

U. S. CONSUMER PRODUCT SAFETY COMMISSION

Report for Fiscal Year 2005 The Administration of The Freedom of Information Act

I. BASIC INFORMATION REGARDING THE REPORT

- A. Contact for questions about the report: Todd Stevenson, Director, Office of the Secretary, Division of Information Management, Office of Information and Technology, U.S. Consumer Product Safety Commission, 4330 East-West Highway, Suite 502, Bethesda, Maryland 20814.
Telephone: 301-504-7923, Facsimile: 301-504-0127,
Email: tstevenson@cpsc.gov or cpsc-os@cpsc.gov.
- B. Web address for this report:
<http://www.cpsc.gov/cpscpub/pubs/reports/foia05.pdf>
- C. A paper copy of the report is available from CPSC Office of the Secretary at the address above.

II. HOW TO MAKE A FOIA REQUEST

- A. All FOIA requests received by the CPSC are processed in headquarters. The address is: Freedom of Information Act Request, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East-West Highway, Suite 502, Bethesda, Maryland 20814. Telephone: 301-504-7923, Facsimile: 301-504-0127, Email: tstevenson@cpsc.gov or cpsc-os@cpsc.gov.
- B. Other Reference Information about the Agency: The CPSC's World Wide Web site, www.cpsc.gov, contains extensive information about the agency's activities, including agency meetings, product recalls and hazards, job vacancies, publications, a calendar of public meetings, other important activities and the Guide to Public Information. The site also includes an interactive feature that allows consumers to report unsafe products and related injuries electronically. CPSC also maintains an electronic mail address: Info@cpsc.gov. This can be used for inquiries about product recalls or to report potential product hazards. The CPSC's public reference reading room contains numerous agency records, including the materials the CPSC makes available for public inspection and

copying pursuant to the FOIA, 5 U.S.C. §§ 552(a)(2) and (5). The reading room is accessed in the Public Information Center in Suite 419 at the CPSC's headquarters at 4330 East-West Highway, Bethesda, Maryland 20814. Call the Office of the Secretary for an appointment, 301-504-7923. Those reading room records are also available on the CPSC's electronic reading room on CPSC's World Wide Web site, www.cpsc.gov, in the "Library - FOIA" section.

- C. Response Time Ranges: The CPSC responds within 6 days to most of the FOIA requests that are received. These are simple requests for materials that are frequently requested or where we have anticipated the subject of the requests. More complex requests require additional preparation and processing time. The median time to complete the complex requests is 35 days. Complex requests involve one of the following: voluminous records or records which are not easily accessible and have to be collected from several Commission offices; proprietary data; privacy concerns; part of an investigatory file; or review required by section 6(b) of the Consumer Product Safety Act (CPSA), 15 U.S.C. § 2055(b).¹ The Commission reviews all agency records that are responsive to FOIA requests according to the requirements of section 6(b). These notifications and the extensive analyses they require are in addition to procedures routinely conducted pursuant to the FOIA. The process not only involves the staffs of the Offices of the Secretary and the General Counsel, but also frequently involves other technical staffs where their expertise is required for an understanding of the materials being processed. The time-consuming reviews and material preparations of FOIA requests involving section 6(b) cause delays in the processing of these requests.
- D. The CPSC generally does not disclose to the public the following types of information:
1. Documents prohibited from disclosure by the CPSA, 15 U.S.C. §§ 2055(a) and (b), which prohibits the release of: trade secrets and confidential commercial or financial information; and information that identifies manufacturers of consumer products, unless the CPSC has taken reasonable steps to assure it is accurate, its release would be fair under the circumstances, and its release is reasonably related to effectuating the purposes of the acts the Commission administers.
 2. Information that identifies injured persons and the persons who treated them, without their consent to disclosure.
 3. Certain inter-agency and intra-agency memoranda containing opinions and recommendations prepared to assist in decision-making.

¹ On June 9, 1980, the U. S. Supreme Court ruled that section 6(b) of the CPSA applies to FOIA requests, CPSC v. GTE Sylvania, 447 U.S. 102 (1980). Section 6(b) requires that, with certain exceptions, the Commission notify manufacturers or private labelers of consumer products before disclosing information from which their identities can be readily ascertained by the public. Section 6(b) prohibits the disclosure of information earlier than 30 days after notification to identified firms to allow the firms to make claims and comments. Firms must be given 10 days to file suit to block the disclosure if they claim that the information is confidential or inaccurate. Efforts to satisfy the statutory requirements in the CPSA necessarily delay many responses to FOIA requests.

4. Personnel, medical and similar files, the disclosure of which constitutes a clearly unwarranted invasion of personal privacy.
5. Investigatory records compiled for law enforcement purposes when disclosure could reasonably be expected to interfere with enforcement proceedings, reveal identities of confidential information sources, or would disclose techniques, guidelines and procedures for law enforcement investigations or prosecutions.

III. DEFINITIONS OF TERMS AND ACRONYMS USED IN THE REPORT

- A. Agency-Specific Acronyms or Other Terms.
 1. CPSA • the Consumer Product Safety Act . 15 U.S.C. §§ 2051-2084.
 2. CPSC or Commission • Consumer Product Safety Commission.
 3. Section 6(a) of the CPSA, 15 U.S.C. § 2055(a) • prohibits the disclosure of trade secrets, confidential or proprietary business information or other matters referred to in 18 U.S.C. § 1905 or FOIA Exemption 4; requires notification to submitters of information prior to disclosure of any potential confidential information.
 4. Section 6(b) of the CPSA, 15 U.S.C. § 2055(b) • prohibits the disclosure of information from which the identity of a manufacturer or private labeler of a consumer product can be readily ascertained by the public, earlier than 30 days after notification of the manufacturer or private labeler; requires the Commission to take reasonable steps to assure, prior to disclosure, that the information to be disclosed is accurate, that the disclosure is fair in the circumstances and that disclosure is reasonably related to effectuating the purposes of the statutes that the Commission administers; requires the Commission to notify a firm 10 days prior to disclosure of information that the firm claims is inaccurate, but for which the Commission believes it has complied with the requirements of section 6(b)(1).
 5. Section 15(b) submissions • Section 15(b) of the CPSA, 15 U.S.C. § 2064(b), requires manufacturers, distributors or retailers of consumer products to notify the Commission of certain hazardous products.
- B. Basic Terms expressed in common terminology.
 1. FOIA/Privacy Act Request • Freedom of Information Act request. A FOIA request is a request for access to records concerning a third party, an organization, or a particular topic of interest. A Privacy Act request is a request for records concerning oneself; such requests are also

treated as FOIA requests. All requests for access to records, regardless of which law is cited by a requester, are included in this report.

2. Initial Request • a request to a federal agency for access to records under the Freedom of Information Act.
3. Appeal • a request to a federal agency asking that it review at a higher administrative level an initial full denial or partial denial of access to records under the Freedom of Information Act, or any other FOIA determination, such as a matter pertaining to fees.
4. Processed Request or Appeal • a request or appeal for which an agency has taken a final action on the request or the appeal.
5. Multi-track Processing • a system in which simple requests requiring relatively minimal review are placed in one processing track and more voluminous and complex requests are placed in one or more other tracks. Requests in each track are processed on a first-in/first-out basis. A requester who has an urgent or compelling need for records may request expedited processing.
6. Expedited Processing • an agency will process a FOIA request on an expedited basis when a requester has shown an exceptional need or urgency for the records which warrants prioritization of his or her request over other requests that were made earlier.
7. Simple Request • a FOIA request that an agency using multi-track processing places in its fastest (non-expedited) track based on the volume or simplicity of records requested.
8. Complex Request • a FOIA request that an agency using multi-track processing places in a slower track based on the volume, availability and complexity of records requested.
9. Granted Request • an agency decision to disclose all records in full in response to a FOIA request.
10. Partially Granted Request • an agency decision to disclose a record in part in response to a FOIA request, deleting information determined to be exempt under one or more of the FOIA's exemptions; or a decision to disclose some records in their entirety, but to withhold others in whole or in part.
11. Denial or Full Denial • an agency decision to not release any part of a record or records in response to a FOIA request, because all the information in the requested records is determined by the agency to be exempt under one or more of the FOIA exemptions, or for some procedural reason, such as because no record is located in response to a FOIA request.

12. Time Limits • the time period in the FOIA for an agency to respond to a FOIA request (ordinarily 20 working days from proper receipt of a “perfected” FOIA request).
13. Perfected Request • a FOIA request for records which adequately describes the records sought, which has been received by the FOIA office of the agency or agency component in possession of the records, and for which there is no remaining question about the payment of applicable fees.
14. Exemption 3 statute • a separate federal statute prohibiting the disclosure of a certain type of information and authorizing its withholding under FOIA Exemption 3, 5 U.S.C. § 552(b)(3).
15. Median Number • the middle, not the average number.
16. Average Number • the number obtained by dividing the sum of a group of numbers by the quantity of numbers in the group.

IV. EXEMPTION 3 STATUTES

- A. Section 6(a)(2) of the Consumer Product Safety Act (CPSA), 15 U.S.C. § 2055(a)(2). Trade secret and other confidential business information. *Mulloy v. Consumer Prod. Safety Comm'n*, No. C-2-85-645, 1985 U.S. Dist. LEXIS 17194, at **2-5 (S.D. Ohio Aug.2, 1985).
- B. Section 6(b)(1) of the CPSA, 15 U.S.C. § 2055(b)(1). Information that identifies a particular brand-name of consumer product. *Consumer Prod. Safety Comm'n v. GTE Sylvania, Inc.*, 447 U.S. 102, 122 (1980); and *Krugler v. U.S. Consumer Prod. Safety Comm'n*, 1:03-CV-1905-JTC (N.D.GA. June 22, 2004).
- C. Section 6(b)(5) of the CPSA, 15 U.S.C. § 2055(b)(5). Information submitted under statutory reporting requirement for certain potentially unsafe consumer products. *Reliance Elec. Co. v. Consumer Prod. Safety Comm'n*, No. 87-1478, slip op. at 16-17 (D.D.C. Sept. 19, 1989).
- D. Section 6(e)(1) of the CPSA, 15 U.S.C. § 2055(e)(1). Information submitted under statutory reporting requirement for certain consumer products involved in product liability actions. None
- E. Section 25(c) of the CPSA, 5 U.S.C. § 2074(c). Information that identifies injured persons or those treating injured persons, absent consent. None

V. INITIAL FOIA/PA ACCESS REQUESTS

A. Numbers of Initial Requests.

1. Number of requests pending at end of fiscal year 2004 • 58
2. Number of requests received during fiscal year 2005 • 5,441
3. Number of requests processed during fiscal year 2005 • 5,387
4. Number of requests pending at end of fiscal year 2005 • 112

B. Disposition of Initial Requests.

1. Number of total grants • 4,447
2. Number of partial grants • 454
3. Number of (full) denials • 74
 - a. Number of times each FOIA exemption used in partial grants and denials (counting each exemption once per request).
 - (1) Exemption 1 • 0
 - (2) Exemption 2 • 0
 - (3) Exemption 3 • 382
 - (4) Exemption 4 • 154
 - (5) Exemption 5 • 272
 - (6) Exemption 6 • 19
 - (7) Exemption 7(A) • 85
 - (8) Exemption 7(B) • 0
 - (9) Exemption 7(C) • 0
 - (10) Exemption 7(D) • 15
 - (11) Exemption 7(E) • 8
 - (12) Exemption 7(F) • 0

	(13)	Exemption 8	•	0
	(14)	Exemption 9	•	0
4.		Other reasons for nondisclosure (total)	•	412
	a.	No records	•	143
	b.	Referrals	•	205
	c.	Request withdrawn	•	28
	d.	Fee-related reason	•	15
	e.	Records not reasonably described	•	0
	f.	Not a proper FOIA request for some other reason	•	0
	g.	Not an agency record	•	0
	h.	Duplicate request	•	21

VI. APPEAL OF INITIAL DENIALS OF FOIA/PA REQUESTS

A.	Numbers of Appeals.			
	1.	Number of appeals received during fiscal year 2005	•	19
	2.	Number of appeals processed during fiscal year 2005	•	19
B.	Disposition of Appeals.			
	1.	Number completely upheld	•	19
	2.	Number partially reversed	•	0
	3.	Number completely reversed	•	0
	a.	Number of times each FOIA exemption used (counting each exemption once per appeal).		
		(1)	Exemption 1	• 0
		(2)	Exemption 2	• 0
		(3)	Exemption 3	• 9

(4)	Exemption 4	•	2
(5)	Exemption 5	•	11
(6)	Exemption 6	•	2
(7)	Exemption 7(A)	•	8
(8)	Exemption 7(B)	•	0
(9)	Exemption 7(C)	•	0
(10)	Exemption 7(D)	•	0
(11)	Exemption 7(E)	•	0
(12)	Exemption 7(F)	•	0
(13)	Exemption 8	•	0
(14)	Exemption 9	•	0
4.	Other reasons for nondisclosure (total)	•	0
a.	No records	•	0
b.	Referrals	•	0
c.	Request withdrawn	•	0
d.	Fee-related reason	•	0
e.	Records not reasonably described	•	0
f.	Not a proper FOIA request for some other reason	•	0
g.	Not an agency record	•	0
h.	Duplicate request	•	0
i.	Other	•	0

VII. COMPLIANCE WITH TIME LIMITS / STATUS OF PENDING REQUESTS

- A. Median Processing Time for Requests Processed During Fiscal Year 2005.
1. Simple Requests.
 - a. Number of requests processed • 4,859
 - b. Median number of days to process • 6 days
 2. Complex Requests.
 - a. Number of requests processed • 528
 - b. Median number of days to process • 35 days
 3. Requests Accorded Expedited Processing.
 - a. Number of requests processed • 0
 - b. Median number of days to process • Not Applicable
- B. Status of Pending Requests (for Each Multiple Track).
1. Number of simple requests pending at end of fiscal year 2005 • 27
 2. Number of complex requests pending at end of fiscal year • 85
- Median number of days that such requests were pending as of that date • 45

VIII. COMPARISONS WITH PREVIOUS YEARS

A. Comparison of Numbers of Requests Received •

Fiscal Year 2004	Fiscal Year 2005	Number of Change	Percentage of Change
6,355 requests	5,441 Requests	-914 requests	-14.4

B. Comparison of Numbers of Requests Processed •

Fiscal Year 2004	Fiscal Year 2005	Number of Change	Percentage of Change
6,397 requests	5,387 requests	-1,010 requests	-15.8

C. Comparison of Median Numbers of Days Requests Were Pending as of End of Fiscal Year 2005 •

Fiscal Year 2004	Fiscal Year 2005	Number of Change	Percentage of Change
58 requests pending 30 median days	112 requests pending 45 median days	54 requests 15 median days	93.1 50

D. Other Statistics Significant to Agency • Expedited Requests, Numbers of Notifications Under the Consumer Product Safety Act (CPSA) and Other Responses Made to Fulfill FOIA Requests.

1. The number of requests for expedited processing received • 0
2. The number of requests for expedited processing granted • 0
3. Section 6(b)(1) notifications made to manufacturers or private labelers of consumer products to inform them of the proposed disclosure of information that identifies their products and allow them to comment on the disclosure. (Many notices are made at the time the documents are initially filed, before the agency has received an FOIA request.) • 12,586
4. Section 6(b)(2) notifications made to manufacturers or private labelers to inform them 10 days prior to disclosure of information that the firms had claimed was inaccurate or unfair to release, but for which the Commission believes it has complied with the requirements of Section 6(b)(1) and has overruled the comments or claims made by the firm • 200
5. Instances where Section 6(b)(1) applied to requested materials and upon completion of notifications and other requirements of Sections 6(b)(1) and 6(b)(2), the Commission disclosed materials • 1,852
6. Section 6(a)(3) notifications made to submitters of information to the Commission prior to disclosure of any potential confidential information • 315
7. Section 6(a)(5) notifications made to submitters of information 10 days prior to the intended disclosure, where the Commission had overruled any firm claims of proprietary or confidential business information • 94

E. Other Agency Efforts to Improve Timeliness of FOIA Performance and to Make Records Available to the Public • The CPSC has increased its activities to make more available to the public the records of interest, by expanding the placement of records on its World Wide Web site (www.cpsc.gov). The CPSC's Web site had 13,695,650 visitors during fiscal year 2005, including 84,251 visitors to the FOIA Electronic Reading Room. We responded to 3,370 internet inquiries about agency activities. The information sought included records regarding the Commission's regulatory and compliance activities, documents filed in adjudicatory proceedings, Commission decisions, press releases, safety alerts,

publications, the Public Calendar of meetings and briefings, briefing materials on matters before the Commission, advisory opinions of the General Counsel, materials requested under the FOIA by more than one requester, contracting activities, job vacancies, and many other matters.

The Commission continues to maintain materials of interest to the public in a Reading Room in its headquarters location. Few visitors used the Reading Room. The Commission’s Office of the Secretary (301)-504-7923 or cpssc-os@cpssc.gov is available to assist the public in locating information or with preparing an FOIA request for information.

IX. COSTS / FOIA STAFFING

A. Staffing Levels.

- 1. Number of full-time FOIA personnel (in total work-years) • 5.1
- 2. Number of personnel with part-time or occasional FOIA duties (in total work-years) • 6.1
- 3. Total number of personnel (in work years) • 11.2

B. Total Costs (Including Staff and All Resources).

- 1. FOIA processing (including appeals) • \$1,142,756
- 2. Litigation-related activities (estimated) • \$20,000
- 3. Total costs • \$1,162,756
- 4. Comparison with previous years (including percentage of change) •

Staffing – Total Number of Personnel (in work years)

Fiscal Year 2004	Fiscal Year 2005	Number of Change	Percentage of Change
15.2	11.2	- 4.0	- 26.4

FOIA Processing (including appeals)

Fiscal Year 2004	Fiscal Year 2005	Number of Change	Percentage of Change
\$1,627,309	\$1,142,756	- \$484,553	- 29.8

FOIA Litigation-Related Activities (estimated)

Fiscal Year 2004	Fiscal Year 2005	Number of Change	Percentage of Change
\$2,000	\$20,000	\$18,000	900

Total FOIA Costs

Fiscal Year 2004	Fiscal Year 2005	Number of Change	Percentage of Change
\$1,629,309	\$1,162,756	- \$466,553	- 28.7

X. FEES

- A. Total Amount of Fees Collected by Agency for Processing Requests • \$5,118.85
- B. Percentage of Total Costs • 0.5% of Total Costs

XI. FOIA REGULATIONS (INCLUDING FEE SCHEDULE)

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