



May 9, 2025

Christopher Bavitz
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RE: FOIA Appeal 25-A-00005 (FOIA Request 25-F-00209)

Dear Mr. Bavitz:

By an April 11, 2025 letter, sent via email of the same date, you appealed (“FOIA Appeal”) the decision of the Consumer Product Safety Commission (CPSC or Commission) Office of the General Counsel, Division of Information Access (FOIA Staff) dated February 18, 2025 (FOIA Decision Letter). The FOIA Decision Letter addressed FOIA Request 25-F-00209 (FOIA Request), received December 12, 2024, seeking copies of certain standards developed by ASTM International (ASTM) specified in “Appendix A” attached to your FOIA Request¹, as well as any agreements between CPSC and ASTM pertaining to the development or incorporation of such standard or standards.²

The FOIA Decision Letter explained that copies of the requested ASTM standards are available to view for free in a public reading room on ASTM’s website and provided a hyperlink to the website. FOIA Decision Letter at 1. FOIA staff further informed you that no other records were located and informed you of your right to appeal a “partial denial of access to records.” *Id.*

¹ Appendix A is comprised of a table that lists 20 different federal regulations and related ASTM standards. FOIA Request at App. A. The FOIA Request sought copies of the standards and agreements in their native format provided by ASTM or in the alternative a searchable .pdf format. FOIA Request at 1.

² By email dated December 17, 2024, FOIA staff requested that you provide a search timeframe for your FOIA Request. On December 19, 2024, you responded by letter, sent by email of the same date, confirming that you seek “copies of the relevant ASTM standard(s) with respect to each regulation as they exist at the time the [r]equest is fulfilled.” Dec. 19, 2024 Letter at 1.



Your FOIA Appeal contends that the FOIA Decision Letter did not disclose the grounds for the partial denial of access to records.³ You also appeal the decision of the FOIA staff to provide hyperlinks to ASTM's website instead of copies of the standards.⁴ Finally, you appeal the adequacy of the search, including specifically with respect to any agreements between CPSC and ASTM.⁵

Under authority delegated to me by the Commission, 16 C.F.R. § 1015.7, I have reviewed your appeal. I am granting your appeal with respect to any agreements between CPSC and ASTM and directing the FOIA staff to conduct a further search for responsive records. You will be receiving separate correspondence from the FOIA staff consistent with this decision.

With respect to your appeal of the "partial denial of access to records," no records were withheld and any language to this effect in the FOIA Decision Letter was the result of a typographical error. Because no records were withheld, this portion of your appeal is denied as moot and no further action is required.

Regarding your appeal concerning the format in which the ASTM standards were provided—specifically, a hyperlink to a free public reading room on ASTM's website—please note that the standards are copyrighted and therefore not "readily reproducible" in the format you requested, *i.e.*, native format or searchable .pdf. Because ASTM retains the exclusive rights to distribute its standards, they are available for purchase directly from the organization itself. CPSC is a licensee of the ASTM standards allowing CPSC access to the standards under the terms of the license. The copyright remains with ASTM and CPSC may not redistribute the standards in native or text searchable format. As previously communicated by FOIA staff, however, the requested standards can be accessed free of charge via a public reading room on ASTM's website, and a hyperlink to that site was provided. Additionally, although not specifically mentioned in the FOIA Decision Letter, the standards are also available for in-person inspection at the Commission's public reading room at CPSC headquarters in Bethesda, Maryland.

Moreover, because the ASTM standards are copyrighted, there are sufficient grounds under Exemption 4 of the FOIA for withholding them. FOIA Exemption 4 protects "trade secrets and commercial or financial information obtained from a person and privileged or confidential." 5 U.S.C. § 552(b)(4). In *Food Marketing Inst. v. Argus Leader Media*, 588 U.S. 427, 440 (2019), the Supreme Court clarified that information qualifies as "confidential" under Exemption 4 when it is both customarily kept private by the submitter and provided to the government under an assurance of privacy. A copyright

³ FOIA Appeal at 3.

⁴ *Id.* at 3-5.

⁵ *Id.* at 5-7.



holder “naturally has a commercial interest in the information he seeks to protect.” *Naumes v. Dep’t of the Army*, 588 F. Supp. 3d 23, 37 (D. D.C. 2022). The “[r]elease of copyrighted information through FOIA requests would undermine the market for the creator’s work in much the same way that the release of other types of commercial information could inflict competitive harm.” *Id.* Thus, the FOIA is not intended to serve as a means of circumventing copyright protections to access materials that are otherwise available only through purchase. *Id.* at 40. Nor should agencies be compelled to release such information if doing so could result in copyright infringement claims. *Id.*

For these reasons, withholding the ASTM standards under FOIA is appropriate. Their copyrighted status, combined with their commercial and confidential nature, clearly brings them within the scope of Exemption 4’s protections. Releasing them through the FOIA would not be consistent with established case law and could cause harm to the copyright holder, but offering read-only access through a free public reading room aligns with both the FOIA and the protection of copyright interests.

You have the right to 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
Email: ogis@nara.gov
Telephone: 202-741-5770 or toll free at 877-684-6448
Fax: 202-741-5769

You have the right to seek judicial review of this decision as provided by 5 U.S.C. § 552(a)(4)(B).

Sincerely,

A handwritten signature in black ink that reads "Matthew A. Campbell".

Matthew A. Campbell
General Counsel