

May 11, 2015

Todd Stevenson
Secretary
FOIA Requester Service Center
U.S. Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

Re: Freedom of Information Act Request

Dear Secretary Stevenson:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and corresponding U.S. Consumer Product Safety Commission (CPSC) regulations, 16 C.F.R. Part 1015, EWG Action Fund hereby requests copies of the following records¹ located within CPSC:

- (1) All records since 2000 relating to asbestos or asbestos-like fibrous silicate contamination or potential for contamination of talc in consumer products, including, but not limited to, asbestos testing and results, studies conducted or received by CPSC relating to asbestos contamination in consumer products, and risk assessments relating to potential contamination;
- (2) All records since 2000 relating to the sourcing of talc for consumer products; and
- (3) All records since 2000 of CPSC's communications with the Food and Drug Administration; U.S. Customs and Border Protection; other federal agencies and/or lawmakers; state agencies, port authorities, and/or lawmakers; and/or companies that manufacture, process, and/or distribute consumer products and/or substances, including their respective trade associations, relating to the actual or potential presence of asbestos or asbestos-like fibrous silicates in talc and talc-containing products.

EWG Action Fund respectfully requests that the CPSC respond to this request within twenty (20) business days of receipt, as required by CPSC regulations, 16 C.F.R. § 1015.5.

Copies should be mailed to:

Reade Wilson
Staff Attorney
EWG Action Fund

¹ For purposes of this FOIA request, "records" means information of any kind, including writings; memoranda; emails, including subject lines, the names of recipients, their e-mail addresses, and any attachments; text messages; letters; notes; meeting requests; calendar entries, including the names of invitees, their e-mail addresses, and any attachments; meeting minutes; documents; drawings; graphs; charts; photographs; electronic and magnetic meeting recordings; records of telephone conversations, including cell-phone records; and any other compilation of data from which information can be obtained.

1436 U Street NW, Suite 101
Washington, DC 20009

Should you determine that portions of the requested records are exempt from disclosure, please segregate those portions and mail the remaining records. For any records or portions of records that you determine to be exempt, please provide a specific description of the record or portion of the record exempted, an estimate of the volume of requested material withheld, and a particularized description of the exemption with applicable citation.

EWG Action Fund is a 501(c)(4) nonprofit organization whose mission is to protect public health and the environment by educating the public and advocating on a wide range of policy issues. EWG Action Fund and its supporters are especially concerned about protecting users from toxic chemicals and substances in consumer products. In furtherance of this mission, EWG Action Fund is engaged in public education, advocacy, and the review of the government's implementation of its statutory mandates. EWG Action Fund is interested in (i) furthering the public's understanding of the health risks posed by asbestos-contaminated talc and (ii) reviewing what action CPSC has taken to ensure the safety of talc-containing consumer products and products whose manufacturing processes use talc. Thus, EWG Action Fund seeks the requested records consistent with the purposes of FOIA, namely "the citizens' right to be informed about 'what their government is up to.'"²

Given the widespread presence of talc in consumer products and the health concerns that asbestos contamination of talc raises, EWG Action Fund seeks this information in the interest of public information and consumer safety. Talc is present in, or used in the manufacture of, a number of products including: paper, paints, French chalk, dry lubricant, roofing material, patching compounds, fertilizer, ceramics including tiles and tableware, inks, putties, adhesives, plastics, rubber and rubber products, particle board, colored pencils, and putties.³ Thus Americans are exposed to talc in a wide range of products.

This material poses serious safety concerns because of its potential contamination with asbestos, a known human carcinogen.⁴ Talc and asbestos "are naturally occurring minerals that may be found in close proximity in the earth."⁵ Asbestos has been identified in consumer products containing incompletely purified minerals. A CPSC analysis of crayons conducted in 2000 found asbestos or asbestos-like fibers in at least twenty-one of twenty-five samples; an independent study initiated by the Seattle Post-Intelligencer the same year found asbestos in thirty-two of forty crayons.⁶ Nonetheless, the CPSC chose not to recall the contaminated crayons and instead

² U.S. Dep't of Justice v. Reporters Comm. for Freedom of Press, 489 U.S. 749, 773 (1989).

³ Int'l Agency For Research On Cancer, Vol. 93 Carbon Black, Titanium Dioxide, And Talc, IARC Monographs On The Evaluation Of Carcinogenic Risks To Humans, at 286, 290-95 (WHO Press 2010); Andrew Schneider, FDA: Weak Laws, Sparse Resources Handcuff Agency, Seattle Post-Intelligencer, at 2 (October 31, 2014), <http://www.seattlepi.com/national/article/FDA-Weak-laws-sparse-resources-handcuff-agency-5861903.php>.

⁴ FDA, Talc, <http://www.fda.gov/cosmetics/productsingredients/ingredients/ucm293184.htm> (last updated Mar. 19, 2014).

⁵ Id.

⁶ Caroline E. Mayer, 3 Crayon Firms Agree to Remake Products, Washington Post (June 13, 2000), <http://articles.latimes.com/2000/jun/13/news/mn-40473>.

accepted industry promises to reformulate their products.⁷ Asbestos-contaminated talc may be present in additional art supplies, such as clay and stone; CPSC itself suggests that exposure to these sources may cause asbestosis or cancer.⁸ Similarly, the EPA has examined gardening products that contain vermiculite, a mineral closely related to talc, and found asbestos in seventeen of thirty-eight products tested, such as potting mixes, composts, fertilizers, and pesticides.⁹ Since asbestos-contaminated minerals have been found in consumer products, there is a significant possibility that today's consumers continue to be exposed to this dangerous substance.

Talc that is contaminated with asbestos poses a serious health concern. The International Agency for Research on Cancer, a unit of the World Health Organization, classifies talc that contains asbestos as carcinogenic to humans.¹⁰ As the agency that enforces the Consumer Product Safety Act, CPSC is tasked with promoting investigation into the causes of product-related illnesses, developing safety standards for products, and protecting the public against unreasonable risk of injury associated with consumer products.¹¹ EWG Action Fund seeks to learn what actions CPSC has taken, or plans to take, pursuant to this statutory mandate in order to protect consumers from asbestos-contaminated talc.

Fee Waiver

EWG Action Fund seeks a fee waiver due to the fact that “disclosure of the information is in the public interest because it is likely to contribute significantly to the public understanding of the operations or activities of the government” and because disclosure is not in the commercial interest of EWG Action Fund.¹² This request meets the factors outlined in CPSC regulations and DOJ's FOIA Guide.¹³

1. The request's subject matter concerns operations or activities of the government.

The subject matter of this request concerns the operations or activities of the federal government. Action is needed to learn how common asbestos contamination is in consumer products and to protect the public from asbestos-contaminated goods. The Consumer Product Safety Act makes CPSC responsible for investigating such threats to consumer health and for establishing the

⁷ Id.

⁸ U.S. Consumer Product Safety Commission, Art and Craft Safety Guide 11, 13, 22, <http://www.cpsc.gov/PageFiles/112284/5015.pdf> (last visited Apr. 23, 2015).

⁹ U.S. Environmental Protection Agency, Sampling and Analysis of Consumer Garden Products That Contain Vermiculite (Aug. 2000).

¹⁰ American Cancer Society, Talcum Powder and Cancer (Nov. 21, 2014), <http://www.cancer.org/cancer/cancercauses/othercarcinogens/athome/talcum-powder-and-cancer>.

¹¹ Consumer Product Safety Act §2(b), 15 U.S.C. § 2051 (2014).

¹² See 5 U.S.C. § 552(a)(4)(A)(iii); see also 16 C.F.R. § 1015.9(f)(4).

¹³ 16 C.F.R. § 1015.9; U.S. Dep't of Justice, Freedom of Information Act Guide (May 2004) (Approval of a fee waiver requires that (1) the subject matter of the requested records must concern “operations or activities of the government,” (2) disclosure must be “likely to contribute” to an understanding of government operations or activities, (3) disclosure must contribute to the understanding of the “public at large,” and (4) disclosure must contribute “significantly” to public understanding of the subject matter. If the requester has a commercial interest in the disclosure (factor 5), then this commercial interest must not be “primary” (factor 6) in comparison to the public interest in disclosure).

framework necessary to protect the public.¹⁴ EWG Action Fund seeks the requested records to understand what, if anything, CPSC is doing to protect consumers from products containing carcinogenic asbestos.

2. The requested records are likely to contribute to an understanding of the subject matter.

The records are likely to inform an understanding of CPSC's activities concerning asbestos-contaminated talc, in a manner that is not already public knowledge. The disclosure of these records will make public any information CPSC has as to the possible presence of asbestos-contaminated talc in consumer products. The records are likely to reveal CPSC's understanding of this consumer health concern and whether it has taken action to address the matter.

3. The disclosure will contribute to the understanding of the public at large.

Disclosure of the requested information will contribute to the understanding of the public at large since EWG Action Fund will disseminate information gleaned from the records for purposes of informing the public. EWG Action Fund conducts educational and investigative analyses and disseminates information through a variety of channels, including press releases, online and social media posts, communications to lawmakers and administrative agencies, and e-mails to supporters and like-minded third parties. EWG Action Fund's established interest in chemical safety and environmental health gives it the specialized knowledge and ability and intention to disseminate the information requested in a manner that will contribute to public understanding.

4. The disclosure contributes "significantly" to public understanding.

Disclosure of the requested records will contribute "significantly" to public understanding of CPSC's actions to protect consumers from asbestos-contaminated products.¹⁵ The disclosure of records pertaining to CPSC activities, if any, will help paint a more comprehensive picture of CPSC's work in this area. The records will allow consumers to understand whether CPSC has responded adequately to this important safety concern.

5. There is no commercial interest in the disclosure.

Finally, this request is not in the commercial interest of the requester. EWG Action Fund has no intention of using this information in a manner that "furthers commercial, trade, or profit interests."¹⁶ Any publication of EWG Action Fund's analysis of the requested information would be for the sole purpose of dissemination to the public to educate consumers and to advocate on behalf of American consumers.

For the foregoing reasons, it is clear that the disclosure of the information requested is in the public interest because it is likely to contribute significantly to the public's understanding of CPSC's activities and investigation of asbestos in consumer products. Therefore, please waive all processing and copying fees pursuant to 5 U.S.C. § 552(a)(4) and 16 C.F.R. § 1015.9(f). The

¹⁴ 15 U.S.C. § 2051, *supra* note 11.

¹⁵ 16 C.F.R. § 1015.9(f)(4)(iv).

¹⁶ 16 C.F.R. § 1015.9(c)(5).

request for a fee waiver should not be construed as an extension of time in which to reply to this FOIA request.

Thank you for your consideration. If you have any questions, please do not hesitate to contact me at (202) 667-6982.

Sincerely,

A handwritten signature in black ink, appearing to read 'Reade Wilson', with a long, sweeping horizontal flourish extending to the right.

Reade Wilson
Staff Attorney
EWG Action Fund