

U.S. Consumer Product Safety Commission Freedom of Information Performance Improvement Plan

A. U.S. Consumer Product Safety Commission (CPSC) Freedom of Information Act (FOIA) Process Overview

FOIA requests are initially received, reviewed and processed in the Division of Information Management (ITIM), Office of Information and Technology Services (EXIT), formerly the Office of the Secretary. Most requests generally fall into one of four CPSC records categories and are filed accordingly. The categories are: (1) Commission regulation, rulemaking and legal adjudication records maintained in the ITIM (Office of the Secretary); (2) consumer product complaints, reported incidents and investigations of incidents (IDIs) maintained in the CPSC National Injury Information Clearinghouse (NIIC), EXIT; (3) Commission investigatory files (corrective action or recall or Consumer Product Safety Act (CPSA) Section 15 files) from the Office of Compliance; and (4) Commission technical and contractor reports and studies about various health and safety issues.

Once a request is received in ITIM, the FOI Officer, or approved ITIM staff, reviews the request to determine the most efficient method of response and the appropriate assignment based on the level of complexity (multi-tracking process). The distribution for processing requests is as follows: (1) Requests regarding Commission regulation or rulemaking activities is responded to by ITIM (ITIM is the office responsible for maintaining these records); (2) Requests for complaints and injury information are prepared and sent to the NIIC; and, (3) Office of Compliance files are fulfilled by first searching the corrective action database index to determine if the investigation is closed or open/active. Closed files are retrieved from the NIIC, which handles closed and retired cases. Open files are forwarded to the Office of Compliance with processing instructions. (4) Requests for reports from other CPSC organizations are sent with processing instructions to the appropriate office.

In all cases, when the records are obtained, copies are made and filed with the request in ITIM. Requests are then processed in accordance with the Freedom of Information Act, 5 U.S.C. § 552, *et seq.*, the applicable provisions of the Consumer Product Safety Act, 15 U.S.C. § 2051 *et seq.* and related Commission regulations (16 C.F.R. Parts 1015 and 1101). Requests are processed according to the chronological FOIA request number.

B. Areas Selected for Review

Areas selected for our review are: (1) the overall FOIA Processing system (described in Section A); (2) Processing of requests for the Office of Compliance Corrective Action or CPSA Section 15 files; (3) CPSC Website – www.cpsc.gov – FOIA Information; (4) Staff Resources; and, (5) Public Release of Investigation Reports (IDIs) with Confidential or Sensitive Attachments or Information.

C. Summary of Reviews

1. Initial Processing of FOIA Requests (See Section A)

2. Processing of Office of Compliance Corrective Action or CPSA Section 15 Files

Because the bulk of our FOIA processing involves these files we have identified them as an area appropriate for review. Corrective Action or Recall files, CPSA Section 15 files, related violation files, and Field Inspection files, undergo as many as eight reviews prior to the final release to the public. These files generally contain confidential business information and trade secrets and sensitive staff analyses, notes, drafts and internal legal memoranda, IDIs and consumer complaints.

Procedures are in place to ensure that consumer confidentiality requirements are adhered to prior to the release of any of these files. An extensive review is conducted by ITIM FOI Paralegal Specialists, the FOI Officer, the Director, and when necessary, attorneys from the Office of the General Counsel, to remove personal identifying information and other confidential information from Commission documents, notably, IDIs and Consumer Complaints. Consumers are asked to give consent for the release of any personal identifying information provided by them.¹ Where consent is denied, information is excised; otherwise, documents are released intact.

For submitted documents from manufacturers, we provide notice pursuant to sections 6(a) and 6(b) of the CPSA (described below) and await their claims on the records before we excise any information from their documents. If they do not make claims we release the records intact.

- a. After a FOIA request is received for a Compliance file, the file is retrieved for processing, either from retirement, (for older or closed files) or from Compliance if the file is open or active.² When the file is obtained from Compliance, the first review is conducted by a Compliance attorney or Compliance Officer who reviews the file and marks any documents deemed not available for public disclosure. This generally includes internal memoranda and legal documents.³
- b. ITIM FOI Paralegal Specialists then copy and review the file to remove the documents identified as not for public disclosure in addition to other information such as the identities of consumers requesting the withholding of personal information.

¹ 15 U.S.C. § 2074(c) prohibits the release of the identity of any injured person or person providing treatment in any Commission accident investigation report without the consent of the identified person.

² In some cases involving active investigations, Compliance requests that we withhold the entire file, which we generally withhold applying the FOIA exemptions to disclosure involving internal legal and technical files (FOIA Exemption 5) and active investigations (FOIA Exemption 7(A)).

³ The FOI Paralegal Specialist makes these calls where the file is retrieved from retirement.

- c. The file is prepared for notification to the manufacturer as required by Consumer Product Safety Act sections 6(a)(3) and 6(b)(1).⁴
- d. The notification letters and identified documents are reviewed by the FOI Officer or the Director before being sent to the manufacturer for comment pursuant to the above-referenced provisions.
- e. After notification by the Commission, if the company makes claims and/or comments on the records, the FOI Specialist processes those claims and makes a determination as to whether the claims are sufficient to withhold the company records in accordance with relevant provisions. The FOI Specialist then prepares a response to the company explaining agreement or disagreement with their claims. If the FOI Specialist determines that a document should be disclosed, the response will, according to the CPSA sections 6(a)(5) and 6(b)(2), provide notification that the Commission intends to disclose the documents at a date not less than 10 days after a firm's receipt of such notification. If further consultation is needed, ITIM may forward the file to the Office of General Counsel for review. A final review is performed by the FOI Officer or the Director prior to this second notification to the company. Prior to the date set for release of the documents, a firm may take the matter to District Court and seek to enjoin the Commission from disclosing the file materials.⁵
- f. If the time period for action by the notified firm has expired, the disclosure letter and release materials are prepared for the final file reviews and signatures by the FOI Specialist, FOI Officer and Director.
- g. An additional review is completed to help ensure that we avoid the unauthorized release of personal information. During the final review of files to be released, a

⁴ Section 6(a)(3) of the CPSA, 15 U.S.C. § 2055(a)(3) provides that "The Commission shall, prior to the disclosure of any information which will permit the public to ascertain readily the identity of a manufacturer or private labeler of a consumer product, offer such manufacturer or private labeler an opportunity to mark such information as confidential and therefore barred from disclosure under paragraph 2." The referenced paragraph 2 of the CPSA, 15 U.S.C. § 2055(a)(2), provides that "all information reported to or otherwise obtained by the Commission under this Act which such information contains or relates to a trade secret or other matter referred to in section 1905 of title 18, United States Code, or subject to section 552(b)(4) of title 5, shall be considered confidential and shall not be disclosed."

Section 6(b)(1) of the CPSA, 15 U.S.C. § 2055(b)(1), provides that "... not less than 30 days prior to its public disclosure of any information ... the Commission shall notify and provide a summary of the information to each manufacturer or private labeler of any consumer product to which such information pertains ... and shall provide such manufacturer with a reasonable opportunity to submit comments to the Commission in regard to such information. The Commission shall take reasonable steps to assure, prior to its public disclosure thereof that the information ... is accurate, and that such disclosure is fair and reasonably related to effectuating the purposes of [the CPSA]." The Commission has issued interpretative regulations implementing this provision at 16 C.F.R. Part 1101. Exceptions to section 6(b)(1) are specified in section 6(b)(4), 15 U.S.C. § 2055(b)(4). Additional limitations on disclosure of information reported under section 15(b) of the CPSA are established in section 6(b)(5), 15 U.S.C. § 2055(b)(5).

⁵ 15 U.S.C. § 2055(a)(6), 15 U.S.C. § 2055(b)(3).

search is conducted specifically for any personal consumer information in all documents contained in the file, including manufacturer submissions. Such information is removed unless we have an authorization or other consent to disclose personal information.

3. CPSC Website - www.cpsc.gov – FOIA Information

The CPSC website offers agency information in many forms and formats. From the home page, information is readily available through various links for Press Releases, Publications, Voluntary Standards and Research Reports, Reporting Incidents and other current issues. Tabs are prominently displayed at the top of the page for information of particular interest, including “About the Commission,” “Business, and Library-FOIA.” The Library-FOIA area contains the FOIA Electronic Reading Room and other frequently requested information sources such as Consumer Product-Related Statistics, Peer Review information, Information Quality Guidelines and Requests, and information from the CPSC’s National Electronic Injury Surveillance System (NEISS). The CPSC website had 13,695,650 visitors during fiscal year 2005, including 84,251 visitors to the FOIA Electronic Reading Room.

The Electronic Reading Room – FOIA pages contain the posted CPSC documents listed by fiscal year, Commission General Counsel Advisory Opinions, Summaries of CPSC staff meetings with outside parties, CPSC Federal Register Notices, the link to Make a FOIA Request and information about the CPSC FOIA Requester Service Center and FOIA Public Liaisons to check the status of FOIA requests. The information made readily available on the website goes beyond the requirements of the FOIA.

Section 6(b)(6) of the CPSA, 15 U.S.C. § 2055(b)(6), requires the Commission to establish internal clearance procedures for Commission initiated disclosures of information. The Commission has established such procedures pursuant to CPSC Directive 1450.2, Clearance Procedures for Providing Information to the Public.

In addition to CPSC Directive 1450.2, a written process and policy⁶ is in place for approval and clearance of materials to be posted on the website. The policy provides guidance to staff on how to make requests to have documents posted on the website. The approval includes a review by senior level staff and the Commissioners’ Offices.

Affirmative disclosures are a priority with the CPSC. CPSC Technical Reports, briefing materials and other informative records are under constant review for placement on the website in accordance with the above described procedures in anticipation of public records requests and to provide the information for public review.

⁶ The policy is entitled “CPSC Web Document Posting Policy and Procedures.” (An internal CPSC protocol governing the procedures staff must follow to have a document posted on the web site for public access.)

4. Staff Resources

At the end of fiscal year 2004, the staff resources for processing of FOIA requests were over 15 full time equivalents (FTEs). During fiscal year 2004, 6,397 FOIA requests were processed.

At the end of fiscal year 2005, the FOIA staff resources were 11 FTEs. During fiscal year 2005, 5,387 FOIA requests were processed.

Due to fiscal constraints, we experienced staff reductions. As of March 2006 the staff resources were 8 FTEs. Staff reductions were achieved mostly through attrition and retirement buyouts.

5. Public Release of Investigation Reports (IDIs) with Confidential or Sensitive Attachments or Information

As authorized by CPSC section 6(c),⁷ the NIIC routinely shares all CPSC IDIs and incident reports with the manufacturers of products identified in the reports. The reports are also provided to the manufacturers for the purpose of making any comments or claims on the information if the information becomes the subject of an FOIA request. Reports are not provided to the manufacturers or made public if they are classified as “For Official Use Only” (FOUO). Two directives provide procedures for handling and distributing materials that must be restricted from the public or classified as FOUO.⁸ Any IDI that contains documentation that is subject to any FOUO status should have a FOUO status page covering the document. With IDIs, the FOUO page may also require a warning explaining that the report contains data that is confidential or restricted. Investigators or supervisors also stamp or mark the IDI as CONFIDENTIAL or add a warning on page 1 of the report that explains the reason for the FOUO warning.

For obvious reasons, the sharing of CPSC’s data among CPSC personnel is critical to carrying out our mission. Equally critical is the need to ensure that our laws and policies are followed appropriately and consistently to prevent the disclosure of sensitive or prohibited information to the general public. Public disclosure of documents marked FOUO must always be made through the authority of the ITIM, (Office of the Secretary) or the General Counsel.

Training sessions are conducted to ensure that CPSC employees are aware of our restrictions on the release of documents, especially those with manufacturer, importer and other company identities and other submitted information. ITIM participates in new employee training sessions, including special sessions for field employees. The training

⁷ 15 U.S.C. § 2055(c) provides that “The Commission shall communicate to each manufacturer of a consumer product, insofar as may be practicable, information as to any significant risk of injury associated with such product.”

⁸ U.S. CPSC Directives System, Order 0760.1, April 30, 1992 – Information Resources Management – Security Regulations for Information Protection; and U.S. CPSC Directives System, Order 9010.24, July 12, 1995 – In-Depth Investigations Manual – Epidemiology Support Activities.

includes specific discussions of IDIs, Compliance information and other FOUO documents and is designed to impress upon employees the importance of following the requirements of the CPSA before information is disclosed.

The training sessions also covers the use of the warning cover page(s) that accompany sensitive records and are intended to make staff aware of the restricted nature of the documents that will be entrusted to them.

To ensure that particularly sensitive information such as potential "Grand Jury" information or active local or state law enforcement records are protected, cover page warnings should be more explicit. The warnings can (1) contain a clear message that the report cannot be released to the public, (2) be more specific about the reason for the warning and contain a line describing the confidential information, and (3) contain a statement about how to have the report processed for release by ITIM.

D. Areas Selected for Improvement

Anticipated To Be Completed By December 31, 2006

1. Initial Processing of FOIA Requests (See Section A)

Based upon our review, we have identified the following as potential areas of improvement:

- a. FOIA tracking system - improve tracking and report capabilities.
- b. Designation of Public Liaisons.
- c. Reduce Backlog of FOIA Requests from 145 requests on December 31, 2005, to 90 Requests.
- d. Research and evaluate equipment and software for the scanning and automatic redaction of records.
- e. Upgrade and replace copying machines for the ITIM.

2. Processing of Office of Compliance Corrective Action or CPSA Section 15 Files

Based upon our review, we have identified the following as potential areas of improvement:

- a. Office of Compliance file database index - enhance the search items to include a field for FOIA request numbers where a file has been previously processed for a FOIA request to eliminate duplication of search.

- b. Ensure staff is trained to ensure that consumers understand privacy issues involved in the release of information regarding identity to the public.

3. CPSC Website – www.cpsc.gov – FOIA Information

Based upon our review, we have identified the following as potential areas of improvement:

- a. Improve the “Make a FOIA Request form and application.”
- b. Add more guidance on what specific and descriptive information is needed from requesters to clarify their FOIA requests.
- c. Establish a FOIA Requester Service Center.

4. Staff Resources and Training

Based upon our review, we have identified the following as potential areas of improvement:

- a. Phase One of intra-organizational cross training of staff to reduce backlog.
- b. Reallocate staff resources within EXIT to provide an additional position to perform scanning services for the ITIM.
- c. Provide customer service training for staff.

5. Public Release of Investigation Reports (IDIs) with Confidential or Sensitive Attachments or Information

Based upon our review we have identified the following as potential areas of improvement:

- a. Educate CPSC employees on the disclosure requirements and develop warning and explanation sheets to cover confidential reports.
- b. Remind CPSC employees that requests for public information must be processed through the ITIM-FOI or NIIC offices.

Anticipated To Be Completed By December 31, 2007

1. Initial Processing of FOIA Requests (See Section A)

- a. Reduce Backlog of FOIA Requests from anticipated 90 requests on December 31, 2006, to 75 Requests.

- b. Train ITIM staff and implement new automated FOIA scanning and redaction system.
 - c. Upgrade and replace color printers for the ITIM.
 - d. Train NIIC to directly process more FOIA requests.
 - e. Create a database of other CPSC organizations' reports.
2. **Processing of Office of Compliance Corrective Action or CPSA Section 15 Files**
 - a. Scan files for quicker handling and automated records redaction.
 - b. Implement system to electronically sent Compliance Update notices to Flammable Fabrics Manufacturers.
3. **CPSC Website – www.cpsc.gov – FOIA Information**
 - a. Implement a system for the public to easily track their FOIA requests.
 - b. Develop and implement customer feedback section on FOIA website.
4. **Staff Resources and Training**
 - a. Complete Phase Two of intra-organizational cross training of staff to reduce backlog.
 - b. Require all FOIA staff to utilize government-wide FOIA training.
5. **Public Release of Investigation Reports (IDIs) with Confidential or Sensitive Attachments or Information**
 - a. Follow-up training for ITIM and NIIC staff to ensure that FOUO reports or those marked with Warning Cover Sheets are properly screened to identify or remove confidential information prior to public disclosure.
 - b. Develop more explicit informational cover sheets for confidential reports to clarify reasons for confidentiality.

Areas Under Consideration for Completion beyond 2007:

1. Redesign FOIA web page on www.cpsc.gov .