

## ATVs FROM PAGE 9

part the risks of ATVs with those of such other vehicles as snowmobiles and motorcycles before determining that ATVs are hazardous.

In a letter to the agency, Florio argued that it was "highly questionable whether such comparative data would be relevant," adding that CPSC General Counsel Lacey testified that there is no statutory requirement for comparative data.

Florio charges that if the document had been released as Scanlon planned, it could have undermined the commission's entire enforcement action by giving the industry more ammunition. But the memo was never released, because Florio refused to make it part of the public hearing record.

Scanlon says he offered to enter the memo into the hearing record on a restricted basis "to clarify the record."

## Hundreds of Plaintiffs

Meanwhile, plaintiffs' lawyers charge that the fox-dragging and bureaucratic wrangling in Washington plays into the hands of industry and hurts consumers. Gilreath, head of the ATV plaintiffs' lawyers group, believes that the industry's legal strategy is to "keep the government's nose out of the problem for as long as they can."

Gilreath maintains that if the Justice Department takes the industry to court, a ruling that ATVs are an imminent hazard could prove devastating to manufacturers, who are trying to fend off hundreds of suits. Also, an imminent-hazard finding could trigger a costly recall.

Gilreath estimates that Honda has about 300 ATV-related personal injury complaints pending against it involving damage claims averaging \$1 million per case.

"The message that the industry wants you to believe is that people who get hurt on these things are idiots," says Gilreath.



Michael Brown of Schmeltzer, Aptaker & Sheppard is Honda's regular D.C. counsel. He was instrumental in the decision to hire Lloyd Cutler.

who is now negotiating with Honda in 10 personal injury cases.

"They say the vehicles are being misused or that people are drinking," Gilreath says. "Sure, in some cases that's true, but others are not misusing them. What happens is that the vehicle unexpectedly bounces and turns over unexpectedly, oftentimes causing spinal and head injuries."

Douglas Somers of Los Angeles Somers, Hall, Verrastro & Kern, who represents Honda in product liability cases, says it is "reasonable" to estimate that more than 300 personal liability cases are pending against Honda. He maintains, however, that Gilreath's estimate of \$300 million in potential claims "sounds a bit high."

Whatever the true amount of potential

claims, Honda and the other manufacturers have a tremendous amount riding on what happens in Washington.

That is why Willens and Cutler are trying to buy time to reach a settlement.

"There's no doubt about it," admits Willens. "A judicial ruling declaring ATVs imminent hazards would have an impact on pending product liability cases." □

43,971 TRIS BAN: CONSUMER ATTITUDES FOUND UNCHANGED  
The level of consumer concern regarding the Tris controversy is minimal, a recent survey conducted for the Consumer Product Safety Commission indicates. According to a January 31, 1978, memorandum, a final report on "Consumer Attitudes Survey on Children's Sleepwear and the CPSC Ban

on Children's Garments Containing TBPP (Tris)" also determined that children's sleepwear habits have not changed appreciably as a result of the Tris controversy. The survey, which was conducted for the CPSC by A.T. Kearney Managements and Burke Marketing Research, Inc., also noted that, consistent with reports from major retailers, consumers have not made any significant effort to return purchased garments. Survey data indicated that fewer than 50% of the respondents plan to change their shopping habits at all as a result of the Tris brouhaha. Of those who do plan a change, 22% will read labels more carefully and 15% will not buy any sleepwear. However, after further questioning, 22% of the respondents admitted that they planned to switch fabrics in garments, indicating a preference for cotton (approximately 13%).

The CPSC staff concluded that consumer attitudes concerning the parties involved in the Tris controversy are likely to be short-lived. See ¶ 4013



## Current Report

### *Sports and Recreation*

#### **ATV BRIEFING MAY BE POSTPONED BY CPSC; COMPLIANCE HEAD CRITICAL OF TASK FORCE**

The Oct. 15 public meeting at which the Consumer Product Safety Commission is to be briefed on the recommendations of the agency's task force on all-terrain vehicles is expected to be postponed at the request of two of the commissioners, who charged in an Oct. 7 memorandum the briefing package prepared by the task force is incomplete.

Another memo from the agency's associate executive director for compliance and administrative litigation, which was restricted from the public version of the ATV briefing package, was highly critical of the task force's recommendations, calling them "little more than the status quo."

Commissioners Anne Graham and Carol G. Dawson asked for a deferment, probably until November, in their Oct. 7 memo. They said that the task force's briefing package "is missing substantial and important information," such as (1) an evidentiary critique from the Office of General Counsel advising the commission on the adequacy of the data to support the staff's conclusions and recommendations; (2) an analysis by OGC of possible legal issues associated with those recommendations; and (3) an analysis by the Office of Compliance of the enforcement-related questions raised by the staff's conclusions.

No formal decision had been reached as of Oct. 8 on whether the briefing session will be postponed; however, since two of the three commissioners have asked for deferment, such an action is likely.

The two commissioners, who have been in a dispute with

Chairman Terrence M. Scanlon over interagency accountability (Current Report, Oct. 3, p. 688), said it is a basic duty of the executive director and the general counsel to ensure that the commission receives all relevant information in a timely manner to enable the collegial body to make a reasoned decision on issues such as ATVs. If the staff needed more time to complete its work, the executive director and the general counsel should have asked the commission for an extension of its deadline. "To our knowledge, they never did," the commissioners stated.

It would be imprudent for the commission to hold a public briefing on the ATV issue without first having the entire ATV package and all other relevant information, the commissioners said. It would be equally unwise, they added, to schedule the briefing immediately after the OGC and compliance analyses are received, since it will require time to study these materials in the context of the voluminous data generated by the staff. "We are therefore deferring the ATV briefing until such time as we have received the additional staff memoranda and have had the opportunity to review the material," they declared.

The commissioners said they do not expect to receive the analyses until Oct. 31, after which they would reschedule the briefing.

Dawson and Graham also stated that the commission should have the opportunity to hear from interested parties about their reaction to the staff's package. Therefore, they decided that the commission should conduct a hearing at which all interested parties may address the commission about the staff's findings. This hearing should be held in Washington, they said, and announced through a *Federal Register* notice.

#### Compliance Director's Critique

In a Sept 30 memo to CPSC Executive Director Leonard DeFiore, restricted from the public version of the ATV briefing package but obtained by BNA, David Schmeltzer, associate executive director for compliance and administrative litigation, said the recommendations contained in the ATV task force report are "superficial ones that would virtually do nothing." The task force recommended that industry carry out a voluntary ban on the use of ATVs by children under 12, and if that were not successful, the commission should issue a mandatory ban. The task force also recommended labeling and driver education (Current Report, Oct. 3, p. 687).

"While doing virtually nothing is all right if that is what the commission wants to do," Schmeltzer said, "it should recognize that is what is being done. It does not take a brilliant analysis to conclude that the recommendations are very little more than the status quo."

Schmeltzer said the report seems to shift the responsibility for the injuries and deaths "from the makers and promoters of this very dangerous product to the user." In doing so, he added, "it may foreclose the commission from attempting to do anything meaningful to reduce or eliminate the safety problem."

While there is a restricted briefing package addressing enforcement issues, Schmeltzer said he was concerned that the unrestricted package on regulatory alternatives may leave some readers with the wrong impression of the underlying data. Since the ATV matter involves highly controversial public policy issues, it is reasonable to expect that the commission will be severely criticized if it appears that it has misconstrued the data or downplayed the significance of certain findings, he stated. To many outside persons reviewing the materials it will appear that the "public recommendations of the Task Force do not represent a timely or effective approach toward addressing the ATV problems."

The commission has reports of 559 ATV-related deaths and an estimated 85,900 ATV-related injuries treated in hospital emergency rooms. These deaths and injuries, Schmeltzer said, were the result of a variety of factors. The briefing package overemphasizes the role of the ATV operator as a cause of the accidents and diminishes the responsibility of the manufacturer and distributor, according to Schmeltzer. In discussing the risks of injury, the briefing package contains many references to "judgment" on the part of the operator, and frequently describes the operator's judgment as "poor." In many instances, Schmeltzer said, this behavior on the part of the operator, even if it is characterized as "misuse" of the product, is reasonably foreseeable and could be addressed. He added that such incidents may not be misuse at all — "the machine may simply not be fit for its intended purpose."



U.S. CONSUMER PRODUCT SAFETY COMMISSION  
WASHINGTON, D.C. 20207-0001

OFFICE OF THE GENERAL COUNSEL

Jeffrey S. Bromme  
General Counsel  
Tel: 301-504-0980 ext. 2299  
Fax: 301-504-0403  
E-Mail: cpsc-gc@cpsc.gov

April 2, 1999

Mr. David Swit  
Washington Business Information, Inc.  
1117 North 19th Street  
Suite 200  
Arlington, VA 22209-1798

RE: FOIA Appeal S710117A  
Turner propane gas radiant heaters

Dear Mr. Swit:

By letter dated March 11, 1999, you appealed the decision of the Commission's Freedom of Information Officer to withhold information responsive to your Freedom of Information Act (FOIA) request on the CPSC's recall of Turner propane gas radiant heaters. Under authority delegated to me by the Commission, 16 C.F.R. § 1015.7, I have reviewed your appeal.

The FOI Officer has tentatively reconsidered his decision concerning certain documents in this investigatory file because the ongoing investigation is now completed. However, before he can finally decide to disclose any documents in the file, the Commission must comply with sections 6(a) and (b) of the Consumer Product Safety Act (CPSA). 15 U.S.C. §§ 2055(a) and (b). The FOI Officer is now processing the file under these provisions and will be notifying you, under separate cover, about when you can expect to receive a response. Under these provisions, the Commission must provide the manufacturer the opportunity to mark the information as confidential and to comment upon the disclosure of information that identifies a manufacturer. If the Commission decides to disclose information over the objection of the manufacturer, it must notify the manufacturer of the proposed disclosure at least 10 days in advance.

The FOI Officer has initiated the process of manufacturer comment, and he will notify you of his determination when it has

Mr. David Swit  
April 2, 1999

Page 2

been completed. If he decides to withhold any responsive information at that time, you may appeal his decision to me. While the manufacturer notification process is underway, you may either await his decision or treat this letter as a denial of your FOIA appeal for that responsive information. We are currently withholding it under FOIA Exemption 3, in reliance on CPSA sections 6(a) and (b). Exemption 3 provides for withholding information that is specifically exempted from disclosure by another statute.

I affirm the Freedom of Information Officer's decision to withhold other responsive information contained in the Commission's investigatory file. This decision is based on FOIA Exemptions 5, 7(A) and 7(E). 5 U.S.C. §§ 552(b)(5), (b)(7)(A) and (b)(7)(E).

Exemption 5 permits agencies to withhold certain inter-agency and intra-agency documents and incorporates the deliberative process privilege. The preliminary staff determination and other staff notes withheld in this case consist of staff recommendations containing both pre-decisional and deliberative discussions. The deliberative process privilege protects advice, recommendations, and opinions that are part of the agency's deliberative, consultative, and decision-making processes and also protects information falling within the scope of the attorney work product doctrine. Although this privilege applies only to the opinions or recommendations in a document and not to factual information, facts are withheld here because they are inextricably intertwined with the exempt portions. Release of this information would stifle the Commission's decisionmaking ability with respect to section 15 investigations by impairing open and frank communication within the agency.

The preliminary staff determination and attorney notes being withheld under Exemption 5 are also being withheld under Exemption 7(A). Exemption 7(A) provides for the withholding of investigatory information compiled for law enforcement purposes, but only to the extent that the production of such information could reasonably be expected to interfere with enforcement proceedings. We have determined that disclosure of these documents could reasonably be expected to interfere with law enforcement proceedings.

Exemption 7(E) of the FOIA exempts from disclosure "records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information . . . (E) would disclose techniques and procedures for law enforcement investigations or prosecutions if such

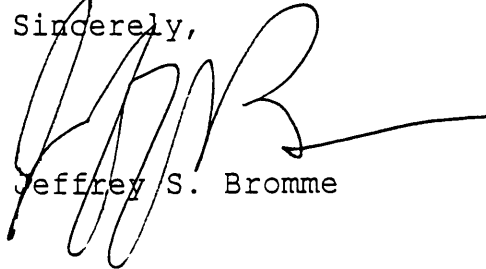
Mr. David Swit  
April 2, 1999

Page 3

disclosure could reasonably be expected to risk circumvention of the law. The preliminary staff determination and attorney notes are also being withheld under Exemption 7(E). These documents were compiled for the purposes of enforcing the CPSA and would disclose the Commission's investigatory techniques if released. Disclosure of the Commission's investigatory techniques would enable companies being investigated to attempt to change their operations to circumvent the investigatory process without complying with the CPSA.

You have the right to seek judicial review of this decision, as provided by 5 U.S.C. § 552(a)(4)(B).

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Bromme', with a long horizontal flourish extending to the right.

Jeffrey S. Bromme





WASHINGTON BUSINESS INFORMATION, INC. • 1117 NORTH 19TH STREET, SUITE 200, ARLINGTON, VA 22209-1798 • (703)247-3434, FAX 247-3421

March 11, 1999

FOIA APPEAL, General Counsel  
Attn: Office of the Secretary  
U.S. Consumer Product Safety Commission  
Washington, D.C. 20207

FAX: 301/504-0127  
(Page 1 of 1)

Dear Sir,

Pursuant to the Freedom of Information Act, we hereby appeal the denial of FOIA Request S-710117A (filed Feb. 19, 1996), Turner heaters, release 95-170. We appeal because:

A -- The denial contradicts the instructions of the President and the Attorney General, as well as CPSC's own regulations, that disclosure be the rule, rather than the exception.

B -- CPSC claims requested records are in "active law enforcement investigatory files." That seems improbable as most recall files are closed in far under the 41-plus months since this one was opened. Please confirm the file is open, and estimate how long it will stay so.

C -- CPSC has provided no proof of its claim that disclosing some or all of these records would disclose techniques and procedures for law enforcement. Moreover, CPSC's blanket withholding of these records is inconsistent with the agency's stated policy that the invoking of these exemptions to the FOIA is discretionary, not mandatory.

D -- CPSC has provided insufficient information for Requester to evaluate validity of withholding records that are segregable from otherwise exempt material. Examples include, but are not limited to:

- (1) Form 1A -- CPSC staff's initial input and staff worksheet
- (2) Company's "Full Report" on possible hazard
- (3) Company's Corrective Action Plan Progress Reports
- (4) Safety-related consumer or dealer complaints, warranty claims, reports of injury,

and copies of all documents related to such complaints, claims and injuries, including court complaints and related documents filed in or associated with lawsuits involving the product, and a description of the resolution of those lawsuits, if any. If the complaints and other documents requested in this sub-paragraph are unavailable, CPSC's records should contain the reason for such unavailability and a summary of the requested items containing the name, address and phone number of the claimant or of his/her attorney.

Please sign below to confirm receipt of this appeal, and fax it to me at 703/247-3421.

Sincerely,

David Swit, Publisher  
Product Safety Letter

Receipt of the above is acknowledged:

_____ Signature	_____ Date
_____ Name (please print)	_____ Title

cc: E. Koch, Esq.  
SEC-rf, DIR/f, PSL



0389  
TUR

U.S. Consumer Product Safety Commission  
Washington, D.C. 20207

February 22, 1999

**Certified Mail**

Mr. Jeffrey W. Schomisch  
Editorial Director • Product Safety Letter  
Washington Business Information  
1117 North 19th Street  
Arlington, VA 22209-1798

A large, stylized handwritten signature, possibly reading "TUR", written in black ink.

**Re: FOIA Request S710117A: Turner Propane Fueled Radiant Heater / CPSC Compliance file RP950030**

Dear Mr. Schomisch:

Thank you for your Freedom of Information Act (FOIA) request to the Commission. We must withhold the records responsive to your request, specifically, the records from the Commission's Office of Compliance's active law enforcement investigatory files, (file RP950030), pursuant to the FOIA Exemptions 5 and 7(A), 5 U.S.C. §§ 552(b)(5) and (b)(7)(A). Exemption 5 provides for the withholding from disclosure of inter-agency and intra-agency memoranda which would not be available by law to a party other than an agency in litigation with the agency. Exemption 7(A) provides for the withholding from disclosure records or information compiled for law enforcement purposes, to the extent that the production of such law enforcement records or information could reasonably be expected to interfere with enforcement proceedings.

The records being withheld consist of internal staff memoranda and correspondence containing recommendations, opinions, suggestions and analyses of the Commission's technical and legal staffs. The records constitute both predecisional and deliberative discussion that clearly falls within the attorney-client and attorney-work product privileges. Any factual materials in the records not covered by some other exemption are inextricably intertwined with exempt materials or the disclosure of the factual materials would itself expose the deliberative process. We have determined that the disclosure of these certain law enforcement investigatory records responsive to your request would be contrary to the public interest. It would not be in the public interest to disclose these materials because disclosure would (1) impair the frank exchange of views necessary with respect to such matters, and (2) prematurely reveal information used in the investigation, thereby interfering with this and other matters by disclosing the government's basis for pursuing this matter.

According to the Commission's regulations implementing the FOIA at 16 C.F.R. § 1015.7, a denial of access to records may be appealed to the General Counsel of the Commission within thirty (30) days of your receipt of this letter. An appeal must be in writing and addressed to: FOIA APPEAL, General Counsel, ATTN: Office of the Secretary, U.S. Consumer Product Safety Commission, Washington, D.C. 20207.

You may want to resubmit your request in a few months upon completion of the case. Processing this request, performing the file searches and reviewing the information, cost the Commission \$100.00. In this instance, we have decided to waive all of the charges.

Sincerely,

Todd A. Stevenson  
Deputy Secretary and  
Freedom of Information Officer



February 19, 1996

Consumer Product Safety Commission  
Freedom of Information Office  
4330 East-West Highway  
Bethesda, Md., 20207

Dear FOI Officer,

Pursuant to the federal Freedom of Information Act, 5 U.S.C. Section 552, I request access to and copies of all information to and from CPSC and Turner on the recall of propane gas radiant heaters.

As a member of the news media I am only required to pay for the direct cost of duplication after the first 100 pages. Please waive any additional fees. Release of the information is in public interest because it will contribute significantly to public understanding of government operations and activities.

If my request is denied in whole or part, I ask that you justify all deletions by reference to specific exemptions of the Act. I will also expect you to release all segregable portions of otherwise exempt material. I, of course, reserve the right to appeal your decision to withhold any information or to deny a waiver of fees.

As I am making this request as an editor and this information is of timely value, I would appreciate your communicating with me by phone (direct line 703/247-3423) or fax (247-3421), rather than by mail, if you have questions regarding this request. I look forward to your reply within 10 business days, as the statute requires.

Thank you for your assistance.

Sincerely,

*Maureen K. Cislo*

Maureen Cislo, Editor  
PRODUCT SAFETY LETTER

Receipt of this letter is acknowledged:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name (please print or type)

cc: PUB/SEC-rf, DIR  
(1227074-111)

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# NEWS from CPSC

U.S. CONSUMER PRODUCT SAFETY COMMISSION

OFFICE OF INFORMATION AND PUBLIC AFFAIRS

WASHINGTON, D.C. 20207

FOR IMMEDIATE RELEASE

September 21, 1995

Release # 95-170

CONTACT: Kate Premo

(301) 504-0580 Ext. 1187

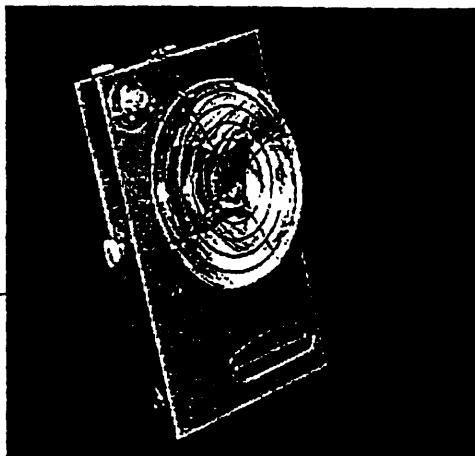
## CPSC ANNOUNCES RECALL OF TURNER HEATERS; COMPANY OFFERING \$250 REWARD

WASHINGTON, D.C.-The U.S. Consumer Product Safety Commission (CPSC), is announcing the recall of certain Turner model LP-2440 propane gas radiant heaters. The company is offering a \$250 reward for the return of the defective heaters. Carbon monoxide poisoning caused by a defective burner element in the heaters may be responsible for killing 6 people since 1963.

Carbon monoxide (CO) is a colorless, odorless gas that is produced by incomplete combustion. CO poisoning can cause nausea, dizziness, drowsiness, vomiting, and in extreme cases, death.

About 20,000 Turner model LP-2440 propane gas radiant heaters were sold for about \$30 to \$35 nationwide from 1963 to early 1964. About 3,700 heaters may still be in use. The heaters are often resold in yard sales and second-hand stores.

The heaters have a green metal cabinet that is approximately 8 inches wide, 13 inches high, and 3 inches deep with room inside for two 14.1-oz. propane gas cylinders. The model number LP-2440 appears on the front of the heater along with the words, "PORTABLE radiant heater, TURNER CORPORATION".



—MORE—

(heater)

-2-

Consumers should stop using the heater and call the Turner Portable Heater Recall Line at (800) 889-7672 between 8 a.m. and 4:30 p.m. EST, Monday through Friday, for further instructions on how to identify heaters subject to the recall and return it for the \$250 reward.

Media inquiries of the company may be made to Meg Mullery at (202) 342-8439.

The U.S. Consumer Product Safety Commission protects the public from the unreasonable risk of injury or death from 15,000 types of consumer products under the agency's jurisdiction. To report a dangerous product or a product-related injury and for information on CPSC's fax-on-demand service, call CPSC's hotline at (800) 638-2772 or CPSC's teletypewriter at (800) 638-8270. To order a press release through fax-on-demand, call (301) 504-0051 from the handset of your fax machine and enter the release number. Consumers can obtain this release and recall information via Internet gopher services at [cpsc.gov](http://cpsc.gov) or report product hazards to [info@cpsc.gov](mailto:info@cpsc.gov).

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March 11, 1999

FOIA APPEAL, General Counsel  
Attn: Office of the Secretary  
U.S. Consumer Product Safety Commission  
Washington, D.C. 20207

FAX: 301/504-0127  
(Page 1 of 1)

Dear Sir,

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David Swit, Publisher  
Product Safety Letter

Receipt of the above is acknowledged:

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Name (please print) Title

cc: E. Koch, Esq.  
SEC=rf, DIR/f, PSL

Author: Melissa V. Hampshire at CPSC-HQ1  
Date: 3/12/99 9:41 AM  
Priority: Normal  
TO: Todd A. Stevenson  
Subject: Krieger file

Can you come and get this file? Thanks!





U.S. Consumer Product Safety Commission  
Washington, D.C. 20207

February 22, 1999

**Certified Mail**

Mr. Jeffrey W. Schomisch  
Editorial Director • Product Safety Letter  
Washington Business Information  
1117 North 19th Street  
Arlington, VA 22209-1798

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0389  
TJR

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Sincerely,

*Maureen K. Cislo*

Maureen Cislo, Editor  
PRODUCT SAFETY LETTER

Receipt of this letter is acknowledged:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name (please print or type)

cc: PUB/SEC-rf, DIR  
(1227K074.1Y1)

*Edc 2*

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CA-B  
22*

# NEWS from CPSC

## U.S. CONSUMER PRODUCT SAFETY COMMISSION

OFFICE OF INFORMATION AND PUBLIC AFFAIRS

WASHINGTON, D.C. 20207

FOR IMMEDIATE RELEASE  
September 21, 1995  
Release # 95-170

CONTACT: Kate Premo  
(301) 504-0580 Ext. 1187

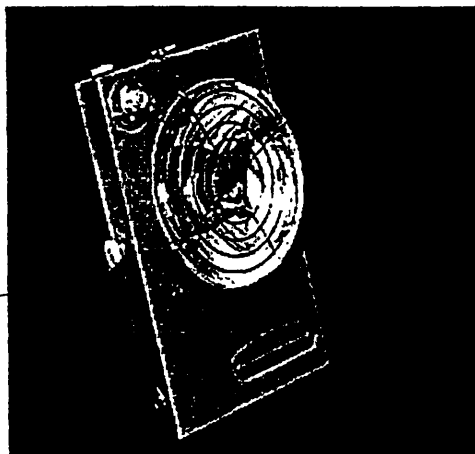
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WASHINGTON, D.C.-The U.S. Consumer Product Safety Commission (CPSC), is announcing the recall of certain Turner model LP-2440 propane gas radiant heaters. The company is offering a \$250 reward for the return of the defective heaters. Carbon monoxide poisoning caused by a defective burner element in the heaters may be responsible for killing 6 people since 1963.

Carbon monoxide (CO) is a colorless, odorless gas that is produced by incomplete combustion. CO poisoning can cause nausea, dizziness, drowsiness, vomiting, and in extreme cases, death.

About 20,000 Turner model LP-2440 propane gas radiant heaters were sold for about \$30 to \$35 nationwide from 1963 to early 1964. About 3,700 heaters may still be in use. The heaters are often resold in yard sales and second-hand stores.

The heaters have a green metal cabinet that is approximately 8 inches wide, 13 inches high, and 3 inches deep with room inside for two 14.1-oz. propane gas cylinders. The model number LP-2440 appears on the front of the heater along with the words, "PORTABLE radiant heater, TURNER CORPORATION".



—MORE—

(heater)

-2-

Consumers should stop using the heater and call the Turner Portable Heater Recall Line at (800) 889-7672 between 8 a.m. and 4:30 p.m. EST, Monday through Friday, for further instructions on how to identify heaters subject to the recall and return it for the \$250 reward.

Media inquiries of the company may be made to Meg Mullery at (202) 342-8439.

The U.S. Consumer Product Safety Commission protects the public from the unreasonable risk of injury or death from 15,000 types of consumer products under the agency's jurisdiction. To report a dangerous product or a product-related injury and for information on CPSC's fax-on-demand service, call CPSC's hotline at (800) 638-2772 or CPSC's teletypewriter at (800) 638-8270. To order a press release through fax-on-demand, call (301) 504-0051 from the handset of your fax machine and enter the release number. Consumers can obtain this release and recall information via Internet gopher services at [cpsc.gov](http://cpsc.gov) or report product hazards to [info@cpsc.gov](mailto:info@cpsc.gov).

####



U.S. CONSUMER PRODUCT SAFETY COMMISSION  
WASHINGTON, DC 20207

Todd A. Stevenson  
Deputy Secretary and  
Freedom of Information Officer  
Office of the Secretary

Tel: 301-504-0785X1239  
Fax: 301-504-0127  
Email: [tstevenson@cpsc.gov](mailto:tstevenson@cpsc.gov)

April 28, 1999

Mr. David Swit  
Publisher  
Washington Business Information  
1117 North 19th Street, Suite 200  
Arlington, VA 22209

Re: FOIA Request and Appeal S710131: Maytag Dishwashers  
/ CPSC Compliance file RP950240

Dear Mr. Swit:

Enclosed are copies of the records (that were previously withheld) from the referenced file, as discussed in the letter dated March 23, 1999, from the General Counsel responding to your appeal. The enclosed records include file information generated by the Commission itself or its contractors for regulatory or enforcement purposes. The Commission has established management systems under which supervisors are responsible for reviewing the work of their employees or contractors. The file information materials are final and have been prepared and accepted by the Commission's staff under such review systems. The Commission believes that it has taken reasonable steps to assure the accuracy of the information.

Sincerely,

  
Todd A. Stevenson

Enclosures



U.S. CONSUMER PRODUCT SAFETY COMMISSION  
WASHINGTON, D.C. 20207-0001

OFFICE OF THE GENERAL COUNSEL

Jeffrey S. Bromme  
General Counsel  
Tel: 301-504-0980 ext. 2299  
Fax: 301-504-0403  
E-Mail: [jbromme@cpsc.gov](mailto:jbromme@cpsc.gov)

March 23, 1999

Mr. David Swit  
Publisher  
Washington Business Information Inc.  
1117 North 19th Street  
Suite 200  
Arlington, VA 22209-1799

RE: FOIA Appeal S710131  
Maytag Dishwashers

Dear Mr. Swit:

By letter dated March 12, 1999, you appealed the decision of the Commission's Freedom of Information Officer to withhold information responsive to your Freedom of Information Act (FOIA) request on the recall of Maytag dishwashers.

The FOI Officer has reconsidered his decision regarding some documents that are primarily facsimile cover sheets containing staff notes. He is releasing these documents, under separate cover, because the Commission has complied with sections 6(a) and (b) of the Consumer Product Safety Act (CPSA). 15 U.S.C. §§ 2055(a) and (b).

Under authority delegated to me by the Commission, 16 C.F.R. 1015.7, I have reviewed your appeal. I affirm the Freedom of Information Officer's decision to withhold documents containing confidential information furnished by Maytag, notes of telephone conversations, draft documents prepared during settlement discussions, and correspondence with attachments between Commission staff and counsel for Maytag, based on FOIA Exemptions 3 and 4. 5 U.S.C. §§ 552(b)(3) and (b)(4). I am also affirming the Freedom of Information Officer's decision to withhold the preliminary staff determination based on FOIA Exemption 7(E). 5 U.S.C. § 552(b)(7)(E).

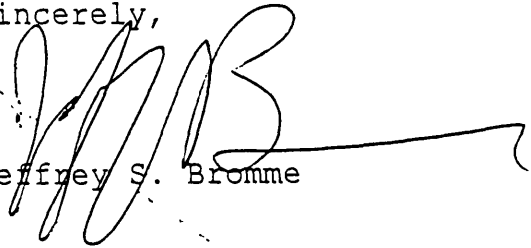
Mr. David Swit  
March 23, 1999

Page 3

Exemption 7(E) of the FOIA exempts from disclosure "records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information . . . (E) would disclose techniques and procedures for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law." 5-U.S.C. § 552(b)(7)(E). The information withheld under Exemption 7(E) consists of an internal staff preliminary determination report. This information was compiled for the purpose of enforcing section 15 of the CPSA and would disclose the Commission's investigatory techniques if released. Disclosure of the Commission's investigatory techniques, which are not shared with the public, would enable companies being investigated to attempt to change their operations to circumvent the investigatory process without complying with CPSA section 15.

You have the right to seek judicial review of this decision, as provided by 5 U.S.C. § 552(a)(4)(B).

Sincerely,



Jeffrey S. Bromme





WASHINGTON BUSINESS INFORMATION, INC. • 1117 NORTH 19TH STREET, SUITE 200, ARLINGTON, VA 22209-1798 • (703)247-3434, Fax 247-3421

March 12, 1999

FOIA APPEAL, General Counsel  
Attn: Office of the Secretary  
U.S. Consumer Product Safety Commission  
Washington, D.C. 20207

FAX: 301/504-0127  
(Page 1 of 1)

**REVISED**

Dear Sir,

Pursuant to the Freedom of Information Act, we appeal the March 8, 1999 denial of major parts of FOIA Request S-710131, (filed Feb. 19, 1999), Maytag dishwashers, release 96-005. We appeal because:

A -- The denial contradicts the instructions of the President and the Attorney General, as well as CPSC's own regulations, that disclosure be the rule, rather than the exception.

B -- CPSC has provided no proof of its claim that disclosing some or all of these records would disclose techniques and procedures for law enforcement. Moreover, CPSC's blanket withholding of these records is inconsistent with the agency's stated policy that the invoking of these exemptions to the FOIA is discretionary, not mandatory.

C -- CPSC has provided insufficient information for Requester to evaluate validity of withholding records that are segregable from otherwise exempt material. Examples include, but are not limited to:

- (1) Form 1A -- CPSC staff's initial input and staff worksheet
- (2) Company's "Full Report" on possible hazard

(3) Safety-related consumer or dealer complaints, warranty claims, reports of injury, and copies of all documents related to such complaints, claims and injuries, including court complaints and related documents filed in or associated with lawsuits involving the product, and a description of the resolution of those lawsuits, if any. If the complaints and other documents requested in this sub-paragraph are unavailable, CPSC's records should contain the reason for such unavailability and a summary of the requested items containing the name, address and phone number of the claimant or of his/her attorney.

Please sign below to confirm receipt of this appeal, and fax it to me at 703/247-3421.

Sincerely,

*David Swit*  
David Swit, Publisher  
Product Safety Letter

Receipt of the above is acknowledged:

_____	_____
Signature	Date
_____	_____
Name (please print)	Title

cc: E. Koch, Esq.  
SEC-rf, DIR/f, PSL



Firm: 0214/ Maytag (dishwashers)  
Off(6a6b release), Off(Denial) Ex.  
3,4 6a2, 5, 7(E), ADFS R-29-99  
Chron, spec. 3285



U.S. CONSUMER PRODUCT SAFETY COMMISSION  
WASHINGTON, D.C. 20207

March 8, 1999

CERTIFIED MAIL- RETURN RECEIPT

Mr. Sam Cristy, Editor  
Product Safety Letter  
Washington Business Information Inc.  
117 North 19th Street, Suite 200  
Arlington, VA 22209-1798

A large, stylized handwritten signature in black ink, appearing to be "S. Cristy".

Re: FOIA Request S-710131; All information regarding Maytag Dishwasher Recall (R-29-99)

Dear Mr. Cristy:

This responds to your Freedom of Information Act (FOIA request seeking information from the Consumer Product Safety Commission. The records from the Commission files responsive to your request have been processed and copies of the releasable records are enclosed.

The enclosed records constitute file information generated by the Commission itself or its contractors for regulatory or enforcement purposes. These records are in file RP950240 and are identified as Laboratory Summaries, Hazard Assessment memoranda and other correspondence, notes and documents. The Commission has established management systems under which supervisors are responsible for reviewing the work of their employees or contractors. The file information materials are final and have been prepared and accepted by the Commission's staff under such review systems. The Commission believes that it has taken reasonable steps to assure the accuracy of the information. Please note that the Commission's staff, not the Commissioners themselves, made the preliminary determination that the products presented a substantial risk of injury to the public as defined by the Consumer Product Safety Act.

We must withhold pages 80-81 of the file pursuant to Exemptions 3 and 4 of the FOIA, 5 U.S.C. §§ 552(b)(3) and (b)(4), and section 6(a)(2) of the Consumer Product Safety Act (CPSA), 15 U.S.C. § 2055(a)(2). FOIA Exemption 3 provides for the withholding from disclosure of matters that are specifically exempted from disclosure by another statute. In applying FOIA Exemption 3 in this instance, we are applying in part

section 6(a)(2) of the CPSA. Section 6(a)(2) prohibits the Commission from disclosing information that is exempt from disclosure under Exemption 4 of the FOIA. That exemption protects trade secrets and confidential commercial information. Confidential commercial information is information directly related to a firm's business that the firm has not made public and whose disclosure could give a substantial commercial advantage to a competitor. Specifically, we are withholding portions that if disclosed would reveal confidential financial and business relationships.

We must also withhold other portions of the law enforcement investigatory files pursuant to Exemptions 5 and 7 (E) of the FOIA, 5 U.S.C. § 552 (b) (5) and (b) (7) (E). Exemption 5 provides for the withholding from disclosure of inter-agency and intra-agency memoranda, which would not be available by law to a party in litigation with the agency. FOIA Exemption 7 (E) provides for the withholding from disclosure records or information compiled for law enforcement purposes, to the extent that the production of such law enforcement records or information would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.

The records being withheld consist of internal notes and memoranda containing recommendations, opinion, suggestions and analyses of the Commission's technical and legal staffs. The records constitute both predecisional and deliberative discussion that clearly falls within the attorney-client and attorney-work product privileges. Any factual materials in the records not covered by some other exemption are inextricably intertwined with exempt materials or the disclosure of the factual materials would itself expose the deliberative process. We have determined that the disclosure of these certain law enforcement investigatory records responsive to your request would be contrary to the public interest. It would not be in the public interest to disclose these material because disclosure would: (1) impair the frank exchange of views necessary with respect to such matters, and (2) reveal the techniques, guidelines and strategies utilized by the investigative and legal staff in developing the information regarding this investigation and other on-going investigations, which if disclosed would significantly risk circumvention of the statutes and regulations of the Commission administers.

According to the Commission's regulations implementing the FOIA at 16 C.F.R. § 1015.7, a partial denial of access to records may be appealed to the General Counsel of the Commission within thirty (30) days of your receipt of this letter. An appeal must be in writing and addressed to: FOIA APPEAL, General Counsel, ATTN: Office of the Secretary, U.S. Consumer Product Safety Commission, Washington, D. C. 20207.

Mr. Cristy, S710131

Page 3

The Commission's FOIA regulations at 16.C.F.R. §1015.9, provide for the charging of fees resulting from the processing of FOIA requests. The processing of your request involved:

- (1) the duplication of 1,875 pages x \$0.10/page = \$187.50
- (2) file searching by professional personnel, 1 hour x \$19.60/hour = \$19.60
- (3) review time to determine whether records were permitted to be withheld, 1 hour X 19.60/hour = 19.60

The FOIA and the Commission regulations also permit a waiver of a certain amount of the fees according to the type of request. In your case, we have decided to waive the file search fee, the review fee, and \$10.00 of the duplication costs, making the total waiver amount \$49.20. Please forward the to the total amount due, **\$138.30** by check or money order made payable to the **TREASURY OF THE UNITED STATES** with the enclosed copy of this letter to: **Division of Financial Services, ADFM Room 522, U.S. CONSUMER PRODUCT SAFETY COMMISSION, WASHINGTON, D.C. 20207.**

Note that after thirty days, interest will be charged on amounts billed. Furthermore, if billing is not paid in a timely manner, the Commission will require advance payment for your future requests and any pending requests.

The Commission's Freedom of Information Officer, Office of the Secretary, will consider a written request for a waiver of the assessed fees when the requester can show that disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and disclosure of the requested information is not primarily in the commercial interest of the requester. Other factors to be considered are listed in the regulations at 16 C.F.R. §1015.9(f)(5)

Thank you for your interest in consumer product safety. Should you have any questions, please contact Alberta Mills, Paralegal Specialist, by letter, facsimile (301) 504-0127 or telephone (301) 504-0785 ext. 1299.

Sincerely,

Todd A. Stevenson  
Deputy Secretary and  
Freedom of Information Officer  
Office of the Secretary

Enclosures



February 19, 1996

Consumer Product Safety Commission  
Freedom of Information Office  
4330 East-West Highway  
Bethesda, Md., 20207

Dear FOI Officer,

*L. Herschman*

Pursuant to the federal Freedom of Information Act, 5 U.S.C. Section 552, I request access to and copies of all information to and from CPSC and Maytag on the recall of 231,000 dishwashers.

*RP950240 open*

As a member of the news media I am only required to pay for the direct cost of duplication after the first 100 pages. Please waive any additional fees. Release of the information is in public interest because it will contribute significantly to public understanding of government operations and activities.

If my request is denied in whole or part, I ask that you justify all deletions by reference to specific exemptions of the Act. I will also expect you to release all segregable portions of otherwise exempt material. I, of course, reserve the right to appeal your decision to withhold any information or to deny a waiver of fees.

As I am making this request as an editor and this information is of timely value, I would appreciate your communicating with me by phone (direct line 703/247-3423) or fax (247-3421), rather than by mail, if you have questions regarding this request. I look forward to your reply within 10 business days, as the statute requires.

Thank you for your assistance.

Sincerely,

*Maureen R. Cislo*

Maureen Cislo, Editor  
PRODUCT SAFETY LETTER

Receipt of this letter is acknowledged:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name (please print or type)

cc: PUB/SEC-rf, DIR  
(1227X074.1YY)

*EXCISE  
Open Herschman*

*4710131  
27*



United States  
**CONSUMER PRODUCT SAFETY COMMISSION**  
Washington, D.C. 20207

**MEMORANDUM**

**DATE:** April 9, 1999

**TO :** Todd Stevenson  
Freedom of Information Officer  
Office of the Secretary

**FROM :** Enes Vecchietti *ev*  
Administrative Officer  
Directorate for Epidemiology & Health Sciences

**SUBJECT:** FOI Request of February 4, 1999

On February 4th I submitted to you an FOI request, copy attached. Shortly thereafter I did receive a response, which I pointed out to you was incorrect. You resubmitted my request to our Office of Human Resources. To date, I have not received a response. It has been 60 plus days since I submitted my request. Because of this long period of time, I will have to consider this lack of response as a denial.

I am, therefore, appealing this denial through whichever channels are necessary. Please advise.

Attachment(s)



**CONSUMER PRODUCT SAFETY COMMISSION**  
**FREEDOM OF INFORMATION ACT REQUEST**  
**CONTROLLED CORRESPONDENCE**  
**RECORD OF FILE SEARCH and FEES**

FOIA Request/Control Number: S- 9030091

REQUESTER'S NAME: Jacchetti  
 SUBJECT OF REQUEST: Jacchetti

DUE DATE to OSFOI: 3/3/85

REFERRED TO: \_\_\_\_\_ DATE REFERRED: 3/17  
 EXIS/IC    EXC    ES    EH    LS    EX    EXHR  
 EXIS    EC    FO    OCR    GC    EXRM    AD    EXPA

**ACTION REQUESTED:**

- (1) Search and RETURN TO OSFOI (ROOM 502) any and all records located that may be responsive to the attached FOIA request.
- (2) Identify and explain any potential sensitive portions, but do not delete or purge those portions. We need to see portions to apply FOIA Exemptions if we decide to withhold.
- (3) Document the file search information and relevant fee data to allow us to compute the fee charges. If you believe the fees may be prohibitive (e.g. in excess of 4 hours of search time or 500 pages) provide the basis for your estimate prior to performing the file search.

**RESULTS OF FILE SEARCH: (To be Completed by the Office Performing the File Search)**

NO RECORDS located responsive to the request. \_\_\_\_\_

Materials being returned to OS/FOI as requested. \_\_\_\_\_

File search performed by: \_\_\_\_\_ Date: \_\_\_\_\_

Fee Information: Clerical search time: \_\_\_\_\_ Professional search time: \_\_\_\_\_  
 Review time to recommend withholdings: \_\_\_\_\_  
 Duplication services, number of pages: \_\_\_\_\_  
 Computer Records: Central Processing Unit (CPU) time: \_\_\_\_\_  
 Number of lines printed: \_\_\_\_\_  
 Other processing charges or notes: \_\_\_\_\_

**OS File Search of EXC Data Base/PREP (PRE-15, RP, CE, HEB files), PDEF (ID Files)**

Search Criteria: Search Dates between Date Opened: / / and/or: / /

NEISS Product Codes: \_\_\_\_\_ Sect15 (File) Number: \_\_\_\_\_  
 Keywords: Product Name: \_\_\_\_\_ Brand Name: \_\_\_\_\_  
 Hazard: \_\_\_\_\_

Company Name: \_\_\_\_\_

**RESULTS OF OS EXC FILE SEARCH: Number of Records Located** \_\_\_\_\_

Print out each file reference located. Searcher: \_\_\_\_\_ Date: \_\_\_\_\_ File Search Time: \_\_\_\_\_

**Notes:**





United States  
CONSUMER PRODUCT SAFETY COMMISSION  
Washington, D.C. 20207

MEMORANDUM

DATE: February 4, 1999

TO : Freedom of Information Officer, CPSC

FROM : Enes Vecchietti  
Administrative Officer  
Directorate for Epidemiology and Health Sciences

SUBJECT: Request for Information Under the FOI Act

Under the Freedom of Information Act, I request the following information:

1. How many CPSC employees, Headquarters and Field, are in the Administrative Officer series?
2. Please provide me with the number of employees, their series numbers, their grades and their ages.

I would appreciate a response as soon as possible.

5 199 903 0091

2/5/99 Submitted to  
Todd this date



United States  
CONSUMER PRODUCT SAFETY COMMISSION  
Washington, D.C. 20207

MEMORANDUM

DATE: February 22, 1999

TO: Todd A. Stevenson  
FOIA Officer  
Office of the Secretary

FROM: Jacqueline D. Taylor *J D Taylor*  
Chief, Operations Branch  
Office of Human Resources Management

SUBJECT: FOIA Request S-9020062

Attached is the information requested with the FOIA request #S-9020062.

Per the request, information is being forwarded identifying the number of employees (both Headquarters & Field) in the Administrative Officer series, their grades and their ages.

If any further information is needed, I can be reached on x1167.

Attachment

***Administrative Officer Positions (Headquarters)***

<b><i>Series</i></b>	<b><i>Grade</i></b>	<b><i>Age</i></b>
341	11	49
341	11	49

***Administrative Officer Positions (Field)***

<b><i>Series</i></b>	<b><i>Grade</i></b>	<b><i>Age</i></b>
341	11	45
341	11	43
341	11	39

***Total CPSC employees in the Administrative Officer series is 5 (both HQ & Field).***



U.S. CONSUMER PRODUCT SAFETY COMMISSION  
WASHINGTON, D.C. 20207-0001

OFFICE OF THE GENERAL COUNSEL

Jeffrey S. Bromme  
General Counsel  
Tel: 301-504-0980 ext. 2299  
Fax: 301-504-0403  
E-Mail: cpsc-gc@cpsc.gov

May 4, 1999

Mark F. Schroeder, Esq.  
Sheehan & Lower, P.C.  
6 Spring Street  
Cary, Illinois 60013

RE: FOIA Appeal S8100033  
Himalaya Amusement Rides

Dear Mr. Schroeder:

By letter dated April 7, 1999, you appealed the decision of the Commission's Freedom of Information Officer to withhold information responsive to your Freedom of Information Act (FOIA) request on the CPSC's investigation of an amusement ride known as Himalaya manufactured by Reverchon. Under authority delegated to me by the Commission, 16 C.F.R. § 1015.7, I have reviewed your appeal. I affirm the Freedom of Information Officer's decision to withhold responsive information contained in the Commission's active law enforcement investigatory files. This decision is based on FOIA Exemptions 3, 4, 5 and 7(A). 5 U.S.C. §§ 552(b)(3), (b)(4), (b)(5) and (b)(7)(A).

Exemption 3 of the FOIA provides for withholding information that is specifically exempted from disclosure by another statute. In applying Exemption 3 to the withheld documents, I am relying on section 6(b)(1) of the Consumer Product Safety Act. 15 U.S.C. § 2055(b)(1).

Section 6(b)(1) requires that, before disclosing information that would enable the public to identify the manufacturer or private labeler of a consumer product, the Commission "shall take reasonable steps to assure . . . that [the] information . . . is accurate, and that such disclosure is fair in the circumstances and reasonably related to effectuating the purposes of the [CPSA]." The information that is being withheld pursuant to Exemption 3, based on section 6(b)(1), consists of documents containing confidential information furnished by Reverchon,

Mark Schroeder, Esq.  
May 4, 1999

Page 2

notes of telephone conversations, and correspondence with attachments between Commission staff and the manufacturer. All of these documents concern the firm's section 15 report. The Commission has determined that it is unfair in the circumstances to disclose information furnished by a firm to facilitate prompt remedial action or settlement where the firm has a reasonable expectation that the information will be maintained in confidence. 16 C.F.R. §§ 1101.32(b)(1) and (b)(2). The withheld information falls within the scope of these regulations.

In addition, under Exemption 3, the Commission is relying on section 6(a)(2) of the CPSA. 15 U.S.C. § 2055(a)(2). Section 6(a)(2) expressly prohibits the disclosure of information reported to or otherwise obtained by the Commission which contains or relates to trade secrets or other confidential commercial information. Section 6(a)(2) incorporates Exemption 4 of the FOIA. That exemption protects trade secrets and confidential commercial information obtained from a person.

Commercial information is confidential if disclosure is likely (1) to impair the government's ability to obtain the information in the future or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained. The information that has been withheld pursuant to Exemption 3, based on section 6(a)(2), and Exemption 4 consists of a full section 15 report from Reverchon containing design and other engineering data.

Exemption 5 permits agencies to withhold certain inter-agency and intra-agency documents and incorporates the deliberative process privilege. The internal memoranda and staff notes withheld in this case consist of staff recommendations containing both pre-decisional and deliberative discussions. The deliberative process privilege protects advice, recommendations, and opinions that are part of the agency's deliberative, consultative, and decision-making processes. Although this privilege applies only to the advice, recommendations or opinions in a document and not to factual information, facts are withheld here because they are inextricably intertwined with the exempt portions. Release of this information would impair the Commission's decisionmaking ability with respect to section 15 investigations by discouraging open and frank communication within the agency.

The documents being withheld under Exemption 5 are also being withheld under Exemption 7(A). Exemption 7(A) provides for the withholding of investigatory information compiled for law

Mark Schroeder, Esq.  
May 4, 1999

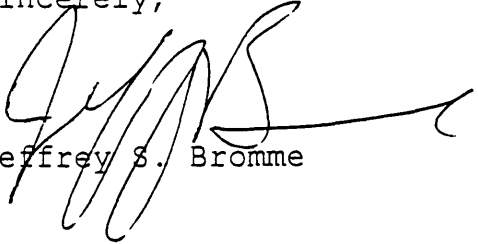
Page 3

enforcement purposes, but only to the extent that the production of such information could reasonably be expected to interfere with enforcement proceedings. We have determined that disclosure of these documents could reasonably be expected to interfere with law enforcement proceedings.

At the present time, the investigatory file that contains the responsive documents is open since the investigation is ongoing. If the file is closed in the future, some of the information may be subject to disclosure under the FOIA. You may want to call our FOI office from time to time for suggestions on when to resubmit your FOIA request.

You have the right to seek judicial review of this decision, as provided by 5 U.S.C. § 552(a)(4)(B).

Sincerely,



Jeffrey S. Bromme

*Sheehan & Lower, P.C.*  
ATTORNEYS AND COUNSELLORS AT LAW

JACQUELINE H. LOWER  
THOMAS M. SHEEHAN

MARK F. SCHROEDER  
MARTIN J. CORN  
KERRY L. KESSLER

OF COUNSEL  
ROBERT R. SHEEHAN

8 SPRING STREET  
CARY, ILLINOIS 60013

TELEPHONE: 847-516-3200  
FAX: 847-516-3443  
E-MAIL: rldotlaw@aol.com

April 7, 1999

VIA FACSIMILE TRANSMISSION  
VIA CERTIFIED MAIL

FOIA Appeal  
General Counsel  
ATTN: Office of the Secretary  
U.S. Consumer Product Safety Commission  
Washington, DC 20207

Rc: FOIA Request No. S-8100033  
Himalaya Amusement Ride Incident in Austin, Texas

Dear Sir or Madam:

As you will recall, on October 9, 1998, this firm requested information regarding the above-described incident pursuant to the Freedom of Information Act (FOIA). Pursuant to our request, on March 5, 1999, you forwarded certain materials to us. However, you declined to produce other materials. This is an appeal of the denial of the information identified in your letter of March 5, 1999, pursuant to 5 U.S.C., Sections 552(a)(6) and 1015.7.

Your partial denial of the requested information was based upon exemptions 5 and 7(A). Please reconsider the denial based upon the points made below and address each in your reply.

1. Since October of 1993, the federal government has favored a presumption of disclosure. Attorney General Reno stated that an agency should only use an exemption where "the agency reasonably foresees that disclosure would be harmful to an interest protected by that exemption." She went on to state that items of information should not be withheld unless necessary, even though the item "might technically or arguably fall within an exemption." In view of this federal policy, it would appear that the withholding of information which we have requested is

FOIA Appeal  
General Counsel  
April 7, 1999  
Page 2

unjustified and unnecessary. If the CPSC determines that it will continue to withhold information harm that would result from disclosure.

2. Exemption 5 should not be invoked, in light of the prevailing FOIA policy, unless it appears that agency personnel would have changed their expression of views if they had known that public disclosure was contemplated. It is difficult to imagine a situation in which individuals conducting a factual investigation and reporting to the CPSC on matters of public safety would change their view in contemplation of public disclosure. Therefore, denial of access based upon conclusory references to exemption 5 should not be justified.

3. Exemption 5 does not cover factual portions of pre-decisional material. Accordingly, factual material must be disclosed even if contained in documents which may be withheld under exemption 5. The letter denying access to material based upon exemption 5 clearly states that factual materials "are inextricably intertwined with exempt materials or the disclosure of the factual materials would itself expose the deliberative process." Such reliance upon this exemption should not be justified when the information properly excluded by exemption 5 can be redacted.

4. The letter denying access to the requested information makes reference to the attorney-client and attorney-work product privileges. First, the attorney-client privilege should be narrowly construed in relationship to Commission or other agency attorneys who are preparing materials which relate to issues of public safety. Additionally, the Commission should not be entitled to evoke the attorney-work product privilege unless the allegedly privileged materials were prepared in anticipation of litigation. It is difficult to imagine that the CPSC or any other agency will become involved, as a party, in any litigation relating to the incident which is the subject matter of our information request. Finally, in the absence of some additional information regarding the reliance upon the attorney-work product privilege, it is impossible for the undersigned to determine whether there is any hardship in attempting to obtain equivalent materials by some other means. Therefore, the application of this exemption to the requested materials is not justified.

5. As noted in the letter of March 5, 1999, exemption 7(A) provides for withholding information compiled for law enforcement purposes. However, as indicated above, the prevailing federal policy favoring a presumption of disclosure would appear to severely limit such a claimed exemption. Again, this matter involves reports of factual investigations relating to matters of public safety. The disclosure of these materials should not impair the frank exchange of views or prematurely reveal information used in the investigation. Therefore, it does not appear that the Commission's reliance upon this exemption is justified.



FOIA Appeal  
General Counsel  
April 7, 1999  
Page 3

We trust that, upon your reconsideration of the denial of access to the requested material, you will reverse the decision. However, if this appeal is denied, we will consider initiating a lawsuit to compel disclosure. In any event, we will expect to receive your decision and the additional materials as soon as possible.

Yours truly,

SHEEHAN & LOWER, P.C.



Mark F. Schroeder

MFS/cab

SHEEHAN & LOWER, P.C.  
6 Spring Street  
Cary, Illinois 60013  
Business: (847) 516-3200  
Facsimile: (847) 516-3443

FROM: Mark F. Schroeder  
DATE: April 7, 1999

**FAX COVER SHEET**

TO: FOIA Appeal  
General Counsel  
U.S. Consumer Product Safety Commission  
Business (301)504-0785  
Fax (301)504-0127

MESSAGE:

See attached correspondence.

NUMBER OF PAGES FOLLOWING THIS COVER SHEET: 3

IF YOU NEED A CONFIRMATION OR ANY OF THE PAGES RE-SENT, PLEASE  
CALL OUR OFFICE AT THE ABOVE PHONE NUMBER.

The information contained in this facsimile message is attorney privileged and confidential information, intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination or copy of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone. Thank you.



1293  
Pew

U.S. Consumer Product Safety Commission  
Washington, D.C. 20207

March 5, 1999

CERTIFIED MAIL

Mr. Kerry L. Kessler  
Sheehan and Lower  
6 Spring Street  
Cary, IL 60013

Re: FOIA Request S8100033: Himalaya Amusement Ride Incident in Austin Texas,  
March 1998

Dear Mr. Kessler:

Thank you for your Freedom of Information Act (FOIA) request to the Commission. The records from the Commission files responsive to your request have been processed and copies are enclosed. The enclosed records constitute one Epidemiologic Investigation Report with the underlying and supporting documentation. The Commission has received this information from its formal investigation systems. Through these systems the Commission hopes to learn when specific products are associated with illness, injury or death. The Commission believes that it has taken reasonable steps to assure the accuracy of this information. While conducting the interviews for the investigation report, Commission staff or contractors have spoken with the individuals involved or with others who witnessed or are familiar with the incident. Commission staff have examined the products reportedly involved in the incident. Although the Commission has investigated the incident described in the investigation report, the Commission has not necessarily determined the cause of the incident.

We must withhold the records responsive to your request, specifically, the records from the Commission's Office of Compliance's active law enforcement investigatory file designated CA980057, pursuant to the FOIA Exemptions 5 and 7(A), 5 U.S.C. §§ 552(b)(5) and (b)(7)(A). Exemption 5 provides for the withholding from disclosure of inter-agency and intra-agency memoranda which would not be available by law to a party other than an agency in litigation with the agency. Exemption 7(A) provides for the withholding from disclosure records or information compiled for law enforcement purposes, to the extent that the production of such law enforcement records or information could reasonably be expected to interfere with enforcement proceedings. The records being withheld consist of internal staff memoranda and correspondence containing recommendations, opinions, suggestions and analyses of the Commission's technical and legal staffs and contractors. The records constitute both predecisional and deliberative discussion that clearly falls within the attorney-client and attorney-work

product privileges. Any factual materials in the records not covered by some other exemption are inextricably intertwined with exempt materials or the disclosure of the factual materials would itself expose the deliberative process. We have determined that the disclosure of these certain law enforcement investigatory records responsive to your request would be contrary to the public interest. It would not be in the public interest to disclose these materials because disclosure would (1) impair the frank exchange of views necessary with respect to such matters, and (2) prematurely reveal information used in the investigation, thereby interfering with this and other matters by disclosing the government's basis for pursuing this matter.

You will note that in the documents disclosed information that could identify injured parties and persons treating them has been deleted, because section 25(c) of the Consumer Product Safety Act, 15 U.S.C. § 2074(c)(1), prohibits such disclosures without the consent of those individuals. In some cases the parties have denied consent or consent has not otherwise been obtained.

According to the Commission's regulations implementing the FOIA at 16 C.F.R. § 1015.7, a denial of access to records may be appealed to the General Counsel of the Commission within thirty (30) days of your receipt of this letter. An appeal must be in writing and addressed to: FOIA APPEAL, General Counsel, ATTN: Office of the Secretary, U.S. Consumer Product Safety Commission, Washington, D.C. 20207.

You may want to resubmit your request in a few months upon completion of the case. Processing this request, performing the file searches and reviewing the information, cost the Commission \$100.00. In this instance, we have decided to waive all of the charges.

Sincerely,

Todd A. Stevenson  
Deputy Secretary and  
Freedom of Information Officer

Enclosures

*Sheehan & Lower, P.C.*  
ATTORNEYS AND COUNSELLORS AT LAW

JACQUELINE H. LOWER  
THOMAS M. SHEEHAN  
MARK F. SCHROEDER  
MARTIN J. CORN  
KERRY L. KESSLER

OF COUNSEL  
BRUCE ROSE  
ROBERT R. SHEEHAN

6 SPRING STREET  
CARY, ILLINOIS 60013

TELEPHONE: 847-516-3200  
FAX: 847-516-3443  
E-MAIL: ridelaw@aol.com

9 October, 1998

Mr. Todd A. Stevenson  
Deputy Secretary and  
Freedom of Information Officer  
Office of the Secretary  
U. S. Consumer Product Safety Commission  
Washington, D.C. 20207

*A1,*

Re: FOIA Request  
Himalaya Amusement Rides

Dear Mr. Stevenson:

Pursuant to 15 U.S.C. sec. 2055 and the regulations promulgated under Parts 1015 and 1101 of Title 16 of the Code of Federal Regulations, this is our request, pursuant to the Freedom of Information Act and the above stated statutes and regulations for all records presently held by the Consumer Products Safety Commission (CPSC), regarding or relating to, in any way, a product known as "Himalaya", that being an amusement ride manufactured by Reverchon and others. In this regard, we are aware that the CPSC is in possession of color photographs and a videotape of certain testing done on a particular Himalaya in Austin, Texas, subsequent to the March 19, 1998 accident at the Travis County Livestock Show. These photographs and the videotape are referred to in the Epidemiologic Investigation Report under task number 98032CWE7133, initiated by the CPSC on August 20, 1998. In the event that there are color or black and white photos taken in connection with any other investigation that the CPSC has undertaken on any Himalaya, whether to not manufactured by Reverchon, or any other videotapes exist regarding or relating to any such investigatins of a Himalaya amusement ride, this request contemplates obtaining those other photos and videotapes as well.

*#293*

*EXCIS*

*> 105 IN  
0350E*

Please be advised that we stand ready to pay the reasonable costs of obtaining the information requested herein.

*5810033 0.4*

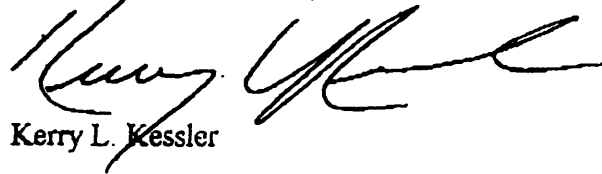
Mr. Todd A. Stevenson  
Consumer Products Safety  
Commission  
9 October, 1998  
Page 2

Should you have any questions or comments, or wish to further discuss this matter in any way, please feel free to contact this office at your earliest convenience.

Thank you for your anticipated cooperation and attention with regard to the matters set forth herein. We look forward to receiving these materials at the earliest possible moment.

Very truly yours,

SHEEHAN & LOWER, P.C.

A handwritten signature in black ink, appearing to read "Kerry L. Kessler", is written over the typed name. The signature is fluid and cursive, with a large initial "K" and a long, sweeping underline.

Kerry L. Kessler

**SHEEHAN & LOWER, P.C.**

6 Spring Street  
Cary, IL 60013  
Business (847) 516-3200  
Fax (847) 516-3443

**FROM:** Kerry L. Kessler  
**DATE:** 12 October, 1998

**FAX COVER SHEET**

**TO:** Mr. Todd A. Stevenson  
Consumer Products Safety Commission  
Fax No: 301.504.0127

MESSAGE: Mr. Stevenson:

The attached constitutes our FOIA Request for all records regarding the amusement ride commonly known as a Himalaya, whether produced by Reverchon or any other manufacturer.

Should you have questions, please contact this office at once. We must consider time to be of the essence with regard to this request and trust that you will consider this request accordingly.

Thank you.

Original (Will \_\_\_\_\_); (Previously sent ) (by U.S. Mail ) (By Overnight Delivery \_\_\_\_\_)

NUMBER OF PAGES FOLLOWING THIS COVER SHEET: 2

IF YOU NEED A CONFIRMATION OR ANY OF THE PAGES RE-SENT, PLEASE  
CALL OUR OFFICE AT THE ABOVE PHONE NUMBER.

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U.S. CONSUMER PRODUCT SAFETY COMMISSION  
WASHINGTON, D.C. 20207-0001

OFFICE OF THE GENERAL COUNSEL

Jeffrey S. Bromme  
General Counsel  
Tel: 301-504-0980 ext. 2299  
Fax: 301-504-0403  
E-Mail: [jbromme@cpsc.gov](mailto:jbromme@cpsc.gov)

May 14, 1999

Daniel R. Ketchum, II, Esq.  
Newton, O'Connor, Turner & Auer  
2700 NationsBank Center  
15 West Sixth Street  
Tulsa, Oklahoma 74119-5423

Re: FOIA Appeal S-811022  
CPSC Investigation of AMF, Inc. Bowling Ball Returns

Dear Mr. Ketchum:

By letter dated April 16, 1999, you appealed the decision of the Commission's Freedom of Information (FOI) Officer to withhold information responsive to your Freedom of Information Act (FOIA) request. Under authority delegated to me by the Commission, 16 C.F.R. § 1015.7, I have reviewed your appeal and the responsive documents.

Since the FOI Officer's March 10, 1999 response to your request, he has reconsidered his decision as to some of the responsive documents that he had previously withheld. However, he will continue to withhold the preliminary determination memorandum pursuant to FOIA Exemptions 5 and 7(E).

FOIA Exemption 5 provides for the withholding of certain inter-agency and intra-agency documents and incorporates the deliberative process privilege. This privilege protects advice, recommendations, and opinions that are part of the deliberative, consultative, and decision-making processes of the agency. Although this privilege applies only to the opinions or recommendations in a document and not to factual information, facts are withheld here because they are inextricably intertwined with the exempt portions.



Daniel R. Ketchum, II, Esq.  
May 14, 1999

Page 2

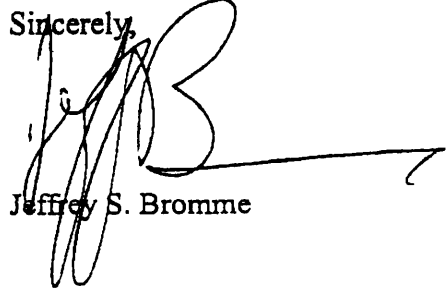
FOIA Exemption 7(E) provides for the withholding of investigatory records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information would disclose techniques and procedures for law enforcement investigations or prosecutions. This exemption also permits withholding of such records if guidelines for law enforcement investigations or prosecutions are disclosed, but only if such disclosure could reasonably be expected to risk circumvention of the law. The preliminary determination memorandum being withheld meets both of these criteria.

Because the Commission is bound by section 6(b) of the Consumer Product Safety Act (CPSA), the FOI Officer cannot finally decide whether to withhold or disclose some of these documents until he complies with this provision. 15 U.S.C. § 2055(b). Under this provision, the FOI Officer must provide the manufacturer the opportunity to comment upon the disclosure of information that identifies a manufacturer. If the FOI Officer decides to disclose information over the objection of the identified manufacturer, he must notify the manufacturer of the proposed disclosure at least 10 days in advance.

The FOI Officer will notify the manufacturer of its opportunity to comment, and he will notify you of his determination when this process has been completed. If he decides to withhold any responsive information at that time, you may appeal his decision to me. While the manufacturer comment process is underway, you may either await his decision or treat this letter as a denial of your FOIA appeal for that responsive information. We are currently withholding the responsive documents that will be sent to the manufacturer for comment under FOIA Exemption 3, in reliance on CPSA section 6(b). Exemption 3 provides for withholding information that is specifically exempted from disclosure by another statute.

You have the right to seek judicial review of this decision, as provided by 5 U.S.C. § 552(a)(4)(B).

Sincerely,



Jeffrey S. Bromme

# NEWTON, O'CONNOR, TURNER & AUER

A PROFESSIONAL CORPORATION  
ATTORNEYS AND COUNSELORS AT LAW

G.W. BILL NEWTON  
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2700 NationsBank Center  
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Telephone: (918) 587-0101  
Facsimile: (918) 587-0102

\*Also admitted in Georgia  
Sender's e-mail : dketchum@notalaw.com

April 16, 1999

FOIA APPEAL  
General Counsel  
ATTN: Office of the Secretary  
U.S. Consumer Product Safety Commission  
Washington, D.C. 20207

CPSC/OFC OF THE SECRETARY  
FREEDOM OF INFORMATION  
1999 APR 20 P 2:25

**Re: FOIA Request S-811022: CPSC Investigation of AMF, Inc.**

Dear Sir/Madam:

On October 14, 1998, we requested, pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, that the U.S. Consumer Product Safety Commission (the "Commission") provide us with all information relating to the Commission's investigation of AMF, Inc. concerning the safety of its bowling ball returns. On March 19, 1999, I received notification from Mr. Todd Stevenson, Deputy Secretary and Freedom of Information Officer, that the records we requested would be withheld pursuant to Exemptions 5 and 7(A), 5 U.S.C. §§ 552(b)(5) and (b)(7)(A).

Pursuant to the Commission's regulations at C.F.R. § 1015.7, we hereby appeal the Deputy Secretary's denial of access to the records requested on October 14, 1998, and respectfully request that you find that access should be granted and the requested documents be produced.

## GROUND FOR APPEAL AND SUPPORTING ARGUMENTS

It is well established that the exemptions from disclosure under FOIA must be narrowly construed so as to release as much governmental information as possible. Dept. of Air Force v. Rose, 425 U.S. 352, 361, 96 S.Ct. 1592, 1599, 48 L.Ed. 2d 11 (1976); E.P.A. v. Mink, 410 U.S. 73, 79, 93 S.Ct. 827, 832, 35 L.Ed. 2d 119 (1973). Indeed, the Commission's express policy is that "disclosure is the rule and withholding is the exception." 16 C.F.R. § 1015.1(b). Furthermore, "[t]he Commission will make available, to the extent permitted by law, records authorized to be withheld under 5 U.S.C. §§ 552(b) unless the Commission determines that disclosure is contrary to the public interest." 16 C.F.R. § 1015.15(b). Thus, Exemptions 5 and 7(A), the bases for the Secretary's denial of access to records, must be narrowly construed in determining whether to withhold the requested information relating to the Commission's investigation of AMF, Inc.'s bowling ball returns.

With regard to Exemption 5, the Deputy Secretary contends that every one of the requested documents "clearly falls within the attorney-client and attorney-work product privileges." He further contends that factual materials in the requested documents are "inextricably intertwined with exempt materials or the disclosure of factual materials would [ ] expose the deliberative process." (Emphasis added). He concludes that disclosure of the requested records would be contrary to the public interest by impairing the frank exchange of views and prematurely revealing information used in the investigation.

We respectfully request that you review the Deputy Secretary's conclusions in light of the clear rule of law which does not permit the withholding of factual materials merely because they were placed in a memorandum along with matters of law, policy or opinion. E.P.A. v. Mink, *supra*. See also Nationwide Mut. Ins. Co. v. Friedman, 451 F.Supp. 736 (D.C. Md. 1978). Furthermore, we suggest that there is little risk, in this instance, that disclosure of the requested records would impair the free exchange of ideas. To the extent any investigation by the Commission has been concluded or is nearing completion, the relative risk of interference is, on balance, outweighed by the strong policy in favor of disclosure and our client's right to and need for the requested information.

It is difficult to provide a factual basis for disputing the Deputy Secretary's determination since we have been completely denied access to any of the records. Thus, we cannot point out specific instances where documents which should have been disclosed have been withheld. However, we emphasize that the deliberative process privilege is to be narrowly construed, and factual materials must be disclosed even though such materials may compromise only part of an otherwise privileged document. See Lacy v. U.S. Dept. of the Navy, 593 F.Supp. 71 (D.C. Md. 1984).

The general policy underlying Exemption 7 is to provide maximum public access to records requested as would be consistent with the legitimate interests of law enforcement agencies and affected persons.<sup>1</sup> Pursuant to the express terms of the provision, to the extent production of the requested law enforcement records or information could not reasonably be expected to interfere with enforcement proceedings, the requested information should be disclosed pursuant to the FOIA. 5 U.S.C. § 552(b)(7)(A). Thus, to the extent any enforcement proceedings have been concluded with respect to AMF, Inc.'s ball returns, we submit that the requested information should be produced.

Certainly, there are some documents contained within the investigatory files of the Commission which do not constitute "investigatory records" subject to the Exemption. As noted by the Supreme Court in N.L.R.B. v. Sears Roebuck & Co., 41 U.S. 132 (1975), application of Exemption 7 should be limited to agency records "so that it would apply only to the extent that production of such records would interfere with enforcement proceedings...." To the extent there

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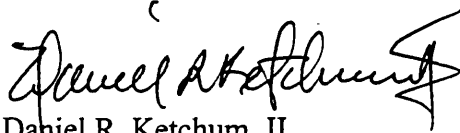
<sup>1</sup> Congressional Research Service Report, Library of Congress (Feb. 28, 1996), reprinted as Exhibit 1 in 132 Cong. Rec. S. 14299 (Sept. 30, 1996).

are no enforcement proceedings currently being prosecuted by the Commission with regard to the subject ball returns, we submit that the requested documents should be produced. See Nemaolin Mines Corp. v. N.L.R.B., 467 F.Supp. 521 (W.D. Pa. 1979).

In conclusion, upon narrowly construing the exemptions and considering the express policy of the Commission in favor of disclosure, the Commission should produce the requested information.

Sincerely,

NEWTON, O'CONNOR, TURNER & AUER, P.C.



Daniel R. Ketchum, II

DRK/kw

cc: David Bradford

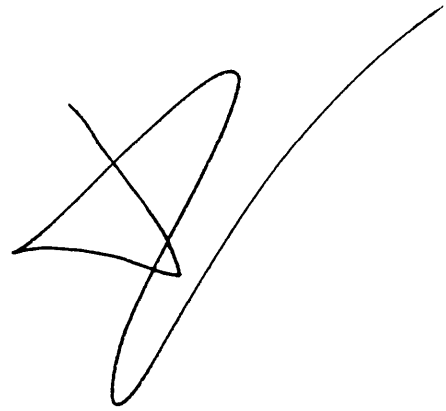
From AMF, Inc

DEW  
811 0022

March 10, 1999

**Certified Mail**

W. Kirk Turner  
Newton, O'Connor, Turner and Auer  
2700 Nationsbank Center  
Fifteen West Sixth Street  
Tulsa, OK 74119-5423



**RE: FOIA Request S-811022: CPSC Investigation of AMF, Inc.**

Dear Mr. Turner:

Thank you for your Freedom of Information Act (FOIA) request seeking information from the Commission. The records responsive to your request are contained in the Commission's Office of Compliance's active law enforcement investigatory files. We must withhold the records pursuant to the Exemptions 5 and 7(A), 5 U.S.C. §§ 552(b)(5) and (b)(7)(A). Exemption 5 provides for the withholding from disclosure of inter-agency and intra-agency memoranda which would not be available by law to a party in litigation with the agency. Exemptions 7(A) provide for the withholding from disclosure records or information compiled for law enforcement purposes, to the extent that the production of such law enforcement records or information could reasonably be expected to interfere with enforcement proceedings.

The records being withheld consist of internal notes, memoranda and other documents containing recommendations, opinions, suggestions and analyses of the Commission's technical and legal staffs. The records constitute both predecisional and deliberative discussion that clearly falls within the attorney-client and attorney-work product privileges. Any factual materials in the records not covered by some other exemption are inextricably intertwined with exempt materials or the disclosure of the factual materials would itself expose the deliberative process. We have determined that the disclosure of these certain law enforcement investigatory records responsive to your request would be contrary to the public interest. It would not be in the public interest to disclose these materials because disclosure would (1) impair the frank exchange of views necessary with respect to such matters, and (2) prematurely reveal information used in the investigation, thereby interfering with this and other matters by disclosing the government's basis for pursuing this matter.

Page 2

According to the Commission's regulations implementing the FOIA at 16 C.F.R. 1015.7, a denial of access to records may be appealed to the General Counsel of the Commission within thirty (30) days of your receipt of this letter. An appeal must be in writing and addressed to: FOIA APPEAL, General Counsel, ATTN: Office of the Secretary, U.S. CONSUMER PRODUCT SAFETY COMMISSION, Washington, D.C. 20207.

This completes the processing of your request. The cost to the Commission to perform the searches and prepare this information was \$50.00. In this instance, we have decided to waive the charges. Thank you for your interest in consumer product safety. Should you have any questions, contact Eva M. Grady, Paralegal Specialist by letter, facsimile (301) 504-0127 or telephone (301) 504-0785.

Sincerely,

Todd A. Stevenson  
Deputy Secretary and  
Freedom of Information Officer  
Office of the Secretary

Encloser

# NEWTON, O'CONNOR, TURNER & AUER

A PROFESSIONAL CORPORATION  
ATTORNEYS AND COUNSELORS AT LAW

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Telephone: (918) 587-0101  
Facsimile: (918) 587-0102

\*Also admitted in Georgia  
Sender's e-mail: wktturner@notalaw.com

October 14, 1998

Mr. Todd Stephenson  
United States Consumer Products Safety Commission  
Washington, D.C. 20207

Re: Bradford v. Riverlanes Bowling Center, Inc.  
Tulsa County District Court,  
Case No. CJ- 97-02517


Dear Mr. Stephenson:

Three months have passed since the ~~AMF, Inc. ball return~~ retrofit announcement was made public. Pursuant to the Freedom of Information Act, please provide me with all information you have relating to the CPSC's investigation of AMF, Inc. concerning the safety of its bowling ball returns.

Should you have any questions, or need additional information, please contact me immediately. Your anticipated cooperation in providing this information is appreciated.

Very truly yours,

NEWTON, O'CONNOR, TURNER & AUER  
A Professional Corporation

  
W. Kirk Turner

WKT:jkk

xc: David Bradford

1998 NOV -5 A 10 58  
CPSC/DEC OF THE SEC  
FREEDOM OF INFORMATION  
5-8-102

# News from CPSC

## U.S. Consumer Product Safety Commission

Office of Information and Public Affairs

Washington, D.C. 20207

For Immediate Release  
July 20, 1998  
Release # 98-144

Contact: Nicolette Humphries  
(301) 504-0580 Ext. 1185

### **CPSC, AMF Bowling Products Announce Recall to Repair or Replace Bowling Ball Returns**

WASHINGTON, D.C. - In cooperation with the U.S. Consumer Product Safety Commission (CPSC), AMF Bowling Products of Mechanicsville, Va., is announcing a program to repair or replace Sure-Pik bowling ball returns. Consumers' fingers can become entrapped and injured in the ball return's belt.

CPSC and AMF have received 14 reports of children's fingers becoming entrapped in these ball returns. Injuries range from bruises and lacerations, to partial amputations and fractures.

Sure-Pik ball returns were manufactured by AMF Inc. between 1973 and 1980 and are in approximately 238 bowling establishments, including military installations, nationwide. Sure-Pik is written on the side of the ball returns.

For AMF-owned establishments, AMF will install plastic guards on either side of the Sure-Pik ball returns to raise the sides around the moving belt. Large warning labels will be placed on the guards. These labels are colorful pictographs warning children to keep their hands and fingers out of the ball return.

For non-AMF-owned establishments, AMF will offer each owner the option of either obtaining the repair kit at cost, plus shipping and handling, or receiving a trade-in allowance of \$900 toward the purchase of a new AMF C-90 ball return. AMF also will make special lease financing available for qualified owners.

For all establishments using Sure-Pik ball returns, AMF will provide, free of charge, warning labels and a safety pamphlet on children's bowling.

Owners of bowling establishments using Sure-Pik ball returns should contact AMF at (800) 342-5263 for information on participating in this recall program.

Consumers should look for the plastic guards and warning labels on all Sure-Pik ball returns. If consumers don't see this, they should contact the establishment's manager.

-more-





**Warning Label**



**Installed Guard with Warning Label**

The U.S. Consumer Product Safety Commission protects the public from unreasonable risks of injury or death from 15,000 types of consumer products under the agency's jurisdiction. To report a dangerous product or a product-related injury and for information on CPSC's fast-response service, call CPSC's hotline at (800) 633-2772 or CPSC's teletypewriter at (800) 633-8270. To order a press release through fax-on-demand, call (301) 504-0051 from the handset of your fax machine and enter the release number. Consumers can obtain this service and recall information at CPSC's web site at <http://www.cpsc.gov> or via Internet gateway services at [cpsc.gov](http://www.cpsc.gov). Consumers can report product hazards to [info@cpsc.gov](mailto:info@cpsc.gov). To establish a link from your web site to this press release on CPSC's web site, create a link to the following address:  
<http://www.cpsc.gov/cpscpub/prerel/prhtml98/98144.html>.

###

**Editor's Note:** To access a full-color version of the product photo in JPEG (JPG) format, go to this press release on CPSC's web site at:

<http://www.cpsc.gov/cpscpub/prerel/prhtml98/98144.html>

To download, place the cursor on the image, click and hold the mouse button (right mouse button for PC users), and use the "save as" menu to save the image in the desired location.

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