



**UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION**

DIRECTIVE NUMBER: D409

SUBJECT: Freedom of Information Act Directive

DIRECTIVE OWNER: Office of the General Counsel, Division of the Secretariat

EFFECTIVE DATE: May 9, 2019

CERTIFIED CURRENT DATE: May 9, 2019

1. **PURPOSE.** The purpose of the Freedom of Information Act (FOIA) is to shed light on government agency actions. The purpose of this directive is to establish the operational parameters of CPSC's FOIA program.
2. **AUTHORITY.** 5 U.S.C. §552; 15 U.S.C. §2055; 16 CFR part 1015; 16 CFR part 1101; GRS 4.2, Information Access and Protection Records
3. **SCOPE.** This FOIA directive defines common terminology used in processing CPSC FOIA requests; describes the FOIA Office's and every program office's responsibilities regarding the processing of FOIA requests; and gives a general directory of other FOIA directive documents and guidance.
4. **DEFINITIONS.**

a. FOIA Request. A FOIA request is a request for CPSC records that meets the following requirements:

- Must be in written form;
- Must be addressed to the Chief FOIA Officer; and
- Must describe the requested records in reasonable detail.

A request for CPSC records that does not explicitly reference the FOIA will be interpreted as a FOIA request. Requests for records that are maintained by another agency are referred to the agency of jurisdiction.

b. Non-FOIA Record Request: A Non-FOIA record request is a request for a document(s) that can be obtained on the CPSC’s website, or under another statute. Examples of non-FOIA records include:

- Copies of historical records;
- Form 278s and SF278s;
- Records for which legal title was transferred to the National Archives and Records Administration;
- Press releases;
- CPSC Publications;
- CPSC Product Safety Alerts, Fact Sheets;
- CPSC Directives and Delegations of Authority;
- FOIA logs;
- DOJ FOIA reports;
- Commissioner Statements;
- Public comments in a rulemaking; and
- Meeting logs.

c. Request for Documents (RFD). A request for documents (RFD) is a transmittal from the CPSC FOIA office to a CPSC FOIA liaison describing the nature of the records being sought that fall under the jurisdiction of that CPSC program office and also setting forth the deadline for the program office to respond, and specifying the contact information for supplying the responsive records.

d. Frequently Requested Records: Frequently requested records are records “that have been released to any person under [the FOIA]; and that because of the nature of their subject matter, the agency determines have become or are likely to become the subject of subsequent requests for substantially the same records; or that have been requested 3 or more times.” 5 U.S.C. 552(a)(2)(D).

e. Agency Record. An “agency record” is defined under the FOIA as:

- A. any information that would be an agency record . . . when . . . maintained by an agency in any format, including an electronic format; and
- B. any information described under [A] that is maintained for an agency by an entity under Government contract, for the purposes of records management.

5 U.S.C. 552(f).

Under the FOIA, CPSC records can include, but are not limited to, correspondence, memoranda, reports, photographs, audiovisual materials,

drawings, electronic calendar entries, voicemails, text messages, and similar documents. They may also include draft documents, although draft documents are subject FOIA Exemption 5.

FOIA records generally do not include objects or articles, such as tangible exhibits, samples, models, equipment, or other such items of physical government property, as well as reference materials (*e.g.*, dictionaries, CFRs, U.S. codes, Bluebook). Agency records also typically do not include personal records and notes, if such records or notes are created for personal use, are not integrated into any CPSC records, and are not used to conduct CPSC business.

- f. FOIA Requester.** A FOIA Requester is any individual (including a non-U.S. citizen), corporation or association, public interest group, or local, state or foreign government requesting Agency Records in a FOIA Request. Federal agencies, however, are not considered individuals under the FOIA.
- g. FOIA Response.** A FOIA response is the interim or final decision in writing made by the CPSC's Chief FOIA Officer, or her or his designee, in answer to a FOIA request.
- h. FOIA Appeal.** A FOIA appeal is a written request seeking reconsideration of an adverse determination by CPSC's FOIA Office regarding the initial FOIA request.
- i. FOIA Exemptions.** FOIA exemptions exempts Agency records subject to FOIA from disclosure, There are nine FOIA exemptions, but only six apply to the CPSC):¹

Exemption 2. Protects records related solely to the internal personnel rules and practices of an agency.

Exemption 3. Protects information exempted from disclosure by another statute.

¹ The three FOIA exemptions that do not apply to CPSC include: Exemption 1. Protects information that is properly classified in the interest of national security pursuant to Executive Order 12958; Exemption 8. Protects information that is contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; and Exemption 9. Protects geological and geophysical information and data, including maps, concerning wells.

Exemption 4. Protects trade secrets and confidential commercial or financial information which could harm the competitive posture or business interests of a company.

Exemption 5. Protects the integrity of the deliberative or policy-making processes within the agency by exempting from disclosure opinion, advice, conclusions, and recommendations included within inter-agency or intra-agency memoranda or letters.

Exemption 6. Protects information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy of the individuals involved.

Exemption 7. Protects records or information compiled for law enforcement purposes the release of which could reasonably be expected:

- 7(A) – to interfere with enforcement proceedings.
- 7(B) – would deprive a person of a right to a fair trial or an impartial adjudication.
- 7(C) – to constitute an unwarranted invasion of the personal privacy of a third party/parties (in some instances by revealing an investigative interest in them).
- 7(D) – to disclose the identity/identities of confidential sources.
- 7(E) – would disclose techniques and procedures for law enforcement investigations or prosecutions.
- 7(F) –to endanger the life or physical safety of an individual.

5. RESPONSIBILITIES.

a. Chief FOIA Officer: The Assistant General Counsel for FOIA, Privacy and Records Management is CPSC’s Chief FOIA Officer. The Chief FOIA Officer provides overall daily management of the CPSC’s FOIA office and ensures the quality, accuracy, and timeliness of FOIA responses. The FOIA tasks that the Chief FOIA Officer performs, include the following duties:

- has agency-wide responsibility for efficient and appropriate compliance with this section;
- monitors implementation of this section throughout the agency and keeps the CPSC Chairman, the CPSC General Counsel, and the Attorney General appropriately informed of the agency’s performance in implementing the FOIA;

- recommends to the CPSC Chairman such adjustments to agency practices, policies, personnel, and funding as may be necessary to improve its implementation of this section;
- reviews and reports to the Attorney General, through the CPSC Chairman, at such times and in such formats as the Attorney General may direct, on the agency's performance in implementing this section;
- facilitates public understanding of the purposes of the statutory exemptions of this section by including concise descriptions of the exemptions in both the agency's handbook . . . and the agency's annual report . . . and by providing an overview, where appropriate, of certain general categories of agency records to which those exemptions apply;
- offers training to agency staff regarding their responsibilities under the FOIA;
- serves as the primary agency liaison with the Office of Government Information Services and the Office of Information Policy; and
- designates one or more FOIA Public Liaisons.

The Chief FOIA Officer . . . shall review, not less frequently than annually, all aspects of the administration of this section by the agency to ensure compliance with the requirements of this section, including –

- agency regulations;
- disclosure of records required [5 U.S.C. 552(a)(2), (8)]²;
- assessment of fees and determination of eligibility for fee waivers;
- the timely processing of requests for information under this section;
- the use of [the FOIA] exemptions []; and
- dispute resolution services with the assistance of the Office of Government Information Services or the FOIA Public Liaison.

5 U.S.C. 552(j).

² 5 U.S.C. 552(a)(2) states: “(A) final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases; (B) those statements of policy and interpretations which have been adopted by the agency and are not published in the Federal Register; (C) administrative staff manuals and instructions to staff that affect a member of the public; (D) [frequently requested records, see Definition 4(d)]; and (E) a general index of the records referred to under subparagraph (D).”

5 U.S.C. 552(a)(8) provides instructions on how to apply the nine FOIA exemptions.

The Chief FOIA Officer may appoint a designee to carry out day-to-day implementation of FOIA responsibilities. All references in this Directive to the “Chief FOIA Officer” include the Chief FOIA Officer’s designee, where applicable.

- a. FOIA Specialists.** FOIA Specialists process FOIA requests, ensuring that responses are accurate, timely and complete. They are also required to attend a minimum of one Department of Justice FOIA training per fiscal year.
- b. FOIA Public Liaison.** The FOIA Public Liaison shall be available to FOIA Requesters who have questions or concerns about FOIA matters. The FOIA Public Liaison shall endeavor to reduce delays, increase transparency regarding the status of FOIA Requests, and assist in resolving disputes with FOIA Requesters.
- c. Assistant and Associate Executive Directors (AEDs) and Office Directors (ODs):** The AEDs and ODs are responsible for supervising their staffs and working with the Chief FOIA Officer to ensure that records responsive to FOIA Requests are collected, reviewed, and produced in a timely fashion. Each AED or OD shall designate a staff member responsible for coordinating responses to requests for documents or information from the Chief FOIA Officer. An AED or OD (or any individual involved in responding to a FOIA Request) must not fail to provide potentially responsive agency records to the Chief FOIA Officer or remove, redact, delete, or alter information from any Agency Record submitted to the Chief FOIA Officer. Note: The Office of the Inspector General will comply with this provision where it does not conflict with the Inspector General Act.
- d. FOIA Liaisons.** FOIA liaisons (FLs) are designated by the AED or OD to liaise between their respective program offices and the FOIA office. FLs have the following duties:
 - Serve as the designated point of contact for their program office (PO) to receive FOIA requests and an associated Request for Documents Memo asking the PO to search for responsive documents. The FOIA Office will send the FL the FOIA request and Request for Documents Memo via a Transmittal Email.
 - Coordinate the search for responsive documents within their PO, by ensuring the Transmittal Email they received is promptly forwarded to the appropriate staff within their Division or Office to conduct a thorough search for records responsive to the FOIA request. The

deadline for PO staff to respond to the FOIA Office's Transmittal Email and attach a completed Request for Documents Memo is 5 business days from the date the FL receives the Transmittal Email. After conducting a search for responsive documents, staff must complete their Request for Documents Memos. If they do not have any responsive records, the FOIA Office is to be notified of that fact within the prescribed time period.

- Ensure that everyone in their Division or Office has responded to the Transmittal Email within the 5 business day period. If they have not heard from everyone in their Division by the deadline, they must send another email on that date, informing the staff person that the time to respond has expired, and urging an immediate response.
 - Gather the information and responsive documents they receive from their Division, and promptly email the information to the FOIA Office contact who sent the Transmittal Email; or, for larger volumes of documents, inform the contact where the information has been downloaded and may be accessed. The FL should note any special issues related to the responsive documents, such as confidentiality or open investigations.
 - The primary role is to receive requests, coordinate timely searches, and obtain timely responses to Request for Documents Memos from within your Division; gather all documents retrieved; and provide them to the FOIA Office. Thereafter, the FOIA Office is responsible for reviewing the information and determining whether the information ultimately will be released in a FOIA disclosure.
 - Attend annual mandatory FOIA training. While serving as an FL, FLs are also responsible for completing periodic FOIA Liaison Training to be provided by the Office of the General Counsel, Division of the Secretariat.
- e. **Office of the General Counsel:** The General Counsel is responsible for deciding FOIA Appeals, except that, in unusual or difficult FOIA Appeal cases, the General Counsel may refer FOIA Appeals to the Commission, in accordance with applicable regulations. As counsel to the Commission, the General Counsel advises the Commissioners about any FOIA Appeals that have been referred to the Commission.
- f. **Office of Financial Management, Planning & Evaluation (EXFM):** EXFM is responsible for the collection of FOIA-related fees.
- g. **Commission:** The Commission decides FOIA Requests that have been certified by the Chief FOIA Officer to the Commission for a decision. The Commission also decides FOIA Appeals referred to the Commission by the General Counsel.

6. **CANCELLATION.** This Directive cancels CPSC Order 0770.1, dated November 10, 2015

Patricia Hanz, General Counsel

Date

Supporting Policies and Guidance:

- DEP'T OF JUSTICE, GUIDE TO THE FREEDOM OF INFORMATION ACT, *available at* <https://www.justice.gov/oip/doj-guide-freedom-information-act-0>.
- IP409A Responding to RFDs
- IP409B Responding to Requests for IDIs
- S409A Responding to FOIA Requests
- S409B FOIA Request Intake, Expedited Processing and Clarifications Standard Operating Procedures
- S409C Processing FOIA Fees
- S409D Department of Justice Annual FOIA Report Standard Operating Procedure
- S409E Frequently Requested Records SOP
- S409F FOIA Recordkeeping and Retention