



UNITED STATES  
CONSUMER PRODUCT SAFETY COMMISSION  
4330 EAST WEST HIGHWAY  
BETHESDA, MD 20814

ACTING CHAIRMAN ANN MARIE BUERKLE

April 29, 2019

The Honorable Roger Wicker  
United States Senate  
555 Dirksen Senate Office Building  
Washington, DC 20510

The Honorable Jerry Moran  
United States Senate  
521 Dirksen Senate Office Building  
Washington, DC 20510

Dear Chairman Wicker and Chairman Moran:

Thank you for your April 15, 2019, letter concerning the U.S. Consumer Product Safety Commission's (CPSC) recent announcement that information was released to certain requesters without following the requirements of Section 6 (15 U.S.C. § 2055) of the Consumer Product Safety Act (CPSA). I take seriously all the requirements of our statutes, but in particular those that protect confidentiality and ensure due process. I was deeply concerned when this error was discovered and moved promptly to address the unauthorized disclosure. As soon as the problem was identified, the agency began immediate notification to those affected.

Reponses to your questions are included below following your questions, which are listed in bold. Additionally, per your request, my staff has scheduled a briefing for both of your staffs on this issue for Tuesday, April 30, 2019.

**1) When did CPSC discover the unauthorized disclosure of information?**

CPSC became aware of the unauthorized disclosure on April 1, 2019.

**2) Have you notified the CPSC's Inspector General of this unauthorized disclosure? If so, how long after the discovery of the disclosure did you do so?**

Yes. The Executive Director informed the Inspector General of the unauthorized disclosure on Monday April 8<sup>th</sup>, 2019, upon his return from out of office travel during the week of April 1.

**3) How and by whom was the unauthorized disclosure discovered?**

CPSC initially learned of an unauthorized disclosure from Consumer Reports. Upon receiving that information, the Director of the Office of Epidemiology, the senior executive responsible for the unit that provided the information to Consumer Reports, conducted a review of other data transmissions. Through that review, the Director identified a total of 29 unique recipients who received unauthorized disclosures.

**4) Please list all entities or organizations that received information as part of the unauthorized disclosure.**

The following individuals and entities received information as part of the disclosure. Note that the information received varies in scope and size in each instance.

Recipient

1. Michele Blood (NJ Writer)
2. Courtney Bowline (Deans &L LLP)
3. Jenny Clifford (Yeti)
4. Daniel Corbett (no association listed)
5. Sal DeAngelo (no association listed)
6. Dorothy Drago (Dadsafety)
7. Curt Freedman (CMF Engineering)
8. Dr. H. Joseph Hughes (no association listed)
9. Dr. Sekhar Iyer (St. Barnabas)
10. Haley Johnson (Vocci)
11. Jerry Miller (Mattel)
12. Sarah Newens (Safety Sys)
13. Irving Ojalvo (Tech Assoc)
14. Karli Parlette (Loma Linda)
15. Carol Pollack-Nelson (Consultant)
16. Alice Rivera (Army Corps of Engineers)
17. Ben Rodrawangpai (UL)
18. Richard Smith (Whirlpool)
19. Krista Stoumbos (Clausen-Miller)

20. Kim Suiters (ABC News)
21. Doris Sullivan (Consumer Reports)
22. Patrick Terpstra (Scripps)
23. Jennifer Vanos (UCSD)
24. Thomas Wuori (RS Injury Law)
25. Mengxi Yu (Texas A&M)
26. 박지은 (Toy Certification Emp)
27. Brian Nunning (Whirlpool)
28. Kevin Hinkley (Whirlpool)
29. Roger Jewel (Whirlpool)

**5) What remedial actions has the CPSC taken to retrieve information that was erroneously disclosed?**

On April 1, 2019, CPSC staff from the Office of Communications requested Consumer Reports, which currently has the largest amount of unauthorized information, return the unauthorized portion of the material disclosed. Consumer Reports rejected the request. Attorneys from the Office of General Counsel repeated that request in a telephone conference on April 2, 2019. Consumer Reports again declined, and the Office of General Counsel sent a letter on April 3, 2019, to Consumer Reports seeking the return and/or destruction of the information. In an April 8, 2019, letter, Consumer Reports again declined to accede to the CPSC request.

In addition, on April 5, 2019, CPSC notified the remaining recipients seeking immediate action to return or destroy the information and provide certification of destruction. To date, 14 of the 29 recipients have agreed to do so. The data received by these recipients, including the recipient of the largest tranche of information, accounts for most of the total unauthorized disclosures. We continue outreach to the remaining parties who have either refused our request or have not responded.

Upon learning of the disclosure, CPSC's Office of General Counsel immediately notified the Department of Justice of the situation and have consulted with them throughout this process including the handling of recipients who refuse to destroy or return the information.

**6) In its announcement, the CPSC stated that identifying information of manufacturers and products was disclosed. Was any information that could potentially identify individual consumers disclosed as well? If so:**

We continue to review all of the information that was released and at this point are conducting a thorough review according to our policy to assess the release of any personally identifiable information (PII).

**a. What types of individual consumer information were disclosed?**

We have so far discovered PII in the form of street addresses, ages, race and gender in some of the information.

**b. What steps has the CPSC taken or will the CPSC take to inform affected consumers?**

In accordance with the agency's Breach Response and Notification Policy and Breach Response Plan, CPSC has formed a Breach Response Team, which is evaluating the information disclosed and the sensitivity of that information and is developing recommendations regarding informing consumers affected if appropriate.

**7) What are the CPSC's existing protocols to comply with 15 U.S.C. § 2055 (b) of the Consumer Product Safety Act?**

CPSC Directive 1450.2 Clearance Procedures for Providing Information to the Public outlines the agency's procedures for complying with 15 U.S.C. § 2055 (b) of the CPSA. That Directive sets forth a review procedure through which all major directorates, including the Office of Executive Director and the Office of General Counsel, provide written approval of information to be disclosed to the public. In addition to this procedure, requests for information under the FOIA process are subject to specific review for compliance with section 6 of the CPSA.

Although Directive 1450.2 generally governs information disclosures to ensure adherence to 15 U.S.C. § 2055(b), the type of data disclosures at issue here historically have been treated separately under a different procedure. Under 15 U.S.C. § 2054 (a) of the CPSA, the Commission is required to maintain an Injury Information Clearinghouse to collect, investigate, analyze, and disseminate injury data and information relating to the causes and prevention of death, injury, and illness associated with consumer products. This function resides within the Data Intake and Injury Information Branch, the CPSC organizational unit that released the unauthorized information. Requests for injury data go directly to the clearinghouse, which processes the requests and transmits

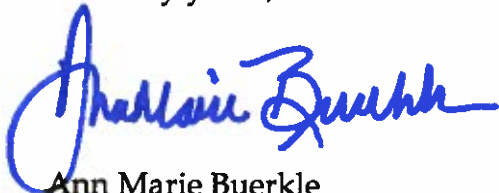
the responsive data directly to the requester. In light of the unauthorized disclosure, we have altered this process. A description of the new process is described below in response to question 8.

**8) Has the CPSC modified its protocols regarding the processing of requests for information related to the National Injury Information Clearinghouse since this unauthorized disclosure was discovered? If yes, please explain how.**

Yes. Upon learning of the disclosure, that same day we changed the process for requesting injury data and the processing of these requests. The Clearinghouse no longer processes any request independently. Each request for incident and injury data is now processed as a Freedom of Information Act (FOIA) request, a procedure that includes a second level of review to ensure compliance with Section 6 of the CPSA. In addition, we are working to standardize the process for requesting data, to improve training, and to update standard operating procedures.

Thank you again for your support of our mission at the CPSC. Should you or your staff have any questions, please do not hesitate to contact me, or Chris Hudgins, Director of Legislative Affairs, at [chudgins@cpsc.gov](mailto:chudgins@cpsc.gov) or (301) 504-7853.

Sincerely yours,



Ann Marie Buerkle  
Acting Chairman