



CHRISTOPHER BAVITZ
MANAGING DIRECTOR, CYBERLAW CLINIC
CLINICAL PROFESSOR OF LAW AND VICE DEAN
FOR EXPERIENTIAL AND CLINICAL
EDUCATION, HARVARD LAW SCHOOL

DIRECT DIAL: 617-496-5155
EMAIL: CBAVITZ@LAW.HARVARD.EDU

April 11, 2025

FOIA APPEAL

Office of the General Counsel, ATTN: Division of Information Access
U.S. Consumer Product Safety Commission
4330 East West Highway, Room 820
Bethesda, MD 20814-4408

VIA EMAIL TO: cpscfoiarequests@cpsc.gov

Re: FOIA Appeal – Request #25-F-00209

Dear CPSC General Counsel,

This letter constitutes an administrative appeal pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552(a) and 16 C.F.R. § 1015.1 et seq. Public.Resource.org (“Public Resource”), through its counsel, appeals the Consumer Product Safety Commission’s (“CPSC”) partial denial of access to certain records and the sufficiency of CPSC’s search for responsive records pursuant to FOIA request #25-F-00209 (“the Request”).¹

Background

The Request identified twenty federal regulations by regulation number and date, each of which mandated use of standards developed by ASTM International (“ASTM”). For each of those twenty regulations, Public Resource requested two categories of information:

1. copies of the relevant ASTM standard or standards (“subpart 1”); and
2. the full text of any agreements between the CPSC and ASTM (including, but not limited to, agreements, contracts, memoranda of understanding, NDAs, etc.) pertaining to the

¹ See Attachment A.

development or incorporation of the relevant ASTM standard or standards (“subpart 2”).

The Request asked that CPSC provide electronic copies of the responsive records in the native file format provided by ASTM and, where that is not possible, “in text-searchable PDF, in the best image quality in the CPSC’s possession.”² It also informed CPSC that “links will not suffice.”³

Public Resource filed the Request with CPSC on December 12, 2024. It was assigned case number 25-F-00209. On December 17, 2024, counsel for Public Resource received an email from CPSC acknowledging the Request and seeking clarification with respect to a “search timeframe.”⁴

On December 19, 2024, counsel for Public Resource responded by email to CPSC’s request for clarification (the “Clarification”).⁵ With respect to subpart 1 of the Request, the Clarification noted that Public Resource was not seeking historical information but rather “copies of the relevant ASTM standard(s) with respect to each regulation as they exist at the time the Request is fulfilled.”⁶ With respect to subpart 2 of the Request, the Clarification proposed that CPSC focus its initial search for relevant agreements on “records dating back to two years prior to the date of the earliest regulation—i.e., June 4, 2008,” two years before requested standard 75 FR 31698 (dated June 4, 2010).⁷

On February 18, 2025, counsel for Public Resource sent a follow-up communication seeking an update on the status of the Request and notifying CPSC that it had exceeded the statutory time limit for issuing a determination.⁸

CPSC responded the same day with its final response (the “Response”).⁹ The Response stated that “CPSC’s Office of Hazard Reductions, and Office of the General Counsel, Division of Regulatory Affairs, searched their records using the search terms and time frames you provided in your request. Copies of the relevant ASTM standards are available to view for free at <https://www.astm.org/products-services/reading-room.html>. No other records were

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ See Attachment C.

⁶ *Id.*

⁷ *Id.*

⁸ See Attachment D.

⁹ See Attachment E.

located.”¹⁰ In a separate paragraph informing Public Resource of its right to appeal, CPSC identified the Response as a “partial denial of access to records.”¹¹ The Response did not elaborate further.

Bases for Appeal:

1. Failure to disclose grounds for withholding

An agency responding to a FOIA request must notify the requesting party not only of its determination but also “the reasons therefor.”¹² Furthermore, CPSC’s own regulations implementing the FOIA establish additional responsive requirements when denying or partially denying access to records. Specifically, such a denial must: (1) reference the specific FOIA exemption(s) authorizing the denial “with a brief explanation of how the exemption applies;”¹³ and (2) estimate “the volume of requested material withheld.”¹⁴

Here, CPSC has issued a “partial denial of access to records” but has not offered any rationale supporting nor any FOIA exemption authorizing this determination.¹⁵ In fact, CPSC’s cursory Response lacks sufficient detail to conclusively identify which records are being withheld in the first place. The Response simply directs Public Resource to ATSM’s third-party online reading room and declares that “[n]o other records were located.”¹⁶ Nowhere does the Response expressly state which of these statements constitutes the “partial denial” nor does it estimate the scope of CPSC’s withholding as the law requires.

2. Inadequate format of disclosed records

Issuing a partial denial of access to responsive records necessarily implies that there was an accompanying partial disclosure. Because CPSC was ostensibly unable to locate other records, Public Resource understands the agency takes the position that linking to ASTM’s reading room qualifies as valid FOIA disclosure of the requested standards. It does not.

¹⁰ *Id.*

¹¹ *See id.*

¹² 5 U.S.C. § 552(a)(6)(a)(i)(I).

¹³ 16 C.F.R. § 1015.6(b)(2).

¹⁴ 16 C.F.R. § 1015.6(b)(3).

¹⁵ *See* Attachment E.

¹⁶ *Id.*

First, the FOIA demands that agencies deliver records in the format requested, provided they are “readily reproducible” in that format.¹⁷ A readily reproducible format is one in which the agency has the “technical capability to create the records”¹⁸ without undue hardship.¹⁹ A format in which the agency already maintains the requested records, or in which they regularly create or convert documents “in their ordinary course of business,” presumptively satisfies the reproducibility requirement “absent specific, compelling evidence as to significant interference or burden.”²⁰

Either format that Public Resource requested fits comfortably within the FOIA’s definition of “readily reproducible.” First, the Request seeks responsive records “in the native format provided by ASTM”²¹—that is, in the precise format in which CPSC already holds them. Where native formats are not possible, the Request deems text-searchable electronic PDF copies acceptable.²² CPSC regularly produces and makes available documents in searchable PDF format, including for FOIA purposes,²³ and has not provided any reason to believe that doing the same here would cause the kind of significant interference or burden necessary to avoid the FOIA’s format requirement. However, despite being presented with two reasonable format options, CPSC has attempted without explanation to provide the standards in the one format that Public Resource made explicitly clear would not suffice: a link.

Second, an agency fulfilling a FOIA request is obliged to provide “agency records,” which are those that the agency creates or obtains and that are within its possession and control.²⁴ As such, even if the Request had not deemed a link unacceptable, CPSC still could not fulfill its disclosure obligations by merely directing Public Resource to third-party records that ASTM

¹⁷ 5 U.S.C. § 552(a)(3)(B).

¹⁸ *Sample v. Bureau of Prisons*, 466 F.3d 1086, 1088 (D.C. Cir. 2006).

¹⁹ See *Public.Resource.org v. U.S. Internal Revenue Serv.*, 78 F.Supp.3d 1262, 1265 (N.D. Cal. 2015) (acknowledging that “the burden on an agency to comply with a request to produce documents in a particular electronic format is a factor to consider in determining whether records are ‘readily reproducible’”).

²⁰ *TPS, Inc. v. U.S. Dep’t of Defense*, 330 F.3d 1191, 1195 (9th Cir. 2003); see also *Public.Resource.org*, 78 F.Supp.3d at 1265–66 (holding that \$6,200 cost to agency and need to develop new technical protocols and train staff did not impose sufficient burden to justify agency’s withholding of requested tax forms in format in which they were maintained).

²¹ See Attachment A.

²² *Id.*

²³ See *Newsroom – FOIA*, CPSC.gov, <https://www.cpsc.gov/Newsroom/FOIA/ReportList>.

²⁴ See *U.S. Dep’t of Just. v. Tax Analysts*, 492 U.S. 136, 142, 144–45 (1989).

maintains on its privately operated website. Instead, CPSC must provide copies of the standards that it possesses and controls.

And to the extent that CPSC denies possessing or controlling copies of the requested ASTM standards, strong evidence suggests otherwise. Each relevant regulation incorporating these standards invites the public to inspect copies in person at CPSC’s headquarters.²⁵ Indeed, the agency has confirmed the existence of inspection copies in previous court filings.²⁶ Further, CPSC frequently enforces the requested ASTM standards.²⁷ In December 2024 alone, CPSC’s Office of Compliance issued at least eight Notices of Violation to importers and manufacturers based on several of the requested ASTM standards.²⁸ CPSC’s frequent application of the requested standards makes it unlikely that CPSC is using ASTM’s reading room in its ordinary course of business.

3. Inadequate search for additional responsive documents

An agency receiving a FOIA request is under a duty to conduct an adequate search for responsive documents.²⁹ A reasonable search, in turn, is one that is “reasonably calculated to

²⁵ See, e.g., 16 C.F.R. § 1235.2 (“Each baby changing product shall comply with all applicable provisions of ASTM F2388-21, *Standard Consumer Safety Specification for Baby Changing Products for Domestic Use*, approved on November 15, 2021. . . You may inspect a copy at the Division of the Secretariat, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone (301) 504-7479, email cpssc-os@cpssc.gov, or at the National Archives and Records Administration (NARA).”)

²⁶ See Brief for Respondent at 16, *Milice v. Consumer Prod. Safety Comm’n*, 2 F.4th 994 (2021) (No. 21-1071), (asserting that petitioner was misinformed when told she could not inspect a copy of incorporated ASTM standard “where the standard is in fact available for inspection at the Commission’s headquarters”); *id.* at 34 (“As the Commission’s Secretary, Alberta Mills, explains in her own declaration, ASTM’s infant bath seat standard is and has been available for inspection at the Commission’s headquarters.”).

²⁷ See *Most Common Violations*, CPSC.gov, <https://www.cpsc.gov/Imports/Most-Common-Violations> (listing the toy safety standard, ASTM F963, as one of the most commonly violated. Public Resource’s Request includes the latest Commission-accepted version of the toy safety standard, ASTM F963-23, which has been incorporated into 16 CFR 1250 as of 2024. See 82 FR 8993, Part 1250.)

²⁸ See *Violations*, CPSC.gov, <https://www.cpsc.gov/Recalls/violations> (listing, in an Excel spreadsheet available for public download, select notices of violation sent by the CPSC Office of Compliance to importers and manufacturers. In December 2024, CPSC issued at least eight Notices of Violation based on ASTM standards requested by Public Resource: TOY GUN by NEW HEROS INC (ASTM F963-17); A PIECE OF BABY TREE LEAF MESH FABRIC WRAP STYLE BABY CARRIE by SHENZHEN HUIDEMING ELECTRONICS CO., LTD. (ASTM F2907-22); KIDINIX BABY AUTO SWING by JINAN HONGJIAYI ELECTRONIC TECHNOLOGY CO (ASTM F2088-22); PLAY YARD by KEEZIO GROUP, LLC (ASTM F406-19); CITY RESTAURANT, CITY MUSIC HALL, and CITY HOTEL by PRE-CREATIONS INC (all three ASTM F963-17); and RIDE ON TOY MOTOBIKE by MOHAMAD AL KOBTANE (ASTM F963-17)).

²⁹ *Int’l Refugee Assistance Project, Inc. v. United States Citizenship & Immigr. Servs.*, 551 F. Supp. 3d 136, 151 (S.D.N.Y. 2021).

uncover all relevant documents.”³⁰ An agency must construe requests liberally in order to ensure responsive documents are found.³¹ An agency can only refuse to conduct a search “if it demonstrates that a search would be futile.”³² Where an agency reports that it has found no records, it must explain the process used, including its rationale for limiting the search to specific offices.³³

In the present case, the Response contains very little information about the search conducted to respond to the Request. It simply asserts that CPSC “searched their records using the search terms and time frames [Public Resource] provided,” and that, aside from ASTM’s reading room, “[n]o other records were located.”³⁴ This is far from sufficient for CPSC to establish that an adequate search was conducted. At the very least, CPSC must issue a more detailed response explaining how it concluded that it was not in possession or control of additional responsive records.

Moreover, there are specific facts that suggest additional responsive records exist, despite CPSC’s conclusion to the contrary. Subpart 2 of the Request seeks any agreements between CPSC and ASTM that pertain to the development or incorporation of the ASTM standards identified in subpart 1, beginning on June 4, 2008. CPSC works closely with ASTM to develop and revise standards through dedicated committees, subcommittees, and task groups in routinely scheduled meetings.³⁵ ASTM’s official website even includes a publication titled *The*

³⁰ *Weisberg v. U.S. Dep’t of Just.*, 705 F.2d 1344, 1351 (D.C. Cir. 1983).

³¹ *Nation Magazine v. United States Customs Serv.*, 71 F.3d 885, 890 (D.C. Cir. 1995) (citing *Truitt v. United States Dep’t of State*, 897 F.2d 540, 544-45 (D.C. Cir. 1990)) (“Although a requester must reasonably describe the records sought, an agency also has a duty to construe a FOIA request liberally.”).

³² *Jenkins v. U.S. Dep’t of Just.*, 263 F. Supp. 3d 231, 234 (D.D.C. 2017), *aff’d in part sub nom. Jenkins v. United States Dep’t of Just.*, No. 17-5184, 2018 WL 4151275 (D.C. Cir. Aug. 14, 2018).

³³ See *Steinberg v. U.S. Dep’t of Just.*, 23 F.3d 548, 552 (D.C. Cir. 1994) (failure to describe “in any detail what records were searched, by whom, and through what process” precluded summary judgment on adequacy of search); see also *Whitaker v. DOC*, 970 F.3d 200 (2d. Cir. 2020) (where the Court ruled in favor of the agency taking a presumption of “good faith” and noted specific explanations about not maintaining records requested in the FOIA request).

³⁴ Attachment E.

³⁵ Recent public meetings published on CPSC.gov include meetings for, *inter alia*, the ASTM F15.22 Water Beads Cautionary Labeling Task Group on April 2, 2025 (<https://www.cpsc.gov/Newsroom/Public-Calendar/2025-04-02-140000/ASTM-F1522-Water-Beads-Cautionary-Labeling-Task-Group>) and the ASTM F15.59 Task Group Meeting for Children’s Step Stools and Standing Towers on April 3, 2025 (<https://www.cpsc.gov/Newsroom/Public-Calendar/2025-04-03-150000/ASTM-F1559-Task-Group-Meeting-for-Children%E2%80%99s-Step-Stools-and-Standing-Towers>). Both of these task groups fall under subcommittees

CPSC and ASTM Collaboration that states that “[t]he development of a new or revised ASTM International standard is often initiated when CPSC approaches ASTM regarding the need for a particular safety standard.”³⁶ Given the close relationship between CPSC and ASTM, it would be unusual to find that none of these collaborative efforts are governed by written agreements, or that CPSC had not kept copies of such agreements.

Other facts suggest that there are also agreements pertaining to the incorporation of the requested standards. In a 2020 letter notifying ASTM that CPSC had voted to incorporate one of the requested standards, CPSC stated, “*Under the procedures for read-only access recently agreed to by ASTM*, CPSC requests that a read-only version of ASTM F2050-19 [...] be made available to the public in the ASTM Reading Room [...] as of January 1, 2021.”³⁷ This express reference to an existing—and, as of 2020, recent—agreement between ASTM and CPSC regarding procedures relevant to the incorporation of standards is hard to square with CPSC’s claim that no such agreements could be found.

Conclusion

For the foregoing reasons, CPSC should conduct a new search for responsive agency records and, upon completion, issue a response with sufficient detail for Public Resource to determine whether the search was adequate. To the extent that agency records are located and disclosed, CPSC should disclose copies of those records it maintains in one of the two “readily reproducible” formats requested—not as a link. To the extent that agency records are located and withheld, CPSC should identify these records and explain which FOIA exemption authorizes such withholding. In short, Public Resource is simply asking that CPSC meet the standard that its own regulations require, and that FOIA requires of every federal agency.

that contribute directly to requested standards F963 and F2613, respectively. See *Committee F15 Subcommittees*, ASTM International, <https://www.astm.org/membership-participation/technical-committees/committee-f15/subcommittee-f15>.

³⁶ Alan Earls, *The CPSC and ASTM Collaboration*, ASTM International, <https://www.astm.org/news/cpsc-and-astm-collaboration-jfi> (July 26, 2016). Additionally, CPSC itself requested the creation of ASTM’s F15 Committee, which is responsible for the development of every standard in the Request. See, e.g., *Subcommittee F15.16 on Highchairs and Hook-On Chairs*, ASTM International, <https://www.astm.org/membership-participation/technical-committees/committee-f15/subcommittee-f15/jurisdiction-f1516>; *Subcommittee F15.17 on Carriages, Strollers, Walkers and Stationary Activity Centers*, ASTM International, <https://www.astm.org/membership-participation/technical-committees/committee-f15/subcommittee-f15/jurisdiction-f1517>; *Subcommittee F15.18 on Cribs, Toddler Beds, Play Yards, Bassinets, Cradles and Baby Changing Products*, ASTM International, <https://www.astm.org/membership-participation/technical-committees/committee-f15/subcommittee-f15/jurisdiction-f1518>.

³⁷ *HHC Update Letter to ASTM*, CPSC.gov, <https://www.cpsc.gov/s3fs-public/HHC-update-letter-to-ASTM.pdf> (emphasis added).

Thank you for your consideration of this appeal. Should you have any questions please do not hesitate to contact me at cbavitz@law.harvard.edu.

Very truly yours,

Christopher T. Bavitz

Attachment A



CHRISTOPHER T. BAVITZ
MANAGING DIRECTOR,
CYBERLAW CLINIC
CLINICAL PROFESSOR OF LAW,
HARVARD LAW SCHOOL

DIRECT DIAL: 617-496-5155
EMAIL: CBAVITZ@LAW.HARVARD.EDU

December 12, 2024

Office of the Secretary
Consumer Product Safety Commission
Room 820, 4330 East West Highway
Bethesda, MD 20814

Re: Freedom of Information Act Request

Dear FOIA Officer:

We submit this request under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, to the U.S. Consumer Product Safety Commission (“CPSC”), on behalf of Public.Resource.org (“Public Resource”).

Requested Records

For each CPSC baby product and toy regulation that mandates use of standards developed by ASTM International (“ASTM”), Public Resource requests the following:

1. copies of the relevant ASTM standard or standards; and
2. the full text of any agreements between the CPSC and ASTM (including, but not limited to, agreements, contracts, memoranda of understanding, NDAs, etc.) pertaining to the development or incorporation of the relevant ASTM standard or standards.

See Appendix A for a complete list of regulations for which standards and agreements are requested. Public Resource requests copies of the records (i.e., not links): (1) in the native format provided by ASTM; and, where that is not possible, in (2) searchable PDF format.

Request for a Public Interest Fee Waiver

Public Resource requests a waiver of search, review, and duplication fees, as the disclosure of the requested records meets the statutory fee waiver requirements set out in the “Procedures for Disclosure of Records Under the Freedom of Information Act” section within the Code of

Federal Regulations.¹ The CFR sets four requirements for waiver or reduction of fees, which facilitate the determination of “whether disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of operations or activities of the government.”²

First, the request concerns “identifiable operations or activities of the federal government.”³ The requested standards are promulgated by an independent agency of the U.S. government and are incorporated by reference into the Code of Federal Regulations. As such, the requested records are part of the agency’s governing law.

Second, disclosure of the requested records will be “meaningfully informative about government operations or activities” so as to “likely contribute to an increased public understanding of those operations or activities.”⁴ Access to the standards will allow companies, non-profits, and citizens to utilize and organize this information to enhance compliance, better understand the provisions of law, improve public safety, increase economic efficiency and opportunity, and highlight opportunities for effective reform. Access to the agreements will contribute to the public’s understanding of the government’s relationship with industry and how government resources, including tax revenues, are utilized.

Third, the requested records will “contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester,” and significantly enhance “the public’s understanding of the subject in question.”⁵ Public Resource is one of the largest distribution sites for public information related to the U.S. government, including over 14,000 hours of video from Congressional hearings posted at the request of the Speaker of the House, over 8 million Form 990 reports filed with the Internal Revenue Service, over 6,000 U.S. government videos posted in cooperation with the Archivist of the United States, and the historical opinions of the U.S. Court of Appeals.⁶ As the President of Public Resource, Carl is an advocate for and frequent public speaker on the subject of public access to government information.

Public Resource regularly publishes information about government regulations and processes on its website, including information that it obtains as the result of FOIA requests. Consistent with this practice, Public Resource also intends to disseminate any information obtained through this request to the public, contributing to the public’s enhanced understanding of the government’s efforts to improve the safety of consumer products through uniform safety standards.

¹ See 6 C.F.R. § 5.11(k)(2)(i).

² *Id.*

³ *Id.*

⁴ § 5.11(k)(2)(ii).

⁵ § 5.11(k)(2)(iii).

⁶ Public.Resource.org, <https://public.resource.org/index.html> (last visited, Oct. 29, 2024).

Finally, Public Resource does not have a commercial interest in the disclosure of the requested records. Public Resource is a 501(c)(3) public charity chartered to make government information more broadly available without fee to any and all users.

Accordingly, we request that you waive all fees for locating and duplicating the requested records. If, however, a waiver is not granted, and if the amount of fees to be assessed in connection with this request exceeds \$200, please obtain my approval before any such costs are incurred.

Request for Records in Electronic Format

Public Resource requests that responsive electronic records be provided electronically in their native file format — links will not suffice. Where that is not possible, Public Resource requests that the records be provided electronically in text-searchable PDF, in the best image quality in the CPSC's possession.⁶ Public Resource further requests that you provide an estimated date on which you will finish processing this request.

If this FOIA request is denied in whole or in part, please provide the reasons for the denial, pursuant to 5 U.S.C. § 552(a)(6)(A)(i). In addition, please release all segregable portions of otherwise exempt material in accordance with 5 U.S.C. § 552(b).

Thank you for your consideration of this request. If you have any questions or concerns, please do not hesitate to contact me at cbavitz@law.harvard.edu.

Very truly yours,

A handwritten signature in black ink, appearing to read "C.T. Bavitz", with a long horizontal flourish extending to the right.

Christopher T. Bavitz

Appendix

CPSC & ASTM Toy and Baby Safety Regulations

Federal Regulation	Title	ASTM Provision	CPSC Site URL
83 FR 29861, June 26, 2018	PART 1235— SAFETY STANDARD FOR BABY CHANGING PRODUCTS	F2388-21, Standard Consumer Safety Specification for Baby Changing Products for Domestic Use, approved November 15, 2021	https://www.ecfr.gov/current/title-16/chapter-II/subchapter-B/part-1235
75 FR 31698, June 4, 2010	PART 1215— SAFETY STANDARD FOR INFANT BATH SEATS	ASTM F1967-19, Standard Consumer Safety Specification for Infant Bath Seats, approved May 1, 2019	https://www.ecfr.gov/current/title-16/chapter-II/subchapter-B/part-1215
75 FR 35273, June 21, 2010	PART 1216— SAFETY STANDARD FOR INFANT WALKERS	ASTM F977-22e1, Standard Consumer Safety Specification for Infant Walkers, approved June 15, 2022	https://www.ecfr.gov/current/title-16/chapter-II/subchapter-B/part-1216
76 FR 22028, Apr. 20, 2011	PART 1217— SAFETY STANDARD FOR TODDLER BEDS	ASTM F1821-19e1, Standard Consumer Safety Specification for Toddler Beds, approved June 1, 2019v	https://www.ecfr.gov/current/title-16/chapter-II/subchapter-B/part-1217
78 FR 63034, Oct. 23, 2013	PART 1218— SAFETY STANDARD FOR BASSINETS AND CRADLES	ASTM F2194-13, Standard Consumer Safety Specification for Bassinets and Cradles, approved April 1, 2013	https://www.ecfr.gov/current/title-16/chapter-II/subchapter-B/part-1218
75 FR 81786, Dec. 28, 2010	PART 1219— SAFETY STANDARD FOR FULL-SIZE BABY CRIBS	ASTM F1169-19, Standard Consumer Safety Specification for Full-Size Baby Cribs approved March 15, 2019	https://www.ecfr.gov/current/title-16/chapter-II/subchapter-B/part-1219
75 FR 81787, Dec. 28, 2010	PART 1220— SAFETY STANDARD FOR NON-FULL-SIZE BABY CRIBS	Except as provided in paragraph (b) of this section, each non-full-size baby crib shall comply with all applicable provisions of ASTM F406-22, Standard Consumer Safety Specification for Non-Full-Size Baby Cribs/Play Yards, approved October 1, 2022	https://www.ecfr.gov/current/title-16/chapter-II/subchapter-B/part-1220
77 FR 52228, Aug. 29, 2012	PART 1221— SAFETY STANDARD FOR PLAY YARDS	ASTM F406-19, Standard Consumer Safety Specification for Non-Full-Size Baby Cribs/Play Yards, approved March 15, 2019	https://www.ecfr.gov/current/title-16/chapter-II/subchapter-B/part-1221

89 FR 46801, May 30, 2024	PART 1223— SAFETY STANDARD FOR INFANT SWINGS	ASTM F2088-22, Standard Consumer Safety Specification for Infant and Cradle Swings, approved May 1, 2022	https://www.ecfr.gov/current/title-16/chapter-II/subchapter-B/part-1223
78 FR 73424, Dec. 6, 2013	PART 1225— SAFETY STANDARD FOR HAND-HELD INFANT CARRIERS	ASTM F2050-19, Standard Consumer Safety Specification for Hand-Held Infant Carriers, approved December 15, 2019	https://www.ecfr.gov/current/title-16/chapter-II/subchapter-B/part-1225
82 FR 8687, Jan. 30, 2017	PART 1228— SAFETY STANDARD FOR SLING CARRIERS	ASTM F2907-22, Standard Consumer Safety Specification for Sling Carriers, approved April 1, 2022	https://www.ecfr.gov/current/title-16/chapter-II/subchapter-B/part-1228
86 FR 26658, May 17, 2021	PART 1231— SAFETY STANDARD FOR HIGH CHAIRS	ASTM F404-21, Standard Consumer Safety Specification for High Chairs, approved November 15, 2021	https://www.ecfr.gov/current/title-16/chapter-II/subchapter-B/part-1231
86 FR 26658, May 17, 2021	PART 1232— SAFETY STANDARD FOR CHILDREN'S FOLDING CHAIRS AND CHILDREN'S FOLDING STOOLS	ASTM F2613-21, Standard Consumer Safety Specification for Children's Chairs and Stools, approved February 1, 2021	https://www.ecfr.gov/current/title-16/chapter-II/subchapter-B/part-1232
81 FR 17065, Mar. 28, 2016	PART 1233— SAFETY STANDARD FOR PORTABLE HOOK-ON CHAIRS	ASTM F1235-18, Standard Consumer Safety Specification for Portable Hook-On Chairs, approved May 1, 2018	https://www.ecfr.gov/current/title-16/chapter-II/subchapter-B/part-1233
2 FR 15627, Mar. 30, 2017	PART 1234— SAFETY STANDARD FOR INFANT BATH TUBS	ASTM F2670-22, Standard Consumer Safety Specification for Infant Bath Tubs, approved March 1, 2022	https://www.ecfr.gov/current/title-16/chapter-II/subchapter-B/part-1234
86 FR 33071, June 23, 2021	PART 1236— SAFETY STANDARD FOR INFANT SLEEP PRODUCTS	Comply with ASTM F3118-17a with the certain conditions and exclusions, approved September 1, 2017	https://www.ecfr.gov/current/title-16/chapter-II/subchapter-B/part-1236
83 FR 30849, July 2, 2018	PART 1237— SAFETY STANDARD FOR BOOSTER SEATS	ASTM F2640-18, Standard Consumer Safety Specification for Booster Seats, approved April 1, 2018	https://www.ecfr.gov/current/title-16/chapter-II/subchapter-B/part-1237

84 FR 28211, June 18, 2019	PART 1238— SAFETY STANDARD FOR STATIONARY ACTIVITY CENTERS	ASTM F2012-18 Standard Consumer Safety Performance Specification for Stationary Activity Centers, approved March 1, 2018	https://www.ecfr.gov/current/title-16/chapter-II/subchapter-B/part-1238
87 FR 8673, Feb. 15, 2022	PART 1241— SAFETY STANDARD FOR CRIB MATTRESSES	ASTM F2933, Standard Consumer Safety Specification for Crib Mattresses, approved June 15, 2021	https://www.ecfr.gov/current/title-16/chapter-II/subchapter-B/part-1241
82 FR 8993, Feb. 2, 2017	PART 1250— SAFETY STANDARD MANDATING ASTM F963 FOR TOYS	ASTM F963-23 Standard Consumer Safety Specification for Toy Safety, approved August 1, 2023	https://www.ecfr.gov/current/title-16/chapter-II/subchapter-B/part-1250

Attachment B

Subject: (Request Clarification) CPSC FOIA Request 25-F-00209
Date: Tuesday, December 17, 2024 at 2:50:20 PM Eastern Standard Time
From: Mosheim Oyewole, Abioye
To: Bavitz, Christopher
Priority: High

Dear Mr. Bavitz,

Thank you for your FOIA request, 25-F-00209. In that request you ask for "baby product and toy regulation standards and related materials." We need you to please provide a search timeframe.

A proper request for records "must reasonably describe the records requested" by including search terms such as "dates, title, file designations, and other information which may help identify the records." 16 C.F.R. 1015.3(b). In cases where such information is lacking in a request, the requestor must clarify the search terms so that the request becomes manageable. See 16.C.F.R. 1015.3(c).

In your reply, please provide a search timeframe to narrow your request, such as "Please search all records from January 1, 2023 to present." If you need assistance, please contact a CPSC FOIA Public Liaison by email at rdalton@cpsc.gov or by phone at 1-800-638-2772. Please respond by December 24, 2024.

Right to Mediation. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001; e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile to 202-741-5769.

Regards,
Abi

Abioye Mosheim Oyewole

Director, Division of Information Access

U.S. Consumer Product Safety Commission | Office of the General Counsel
4330 East West Highway | Bethesda, MD 20814

Phone: (301) 504-7454

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<http://www.cpsc.gov/en/Newsroom/Subscribe> *****!!!

Attachment C



CHRISTOPHER BAVITZ
MANAGING DIRECTOR, CYBERLAW CLINIC
CLINICAL PROFESSOR OF LAW AND VICE DEAN
FOR EXPERIENTIAL AND CLINICAL
EDUCATION, HARVARD LAW SCHOOL

DIRECT DIAL: 617-496-5155
EMAIL: CBAVITZ@LAW.HARVARD.EDU

December 19, 2024

Abioye Mosheim Oyewole
Director, Division of Information Access
U.S. Consumer Product Safety Commission | Office of the General Counsel
4330 East West Highway
Bethesda, MD 20814

**Re: FOIA Request 25-F-00209
Response to Request for Clarification**

Dear Ms. Oyewole,

Thank you for your email dated December 17, 2024, in which you request clarification of the above-referenced FOIA request, 25-F-00209, which we submitted on behalf of Public Resource (the "Request"). You have specifically asked for a "search timeframe" with respect to the Request.

The Request identifies twenty federal regulations by regulation number and date, each of which mandates use of standards developed by ASTM International ("ASTM"). For each of those twenty regulations, Public Resource has requested two categories of information:

1. copies of the relevant ASTM standard or standards; and
2. the full text of any agreements between the CPSC and ASTM (including, but not limited to, agreements, contracts, memoranda of understanding, NDAs, etc.) pertaining to the development or incorporation of the relevant ASTM standard or standards.

Regarding the timeframe on the first request, the regulations in question are current regulations. Public Resource is not seeking historical information. **Accordingly, we request copies of the relevant ASTM standard(s) with respect to each regulation as they exist at the time the Request is fulfilled.**

Regarding the second request, Public Resource seeks a copy of any agreement(s) pertaining to the identified regulations, regardless of date. In the event you require more specificity, we

note that the earliest regulation identified in the Request is 75 FR 31698 (dated June 4, 2010). **We propose that CPSC start by searching records that date back to two years prior to that date — i.e., June 4, 2008.**

Please let me know if you have any further questions or concerns about this matter. Thank you for your time and attention.

Very truly yours,

A handwritten signature in dark ink, appearing to read "C.T. Bavitz", followed by a long, sweeping horizontal stroke.

Christopher T. Bavitz

Attachment D



CHRISTOPHER BAVITZ
MANAGING DIRECTOR, CYBERLAW CLINIC
CLINICAL PROFESSOR OF LAW AND VICE DEAN
FOR EXPERIENTIAL AND CLINICAL
EDUCATION, HARVARD LAW SCHOOL

DIRECT DIAL: 617-496-5155
EMAIL: CBAVITZ@LAW.HARVARD.EDU

February 18, 2025

Abioye Mosheim Oyewole
Director, Division of Information Access
U.S. Consumer Product Safety Commission | Office of the General Counsel
4330 East West Highway
Bethesda, MD 20814

**Re: FOIA Request 25-F-00209
Request for Status Update**

Dear Ms. Oyewole,

We write regarding the above-referenced FOIA request, 25-F-00209 (the “Request”), which we filed with the Consumer Product Safety Commission (the “CPSC”) on behalf of Public.Resource.org on December 12, 2024. We have yet to receive a notice of determination with respect to the Request. Please be advised that the CPSC is now out of compliance with statutory deadlines under the Freedom of Information Act (“FOIA”). We ask that you promptly provide us with information regarding the status of the Request.

An agency that receives a request for records under the FOIA must issue a “determination and the reasons therefor” within 20 working days.¹ The agency “may make one request to the requester for information and toll the 20-day period while it is awaiting such information.”² If an agency fails to comply with applicable time limit provisions, it “shall not assess any search fees”³ and the requester “shall be deemed to have exhausted his administrative remedies.”⁴

It has been 42 working days since we filed the Request on December 12, 2024. You replied to the Request seeking information regarding “search timeframes” (the “Clarification Email”) on

¹ 5 U.S.C. § 552(a)(6)(A)(i)(I).

² 5 U.S.C. § 552(a)(6)(A)(ii)(I).

³ 5 U.S.C. § 552(a)(4)(A)(viii)(I).

⁴ 5 U.S.C. § 552(a)(6)(C)(i).

December 17, 2024. We replied to the Clarification Email with a letter providing the requested information (the "Response Letter") on December 19, 2024. There has been no further communication since that date.

Even if we treat the processing period as having been tolled between the date of the Clarification Email and the date of the Response Letter, the CPSC has failed to notify us of its "determination and the reasons therefor" within the period prescribed by FOIA.

Please reply to this letter with an update regarding the status of the Request, including an anticipated date by which the CPSC intends to issue a determination. In your reply, please also confirm that no search fees will be assessed against Public.Resource.org pursuant to 5 U.S.C. § 552(a)(4)(A)(viii)(I) and that such waiver will not impact consideration of Public.Resource.org's existing request for a public interest fee waiver.

Of course, Public.Resource.org reserves all rights and remedies with respect to this matter, including but not limited to the right to file a complaint.

Very truly yours,

A handwritten signature in black ink, appearing to read "C.T. Bavitz", with a long horizontal flourish extending to the right.

Christopher T. Bavitz

Attachment E



February 18, 2025

Via Email

Christopher Bavitz
cbavitz@law.harvard.edu

RE: Freedom of Information Act Request #25-F-00209: Request on behalf of Public Resource for baby product and toy regulation standards and related materials.

Dear Mr. Bavitz:

Thank you for your Freedom of Information Act (FOIA) request seeking information from the U.S. Consumer Product Safety Commission (CPSC). CPSC's Office of Hazard Reductions, and Office of the General Counsel, Division of Regulatory Affairs, searched their records using the search terms and time frames you provided in your request. Copies of the relevant ASTM standards are available to view for free at <https://www.astm.org/products-services/reading-room.html>. No other records were located.

FOIA Administrative Procedure

Right to appeal. According to CPSC's regulations implementing the FOIA at 16 C.F.R. § 1015.7, a partial denial of access to records may be appealed. If you are not satisfied with the response to this request, you may administratively appeal in writing, addressed to FOIA APPEAL, Office of the General Counsel, ATTN: Division of Information Access, U.S. Consumer Product Safety Commission, 4330 East West Highway, Room 820, Bethesda, MD 20814-4408. Your appeal must be postmarked or electronically transmitted (cpscfoiarequests@cpsc.gov) within 90 days of the date of the response to your request.

Before filing a formal appeal with CPSC, you may contact me or CPSC's FOIA Public Liaison, Robert Dalton (rdalton@cpsc.gov), via email or at 1-800-638-2772, for any further assistance, or to discuss any aspect of your request. Assistance may include guidance on possible reformulation of your request or an alternative time frame for processing the request. You may contact us Monday – Friday from 8:00AM – 4:30PM ET

Right to Mediation. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, MD 20740-6001; email: ogis@nara.gov; telephone: 202-741-5770; toll free: 1-877-684-6448; fax: 202-741-5769.

Fees. No fees were charged.

Sincerely,

ABIOYE MOSHEIM
OYEWOLE

Digitally signed by ABIOYE
MOSHEIM OYEWOLE
Date: 2025.02.18 14:57:55
-05'00'

Abioye Mosheim Oyewole
Assistant General Counsel/Director
Office of the General Counsel
Division of Information Access
301-504-7454
aoyewole@cpsc.gov