SaferProducts.gov. The Database, established pursuant to Congressional mandate, identifies products is searchable by any user.

2. Provide examples of the records, datasets, videos, etc., that have been posted this past year.

The types of records posted on the agency's website, [www.cpsc.gov](http://www.cpsc.gov), are the publicly available database, contractor and CPSC laboratory testing, investigation reports of individual incidents, updates of CPSC overall activities for that product subject, area of safety, guidance to the public, frequent questions and answers, and activities with other agencies, federal and local. Records of Commission Actions on public matters, which include minutes of public decision-making meetings, are posted on the website within days, or sometimes, immediately after the decisions are taken by the Commission. All public statements of Commissioners about public decisions are posted on the website. The CPSC also posts all information relating to CPSC *Federal Register* notices, including drafts of the notices for regulatory and rulemaking activities, Sunshine Act meeting notices, and Paperwork Reduction Act matters. The CPSC webcasts all of the public hearings and meetings of the Commission and then posts videos of those webcasts on our web site.

The Commission posts on its website numerous staff technical reports, summaries of meetings with the public, and all of its contracts with the public, as well as, interagency agreements. Commission guidance and staff guidance for the application of new legislation are posted proactively and provided to the public.

3. Describe the system your agency uses to routinely identify records that are appropriate for posting.

The CPSC has a policy of proactively disclosing on the CPSC website all materials distributed to the Commission with a few exceptions that involve active investigative or legal matters. All technical reports and documents created by CPSC staff or CPSC contractors are placed on the website when finalized. All such records undergo an internal clearance by the professional staff and a web clearance process conducted by the Secretariat that includes review and approval by upper management.

4. Beyond posting new material is your agency taking steps to make the information more useful to the public especially to the community of individuals who regularly access your agency's website, such as soliciting feedback on the content and presentation of the posted material, improving search capabilities, providing explanatory material, etc.?

Regarding public comments on rulemaking matters, the CPSC now directs the public to post their comments on [www.Regulations.gov](http://www.Regulations.gov), which allows the public to review all comments on a given matter. Previously, the public had to wait until the closing the comment period, when the comments were posted on the website. The CPSC is engaging the public through social media, including Facebook, Twitter, the OnSafety blog, Flickr, YouTube, recall widgets, email announcements and Podcasts, as well as specific pages or sections of the website devoted to particular product areas. The website also offers a way for consumers or businesses to contact the agency by email. The website is currently being redesigned to improve its usability.

5. Describe any other steps taken to increase proactive disclosures at your agency.

The CPSC Open Government Plan provides descriptions and guidelines for the use of the CPSC website and links to much of the information on the website. See: <http://www.cpsc.gov/open/open.pdf>. Pursuant to the Consumer Product Safety Improvement Act of 2008, the Commission in March 2011 added a publicly available searchable database on reports of harm received from consumers and other stakeholders. The database is accessed at <http://www.SaferProducts.gov/>. This database will help the public by providing direct access to reports received by the Commission without a FOIA request. <http://www.cpsc.gov/about/cpsia/sect212.html>.

#### **IV. Steps Taken to Greater Utilize Technology**

*Electronic receipt of FOIA requests:*

1. Can FOIA requests be made electronically to your agency?

The CPSC receives FOIA requests at its website page, <http://www.cpsc.gov/library/foia/foiaonline.html>; by email at several email addresses, including [CPSC-FOIA@cpsc.gov](mailto:CPSC-FOIA@cpsc.gov), and [CPSC-OS@cpsc.gov](mailto:CPSC-OS@cpsc.gov); and the addresses of the FOIA Public Liaison Officers, Deborah Acosta - [dacosta@cpsc.gov](mailto:dacosta@cpsc.gov) and Lynn Carter - [lcarter@cpsc.gov](mailto:lcarter@cpsc.gov); and the FOIA Officer, Alberta Mills - [amills@cpsc.gov](mailto:amills@cpsc.gov); and the Chief FOIA Officer, Todd Stevenson - [tstevenson@cpsc.gov](mailto:tstevenson@cpsc.gov); at the CPSC website Contact

Information automated form at <http://www.cpsc.gov/cgibin/info.aspx>; and by facsimile at 301-504-0127.

2. If your agency processes requests on a decentralized basis, do all components of your agency receive requests electronically?

Within the CPSC, the processing of FOIA requests is centralized in the Secretariat. There are no other agency components that process FOIA requests. The Secretariat has the capability to receive FOIA requests electronically.

*Online Tracking of FOIA requests:*

3. Can a FOIA requester track the status of his/her requests electronically?

Requesters cannot electronically track their requests. CPSC has a FOIA page <http://www.cpsc.gov/library/foia/requeststatus.html> that provides the email addresses for the FOIA Public Liaisons, where the requesters can send an email to request the status of their requests.

4. If not, is your agency taking steps to establish this capability?

We are discussing the matter with the contractor that administrates our electronic processing system for FOIA requests.

*Use of technology to facilitate processing requests:*

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

The CPSC is taking steps to utilize more advanced technology with its record searching and filing systems.

6. If so, describe the technological improvements being made.

The new publicly available searchable database improves the record searching and provides a process for the public to directly search for incident information on consumer products. The CPSC is improving its electronic FOIA processing application system and an electronic filing system that makes file searching and retrieval quicker and more efficient. Newer versions of the application system have been purchased and installed and training has been conducted for the FOI professionals. More efficient scanning equipment and computers have also been purchased.

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

1. Section VII.A of your agency's Annual FOIA Report, entitled "FOIA Requests – Response Time for All Processed Requests,"

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

The CPSC uses a separate track for simple requests.

b. If so, for your agency overall, for Fiscal Year 2011, was the average number of days to process simple requests twenty working days or fewer?

The average number of days to process simple requests was not twenty days or fewer.

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

Not applicable to CPSC.

2. Sections XII.D(2) and XII.E(2), of your agency's Annual FOIA Report, entitled "Comparison of Numbers of Requests/Appeals from Previous and Current Annual Report – Backlogged Requests/Appeals," and Section VI.C(5), entitled "Ten Oldest Pending Administrative Appeals,"

a. If your agency had a backlog of requests at the close of Fiscal Year 2011, did that backlog decrease as compared to Fiscal Year 2010?

The backlog of requests at CPSC decreased from 306 in Fiscal Year 2010 to 237 in Fiscal Year 2011 (a decrease of 8%).

b. If your agency had a backlog of administrative appeals in Fiscal Year 2011, did that backlog decrease as compared to Fiscal Year 2010?

CPSC did not have a backlog of administrative appeals in Fiscal Year 2010 or Fiscal Year 2011.

c. In Fiscal Year 2011, did your agency close the ten oldest requests that were pending as of the end of Fiscal Year 2010?

CPSC closed the ten oldest requests that were pending as of the end of Fiscal Year 2010.

d. In Fiscal Year 2011, did your agency close the ten oldest administrative appeals that were pending as of the end of Fiscal Year 2010?

CPSC did not have any pending administrative appeals as of the end of Fiscal Year 2010.

3. If you answered “no” to any of the above questions, describe why that has occurred. In doing so, answers the following questions then include any additional explanation:

*Request Backlog:*

a. Was the lack of a reduction in the request backlog a result of an increase in the number of incoming requests?

Not applicable to CPSC.

b. Was the lack of a reduction in the request backlog caused by a loss of staff?

Not applicable to CPSC.

c. Was the lack of a reduction in the request backlog caused by an increase in the complexity of the requests received?

Not applicable to CPSC.

d. What other causes, if any, contributed to the lack of a decrease in the request backlog?

Not applicable to CPSC.

*Administrative Appeal Backlog:*

a. Was the lack of a reduction in the back of administrative appeals a result of an increase in the number of incoming appeals?

Not applicable to CPSC.

b. Was the lack of a reduction in the appeal backlog caused by a loss of staff?

Not applicable to CPSC.

c. Was the lack of a reduction in the appeal backlog caused by an increase in the complexity of the requests received?

Not applicable to CPSC.

d. What other causes, if any, contributed to the lack of a decrease in the appeal backlog?

Not applicable to CPSC.

All agencies should strive to both reduce any existing backlogs or requests and appeals and to improve their timeliness in responding to requests and appeals. Describe the steps your agency is taking to make improvements in those areas. In doing so, answer the following questions and then also include any other steps being taken to reduce backlogs and to improve timeliness.

1. Does your agency routinely set goals and monitor the progress of your FOIA caseload?

The CPSC sets monthly goals of reducing the backlog and monitors the progress of the FOIA caseload daily.

2. Has your agency increased its FOIA staffing?

CPSC FOIA staffing has not increased.

3. Has your agency made IT improvements to increase timeliness?

We purchased the latest updates to the FOIA processing application system. The updates allow for more accurate searching, processing of multiple pages, improved redacting of information, and enhancements to the FOIA reporting function.

4. If your agency receives consultations from other agencies, has your agency taken steps to improve the efficiency of the handling of such consultations, such as utilize IT to share the documents, or establishing guidelines or agreements with other agencies on the handling of particular information to speed up or eliminate the need for consultations?

CPSC did not have any consultations during the last year.

### **Use of FOIA's Law Enforcement "Exclusions"**

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

1. Did your agency invoke a statutory exclusion during Fiscal Year 2011?

CPSC did not invoke the statutory exclusion during Fiscal Year 2011.

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

CPSC did not invoke the statutory exclusion during Fiscal Year 2011.

## **Spotlight on Success**

In response to the requirements of Section 212 of the Consumer Product Safety Improvement Act of 2008, the CPSC developed a Publicly Available Consumer Product Safety Information Database that is accessible and searchable through the CPSC's Internet website. This is a database of consumer product reports of harm. Through the website, SaferProducts.gov, consumers can report product safety incidents or potential incidents, and search for other reports and recalls on products they own, or may be thinking about buying. SaferProducts.gov provides the CPSC and the American public with powerful new tools to report, review, analyze, and respond to reports on the safety of consumer products.

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