FOIA APPEAL
General Counsel
ATTN: Office of the Secretary
U.S. Consumer Product Safety Commission
4330 East West Highway
Bethesda, Maryland 20814-4408
E-mail: cpsc-foia@cpsc.gov

RE: FOIA Appeal, FOIA Request #15-F-00342

Dear General Counsel:


Copies of my April 1, 2015 request and the CPSC’s May 18, 2015 denial are enclosed with this appeal.

We are appealing the denial of the FOIA request because no exemption applies to the requested record. FOIA requires agencies to release requested records unless those records fall within one of nine specified exemptions. See 5 U.S.C. § 552(a)(3), (b); see also 16 C.F.R. § 1015.6(b)(2) (explaining that a “response denying a written request for a record” must include a “reference to the specific exemption or exemptions under the Freedom of Information Act authorizing the withholding of the record”). Here, the CPSC’s response did not cite any exemptions. And although it mentioned copyright law, thereby suggesting that the record is exempt under FOIA Exemption 3, which applies to records “specifically exempted from disclosure by
statute,” 5 U.S.C. § 552(b)(3), the Copyright Act does not qualify as an Exemption 3 statute. See U.S. Dep’t of Justice, Office of Info. & Policy, OIP Guidance: Copyrighted Materials and the FOIA, FOIA Update, Vol. IV, No. 4 (1983) (“[T]here is nothing whatsoever in the [Copyright Act] or its legislative history to suggest that Congress intended it to trigger Exemption 3.”). Because the requested record is an agency record and no exemption from disclosure applies, the CPSC must release it in response to our request.

Thank you for your time and attention to this matter. We will expect a determination with respect to this appeal within twenty working days, as required by law. Should you have any questions regarding this appeal, please feel free to contact me at (707) 827-7290.

Thank you very much for your attention to this matter.

Sincerely,

Carl Malamud
President & CEO
Public.Resource.Org

cc: David Halperin
Of Counsel
Public.Resource.Org