

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

NATURAL RESOURCES DEFENSE COUNCIL,)
1200 New York Ave., N.W., Suite 400)
Washington, DC 20005,)
)
Plaintiff,)
)
v.)
)
UNITED STATES CONSUMER PRODUCT)
SAFETY COMMISSION,)
4330 East West Highway)
Bethesda, MD 20814)
)
Defendant.)
)

Case: 1:08-cv-01312
Assigned To : Kennedy, Henry H.
Assign. Date : 7/30/2008
Description: FOIA/Privacy Act

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. Plaintiff Natural Resources Defense Council, Inc. (NRDC) asserts violations of the Freedom of Information Act (FOIA), 5 U.S.C. § 552, by defendant United States Consumer Product Safety Commission (CPSC), for refusing to disclose responsive records concerning phthalates in consumer products.

2. Phthalates are chemicals used in many common consumer products, including to soften plastics in some children’s toys. Phthalates are known to interfere with production of the male hormone testosterone, and have been associated with reproductive abnormalities. Numerous animal studies have linked prenatal exposure to certain phthalates with decreases in testosterone, malformations of the genitalia, and reduced sperm production.

3. This court has jurisdiction over this action, and venue is proper in this district, pursuant to 5 U.S.C. § 552(a)(4)(B).

4. Plaintiff NRDC is a national, not-for-profit environmental and public health membership organization with more than 420,000 members nationwide.

5. Defendant CPSC is a federal agency within the meaning of FOIA and has possession or control of the records that NRDC seeks in this action.

6. NRDC submitted a FOIA request to CPSC on April 23, 2007. NRDC's request seeks records regarding the regulation of phthalates in consumer products, CPSC's assessment of the potential health risks associated with the use of phthalates in consumer products, and communications between CPSC and the chemical industry or toy manufacturers regarding phthalates in toys and other consumer products.

7. CPSC's response to NRDC's FOIA request was due May 21, 2007. To date, CPSC has failed to produce any documents in response to NRDC's request.

8. NRDC also sought a fee waiver from CPSC in connection with its April 23, 2007 FOIA request. By letter dated January 15, 2008, and received on January 22, 2008, CPSC denied NRDC's fee waiver request. NRDC filed a timely appeal of this fee waiver denial on February 19, 2008. CPSC has failed to make a determination on that appeal within the time period required by statute and CPSC regulations.

9. NRDC is entitled under FOIA to a waiver of CPSC's search and production fees with respect to this request. NRDC has a demonstrated ability and intent to analyze and convey the information in the requested records to a broad public audience. Disclosure of the requested records will contribute significantly to public understanding of government activities and operations. NRDC is a non-profit organization with no commercial interest in the requested records.

10. NRDC seeks a declaration that CPSC has violated FOIA by refusing to disclose responsive records and an injunction ordering CPSC to provide those records. NRDC also seeks a declaration that, pursuant to FOIA, NRDC is entitled to a fee waiver from CPSC in connection with its April 23, 2007 FOIA request.

11. NRDC brings this action on its own behalf and on behalf of its members. NRDC and its members have been and continue to be injured by CPSC's failure to provide responsive records and failure to grant a fee waiver for this FOIA request. The requested relief will redress these injuries.

CLAIM FOR RELIEF

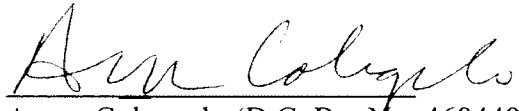
12. NRDC has a statutory right under the Freedom of Information Act for the records that it seeks, at no cost, and there is no legal basis for CPSC's refusal to disclose them.

REQUEST FOR RELIEF

WHEREFORE, the plaintiff respectfully requests an Order:

- (1) Declaring that the defendant's failure to disclose the records requested by the plaintiff in a timely fashion is unlawful;
- (2) Declaring that plaintiff is entitled to a waiver of search and production fees with respect to its request;
- (3) Directing the defendant to disclose the requested records to the plaintiff at no cost within 20 days;
- (4) Awarding plaintiff its costs and attorneys' fees; and
- (5) Granting such other and further relief as the Court deems just and proper.

Respectfully submitted,

A handwritten signature in cursive script that reads "Aaron Colangelo".

Aaron Colangelo (D.C. Bar No. 468448)
Natural Resources Defense Council
1200 New York Ave NW, Suite 400
Washington, DC 20005
Phone: (202) 289-2376
Fax: (202) 289-1060

Counsel for Plaintiff

Dated: July 30, 2008