U.S. CONSUMER PRODUCT SAFETY COMMISSION
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CERTIFIED MAIL

Taylor Lincoln
Public Citizen
215 Pennsylvania Avenue S.E.
Third Floor
Washington, D.C. 20003

Re: FOIA Request 08-F-00111: Commission CPSA Section 15(b) Filings, Office of Compliance and Field Operations Enforcement Database

Dear Mr. Lincoln:

Thank you for your Freedom of Information Act ("FOIA") request to the U.S. Consumer Product Safety Commission ("Commission") seeking information contained in Commission CPSA Section 15(b) compliance and enforcement computer databases. The databases are internal open-ended systems and databases that track and contain information about corrective actions and other staff compliance and regulatory activities. The Commission's databases related to its compliance and regulatory activities pertain to thousands of manufacturers, private labelers and importers and are constantly updated, contain draft information, confidential information submitted by companies under investigation or involved in active investigations and information that the Commission is prohibited from disclosing. Most of the systems cannot be disclosed to the public without extensive and burdensome processing of the information on a record by record and company by company basis.

The recalls and corrective actions are indexed, listed and summarized in sections of the Commission website, www.cpsc.gov. This information is located on the Recall and Product Safety News page which is the best source of information about recalls that can be made available to the public. *See,* http://www.cpsc.gov/cpscpub/prerel/prerel.html. The Commission's prior annual reports to Congress which are on the website may also contain relevant information. *See,* http://www.cpsc.gov/cpscpub/pubs/reports.html.

In the alternative, we must withhold the information contained in databases which are considered law enforcement investigatory records pursuant to the FOIA exemptions to disclosure 3, 4, 5, 7(A) and 7(E), 5 U.S.C. §§ 552(b)(3), (b)(4), (b)(5), (b)(7)(A) and (b)(7)(E), and sections 6(a)(2), 6(b)(1), 6(b)(5) and 6(e)(1) of the CPSA, 15 U.S.C. §§ 2055(a)(2), (b)(1), (b)(5) and (e)(1). 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 to these records, we are relying in part on section 6(a)(2) of the CPSA, which 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 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. These databases contain submitted proprietary and confidential business information.

We are also applying FOIA Exemption 3 to this material while relying on section 6(b)(1) of the CPSA. That section prohibits the Commission from disclosing information about a consumer product that identifies a manufacturer or private labeler unless the Commission has taken "reasonable steps" to assure that the information is accurate, that disclosure is fair in the circumstances, and that disclosure will be reasonably related to effectuating the purposes of the laws that the Commission administers. The Commission has not taken the required "reasonable steps" with respect to the information.

The databases also contain information by the companies under investigation that is protected from disclosure by FOIA Exemption 3 and sections 6(b)(5) and 6(e)(1) of the CPSA. Section 6(b)(5) prohibits the disclosure of information submitted under section 15(b) of the CPSA and relating to such an inquiry, unless the Commission has issued a complaint, accepted in writing a remedial settlement agreement, or the manufacturer agrees to the disclosure. CPSA section 15(b) requires manufacturers to report to the Commission and provide information regarding their products and potential substantial product hazards. The withheld information from the file includes information submitted by the manufacturer pursuant to section 15(b) of the CPSA or records derived from and based on that information. The Commission has not issued a complaint or accepted a remedial settlement agreement and the firm has not consented to disclosure. Some of the databases also contain information submitted to the Commission according to the section 6(e) of the CPSA. Under section 6(e)(1) of the CPSA, the Commission is prohibited from publicly disclosing information furnished under section 37. Section 37 requires the manufacturer of a particular model of a consumer product that is the subject of at least three civil actions that have been filed in Federal or State court for death or grievous bodily injury that result in either a final settlement or a court judgment in favor of the plaintiff in a defined 24 month period to report to the Commission each such civil action within 30 days after the final settlement or court judgment in the third civil action. Section 6(e)(1) of the CPSA prohibits disclosure of these submissions.

Certain internal staff analyses and statements are also being withheld pursuant to FOIA Exemptions 5, 7(A) and 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 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. 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 staff portions of the databases being withheld are both predecisional and deliberative, consisting of recommendations, opinions, suggestions and analyses. Any factual materials in the memoranda 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 the 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, (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, and (3) 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 that the Commission administers.

According to the Commission's FOIA regulations at 16 C.F.R. § 1015.7, a denial of access to records may be appealed within thirty (30) days of your receipt of this letter by writing to: FOIA APPEAL, General Counsel, ATTN: Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814-4408.

Processing this request, performing the file searches and preparing the information, cost the Commission $60.00. In this instance, we have decided to waive all of the charges.

Sincerely,

Todd A. Stevenson