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Description of document:

The cover page and pages 1 and 2 of the Consumer Product Safety Commission (CPSC) International Trade Data System / Risk Assessment Methodology (ITDS/RAM) Exam Log User Manual and The cover page, page 1, and partial page 2 of the ITDS/RAM Inbox User Manual - June 2016

Appeal date:

27-January-2017

Released date:

01-March-2017

Posted date:

10-September-2018

Source of document:

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**U.S. CONSUMER PRODUCT SAFETY COMMISSION
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March 1, 2017

**Re: FOIA Appeal 17-A-00002
For FOIA Request 17-F-00148**

By letter dated January 27, 2017 and received on January 31, 2017, you appealed the decision dated January 19, 2017 of the U.S. Consumer Product Safety Commission’s (“Commission’s”) Freedom of Information (“FOI”) Officer to your Freedom of Information Act (“FOIA”) request seeking records relating to a digital/electronic copy of the manual or instructions for the CPSC Import Surveillance RISK ASSESSMENT METHODOLOGY (RAM) SYSTEM. The FOI Officer withheld disclosure of these records, citing applicable FOIA exemptions.

Under authority delegated to me by the Commission, 16 C.F.R. § 1015.7, I have reviewed your appeal, and I am reversing the FOI Officer’s decision with respect to:

- The cover page and pages 1 and 2 of the “ITDS/RAM Exam Log User Manual – June 2016.”
- The cover page, page 1, and partial page 2 of the “ITDS/RAM Inbox User Manual – June 2016.”

Accordingly, the FOI Officer will process this information pursuant to section 6 of the Consumer Product Safety Act (“CPSA”), 15 U.S.C. § 2055, and will notify you under separate correspondence about possible release of information to you.

I am, however, affirming the FOI Officer’s decision to withhold all other responsive documents based on Exemptions 3, 4, and 7(E) of the FOIA. *See* 5 U.S.C. § 552(b)(3), (4), and 7(E); 16 C.F.R. § 1015.16(c), (d), and g(5). Exemption 3 of FOIA provides for withholding information specifically exempted from disclosure by another statute. In applying Exemption 3,

I am relying on section 6(a)(2) of the CPSA, 15 U.S.C. § 2055(a)(2), which prohibits the disclosure of trade secret, proprietary, or confidential information under Exemption 4. This information is considered confidential if disclosure is likely to (1) impair the government's ability to obtain necessary information in the future or (2) cause substantial harm to the competitive position of the person from whom the information is sought. *See National Parks and Conservation Association v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974). The confidential commercial information being withheld pursuant to Exemption 3, based on section 6(a)(2) of the CPSA, contains proprietary software screenshots and instructions and confidential importation information contained in the "ITDS/RAM Exam Log User Manual – June 2016" at pages 4-47 and contained in the "ITDS/RAM Inbox User Manual – June 2016" at partial page 3 and entire pages 4-32.

In addition to relying on Exemptions 3 and 4 to withhold partial information on page 3 of the "ITDS/RAM Inbox User Manual – June 2016," I am relying on Exemption 7(E) to affirm the FOI Officer's decision to withhold information from page 3 in its entirety and to support the withholding of all information contained in pages 4-47. I am similarly relying on Exemption 7(E) to withhold partial information from page 2 of the "ITDS/RAM Exam Log User Manual – June 2016" and to support the withholding of all information contained in pages 3-32.

FOIA Exemption 7(E) provides for the withholding of records or information compiled for law enforcement purposes that would disclose techniques and procedures for law enforcement investigations or prosecutions or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law. The provision protects techniques and procedures not already well-known to the public, including where the manner and circumstances of the use are not publicly known. *See Rugiero v. DOJ*, 257 F.3d 534, 551 (6 Cir. 2001); *ACLU of Michigan v. FBI*, No. 11-13154, 2012 WL 4513626 at *11 (E.D. Mich. Sept. 30, 2012). Specifically, investigations and operations manuals that list certain techniques, procedures, and events that trigger the agency's use of such techniques and procedures and would allow for the circumvention of the agency's effort may be withheld under Exemption 7(E). *See ACLU of N.J. v. DOJ*, No. 11-2553, 2012 WL 4660515, at *10 (D.N.J. Oct. 2, 2012). Manuals that contain investigation guidance, such as hypotheticals for training purposes and approval limitations on use of certain techniques by law enforcement, may also be withheld if such information is not known to the public because release would increase the risk of individuals conforming behavior to avoid identified investigative tactics. *See PHE, Inc. v. DOJ*, 983 F.2d 248, 251 (D.C. Cir. 1993); *ACLU of Michigan*, 2012 WL 4513626 at *11. Moreover, exemption 7(E) permits an agency to withhold information if the agency can demonstrate logically how the release of the requested information might create a risk of circumvention of the law. *See Blackwell v. FBI*, 646 F.3d 37, 42 (D.C. Cir. 2011). Accordingly, to protect agency law enforcement techniques and prevent circumvention of the law, I am affirming, under Exemption 7(E), the FOI Officer's decision with respect to pages 3-47 of the "ITDS/RAM Exam Log User Manual – June 2016" and partial page 2 and entire pages 3-32 of the "ITDS/RAM Inbox User Manual – June 2016."

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

Sincerely,


Mary T. Boyle
General Counsel



U.S. CONSUMER PRODUCT SAFETY COMMISSION

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March 3, 2017

Re: FOIA Request/Appeal 17-F-00148 (Appeal 17-A-00002): Copies of CPSC investigative manuals

As explained in the letter dated March 1, 2017 from Mary Boyle, CPSC General Counsel, enclosed are the documents that we decided to disclose after considering your appeal of the withholding of records with respect to the above referenced Freedom of Information Act Request.

Sincerely,

A handwritten signature in black ink, appearing to read "Alberta E. Mills".

Alberta E. Mills

Enclosure

ITDS/RAM

US Consumer Product Safety Commission

Office of Import Surveillance

EXAM LOG USER MANUAL– JUNE 2016

This document is User Guide to the ITDS/RAM Proof of Concept system. It has been updated to reflect enhancements through the May 26, 2016 Release.

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ITDS/RAM

US Consumer Product Safety Commission

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INBOX USER MANUAL– JUNE 2016

This document is User Guide to the ITDS/RAM Portal's Inbox module. It has been updated to reflect enhancements through the May 26, 2016 Release.

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