April 30, 2015

Jonathan Ashley
University of Virginia School of Law
580 Massie Road, Room WB237a
Charlottesville, Virginia 22903-1738

Re: Request Number: FOIA-2015-00655
Date of Receipt: April 24, 2014
Subject of Request: Advanced Containment Systems Inc. and Atrium Corporation (Corporate Non-Individual records only)/TXS

Dear Mr. Ashley:

Your request for records under the Freedom of Information Act/Privacy Act has been processed. This letter constitutes a supplemental response from the Executive Office for United States Attorneys, the official record-keeper for all records located in this office and the various United States Attorneys’ Office.

To provide you with the greatest degree of access authorized by the Freedom of Information Act and the Privacy Act, we have considered your request in light of the provisions of both statutes.

The records you seek are located in a Privacy Act system of records that, in accordance with regulations promulgated by the Attorney General, is exempt from the access provisions of the Privacy Act. 28 CFR § 16.81. We have also processed your request under the Freedom of Information Act and are making all records required to be released, or considered appropriate for release as a matter of discretion, available to you. This letter is a [ X ] partial [ ] full denial.

Enclosed please find:

8 page(s) are being released in full (RIF);
13 page(s) are being released in part (RIP);
_____ page(s) are withheld in full (WIF). The redacted/wthheld documents were reviewed to determine if any information could be segregated for release.

The exemption(s) cited for withholding records or portions of records are marked below. An enclosure to this letter explains the exemptions in more detail.

(B)(6)
(B)(7)(c)
This is the final action on this above-numbered request. If you are not satisfied with my response to this request, you may administratively appeal by writing to the Director, Office of Information Policy, United States Department of Justice, Suite 11050, 1425 New York Avenue, Washington, DC 20530-0001, or you may submit an appeal through this Office’s eFOIA portal at http://www.justice.gov/oip/efoia-portal.html. Your appeal must be received within sixty days from the date of this letter. If you submit your appeal by mail, both the letter and the envelope should be clearly marked “Freedom of Information Act Appeal.”

Sincerely,

[Signature]

Susan B. Gerson  
Assistant Director

Enclosure(s)
EXPLANATION OF EXEMPTIONS

FOIA: TITLE 5, UNITED STATES CODE, SECTION 552

(b)(1) specifically authorized under criteria established by and Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order;

(b)(2) related solely to the internal personnel rules and practices of an agency;

(b)(3) specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute (A) requires the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(b)(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(b)(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

(b)(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(b)(7) records or information compiled for law enforcement purposes, but only the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of a confidential source, (E) 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, or (F) could reasonably be expected to endanger the life or physical safety of any individual.

(b)(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(b)(9) geological and geophysical information and data, including maps, concerning wells.

PRIVACY ACT: TITLE 5, UNITED STATES CODE, SECTION 552a

(d)(5) information complied in reasonable anticipation of a civil action proceeding;

(j)(2) material reporting investigative efforts pertaining to the enforcement of criminal law including efforts to prevent, control, or reduce crime or apprehend criminals;

(k)(1) information which is currently and properly classified pursuant to Executive Order 12356 in the interest of the national defense or foreign policy, for example, information involving intelligence sources or methods;

(k)(2) investigatory material compiled for law enforcement purposes, other than criminal, which did not result in loss of a right, benefit or privilege under Federal programs, or which would identify a source who furnished information pursuant to a promise that his/her identity would be held in confidence;

(k)(3) material maintained in connection with providing protective services to the President of the United States or any other individual pursuant to the authority of Title 18, United States Code, Section 3056;

(k)(4) required by statute to be maintained and used solely as statistical records;

(k)(5) investigatory material compiled solely for the purpose of determining suitability eligibility, or qualification for Federal civilian employment or for access to classified information, the disclosure of which would reveal the identity of the person who furnished information pursuant to a promise that his identity would be held in confidence;

(k)(6) testing or examination material used to determine individual qualifications for appointment or promotion in Federal Government service the release of which would compromise the testing or examination process;

(k)(7) material used to determine potential for promotion in the armed services, the disclosure of which would reveal the identity of the person who furnished the material pursuant to a promise that his identity would be held in confidence.
January 6, 2012

Re: Non-Prosecution Agreement – Atrium Companies, Inc.

Dear [Redacted]

On the understandings specified below, the United States Attorney's Office for the Southern District of Texas ("this Office") and Homeland Security Investigations ("HSI") will not bring any criminal, civil, or administrative action against Atrium Companies, Inc., its parent company Atrium Corporation, or any of its direct or indirect subsidiaries, including Champion Window, Inc. (hereafter, collectively referred to as "Atrium Companies") for any crimes related to the employment of unauthorized aliens. These crimes include, but are not limited to, offenses arising under 8 U.S.C. § 1324(a)(1)(A)(iii) (harboring aliens), 8 U.S.C. § 1324(a)(1)(A)(iv) (encouraging or inducing illegal immigration), and 8 U.S.C. § 1324a (unlawful employment of aliens); and with crimes related to the mishandling of employment verification forms, 18 U.S.C. § 1546(b), and the misrepresentation of social security numbers, 42 U.S.C. § 408(a)(7)(B). This Agreement applies only to conduct that occurred prior to the date of its execution, and specifically excludes criminal tax violations, which are under the jurisdiction of the Tax Division and cannot be negotiated by this Office.

This Agreement does not provide any protection against prosecution for any crimes except as set forth above, and applies only to Atrium Companies. This Agreement does not apply to any other entities nor any individuals. Atrium Companies expressly understands that the protections provided to it by this Agreement shall not apply to any successor entities, whether the successor's interest arises through a merger or plan of reorganization, unless and until such successor formally adopts and executes this Agreement. The protections arising from this Agreement will not apply to any purchasers of all or substantially all of the assets of Atrium Companies, unless such purchaser enters into a written agreement, on terms acceptable to this Office, agreeing in substance to undertake all obligations set forth in this Agreement. Without limiting the effect of any other provision of this Agreement, this Office understands and Atrium Companies agrees that should Atrium Companies acquire, directly or indirectly, another entity, via merger, purchase of all or substantially all of their assets or otherwise, Atrium Companies will make reasonable efforts to, and will be afforded a prudent period of time to ensure that the newly-acquired entity adopts and implements an immigration compliance program substantially similar in substance to that adopted by Atrium Companies, as outlined in this Agreement.
It is understood that Atrium Companies: (a) shall truthfully and completely disclose all information with respect to the activities of Atrium Companies, including its present and former officers and employees, and others concerning all matters about which this Office inquires of it; (b) shall cooperate fully with this Office, HSI, and any other law enforcement agency designated by this Office; (c) shall, at this Office’s request, use its best efforts promptly to secure the attendance and truthful statements or testimony of any officer, agent, or employee at any meeting or interview or before the grand jury or at any trial or any court proceeding; (d) shall use its best efforts promptly to provide this Office, upon request, any document, record, or other tangible evidence relating to matters or conduct about which this Office or any designated law enforcement agency inquires; and (e) shall bring to this Office’s attention all criminal conduct by or criminal investigations of Atrium Companies or its respective senior managerial employees that comes to the attention of Atrium Companies’ board of directors or senior management, as well as any administrative proceeding or civil action brought by any governmental authority that alleges immigration violations by Atrium Companies.

It is understood that Atrium Companies accepts and acknowledges responsibility for the facts as set forth in Exhibit A, which is incorporated herein by reference. Atrium Companies further agrees that it will not, through its present or future board of directors, attorneys, officers, agents or management employees, will make any public statements contradicting any of the facts as set forth in Exhibit A. Any such contradictory public statement by Atrium Companies, its present or future board of directors, attorneys, officers, agents or management employees, shall constitute a breach of this Agreement, and Atrium Companies would be subject to prosecution by this Office pursuant to the terms of this Agreement. The decision of whether any public statement by any such person contradicting a fact contained in Exhibit A will be imputed to Atrium Companies for the purposes of determining whether Atrium Companies has breached this agreement shall be at the sole discretion of this Office. Upon this Office’s reaching a determination that such a contradictory statement has been made by Atrium Companies, this Office shall notify Atrium Companies, which may avoid a breach of this Agreement by publicly repudiating such statement within forty-eight hours after notification by this Office. This paragraph is not intended to apply to any statement made by any individual in the course of any criminal, regulatory, or civil case initiated by the United States against such individuals unless the individual is speaking on behalf of Atrium Companies.

It is further understood that Atrium Companies and its subsidiaries: (a) shall continue to use E-Verify; (b) shall comply with all newly-adopted immigration compliance procedures, as referenced in Exhibit A; (c) shall provide company-wide formal training on Form I-9 procedures; (d) shall continue to retain and consult with immigration counsel; (e) shall terminate and/or discipline all individuals responsible for the hiring or continued employment of undocumented aliens; (f) shall revamp existing procedures for responding to complaints by employees and outside parties, including the devotion of additional resources to properly investigate, track, and close out complaints; and (g) shall appoint a full time Chief Compliance Officer.

This Agreement, and Atrium Companies’ obligations hereunder, shall remain in effect for a term of (a) eighteen (18) months from the date this Agreement is executed, or (b) the date upon
which all prosecutions arising out of the conduct described in the opening paragraph of this Agreement are final, whichever is later.

It is understood that Atrium Companies agrees to deliver $2,000,000 to the United States, via a certified check made payable to the United States Customs and Border Protection, by January 9, 2012. Atrium Companies stipulates that the tendered funds are subject to forfeiture as proceeds under Title 18, United States Code, Section 981(a)(1)(A), and agrees to forfeit the funds to the United States. Atrium Companies agrees to waive all right, title, and interest in the above funds, and any notice requirements or limitations periods established by law or the Constitution. Atrium Companies agrees that it will not contest the administrative forfeiture of the above funds in any manner, either directly or in a collateral proceeding, and further agrees to cooperate fully with HSI in the administrative forfeiture. Atrium Companies stipulates that no third parties have an interest in the funds, and agrees that it will assist the United States in defending against any third party claims or petitions. The funds will be deposited into the Department of Treasury Forfeiture Fund for law enforcement purposes, as determined by the Department of Treasury in accordance with Title 31, United States Code Section 9703.

It is understood that, should this Office determine that Atrium Companies has committed any crimes during the term of this Agreement, or that Atrium Companies or any of its representatives have given false, incomplete, or misleading testimony or information, or should Atrium Companies otherwise violate any provision of this Agreement, Atrium Companies shall thereafter be subject to prosecution for any federal violation of which this Office has knowledge, including perjury and obstruction of justice; and any such prosecution that is not time-barred by the applicable statute of limitations on the date of the execution of this Agreement may be commenced against Atrium Companies, notwithstanding the expiration of the statute of limitations between the signing of this Agreement and the commencement of such prosecution.

It is understood that if it is determined that Atrium Companies has committed any crime after the signing of this Agreement or that Atrium Companies or any of its representatives have given false, incomplete, or misleading testimony or information, or have otherwise violated any provision of this Agreement, then: (a) all statements made by Atrium Companies’ representatives to this Office, HSI, or other designated law enforcement agents, and any testimony given by Atrium Companies’ representatives before a grand jury or other tribunal, whether prior to or subsequent to the signing of this Agreement, and any leads from such statements or testimony shall be admissible in evidence in any criminal proceeding brought against Atrium Companies; and (b) Atrium Companies shall assert no claim under the United States Constitution, any statute, Rule 410 of the Federal Rules of Evidence, or any other federal rule that such statements or any leads therefrom should be suppressed. It is the intent of this Agreement to waive all rights in the foregoing respects.

Nothing in this Agreement shall be construed as a waiver of any attorney-client or work-product privileges.

It is further understood that this Agreement does not bind any federal, state, or local prosecuting authority other than this Office and HSI. This Office will, however, bring the
cooperation of Atrium Companies to the attention of other prosecuting and other investigative officers if requested by Atrium Companies.

It is further understood that Atrium Companies, this Office, and HSI may disclose this Agreement to the public.

With respect to this matter, from the date of the signing of this Agreement forward, the Agreement supersedes all prior, if any, understandings, promises and/or conditions between this Office/HSI and Atrium Companies. No additional promises, agreements, and conditions have been entered into other than those set forth in this letter and none will be entered into unless in writing and signed by all parties.

Sincerely,

Kenneth Magidson
United States Attorney

Special Agent in Charge
Houston, Texas
Homeland Security Investigations

AGREED AND CONSENTED TO:

Chairman of the Board and Chief Executive Officer
Atrium Companies, Inc.

APPROVED:

Attorney for Atrium Companies, Inc.,
and its subsidiary, Champion Window, Inc.

Date

January 11, 2012

January 31, 2012
EXHIBIT A

In any criminal prosecution or regulatory action brought by the United States, the following statement shall be admissible against Atrium Companies, Inc. (hereafter, "Atrium Companies"), its parent company, Atrium Corporation, and/or any of its subsidiaries, to-wit:

Atrium Companies is the largest manufacturer and distributor of residential vinyl and aluminum windows and patio doors in the United States, with a total workforce of approximately 3,700 employees. Atrium Companies operates thirteen subsidiaries located in seven different states and Canada. Since June 2006, Atrium Companies has operated Champion Window, Inc. (hereafter, "Champion") as a subsidiary based in Houston, Texas. Prior to January 2006, Champion was principally managed by its original owner, an individual who remained in charge of the day-to-day operations of Champion until February 2008.

Prior to Atrium Companies' acquisition, Champion engaged in a pattern and practice of hiring undocumented workers. Champion's management ignored the requirements of the Immigration and Nationality Act (INA) by falsely attesting on Employment Eligibility Verification Forms (Form I-9's) that work authorization documents presented by new hires appeared genuine. For instance, between 2002 and 2005, one Champion employee forged the signatures of several different managers on approximately 95 Form I-9's because the employee was unwilling to sign name on the Form I-9's, inasmuch as did not believe the work authorization documents presented by the new hires were genuine. The employee forged these managers' names with the knowledge of Champion's long-time human resources manager and, in some cases, the managers themselves.

From 2004 through 2007, Champion received hundreds of notices from the Social Security Administration (SSA) known as "No-Match letters." These No-Match letters indicated that the employee names and social security numbers provided by Champion to SSA did not match SSA records. Upon receiving the letters, Champion failed to take adequate corrective measures, which resulted in the continued employment of the undocumented aliens. For example, in 2006 the SSA notified Champion of multiple social security number mismatches among its workforce. As of November 2010, 82 such employees, about whom Champion received No-Match letters in 2006, were still working at Champion. From 2006 through 2010, Champion derived at least $2,000,000 in revenue from the sales of products manufactured and services provided with the use of a predominantly illegal workforce. The revenue was deposited into Champion's corporate bank accounts. These deposits, cumulating at least $2,000,000, each exceeded $10,000.

In April 2007, a Champion employee, using a fictitious name, sent a letter to Atrium's headquarters in Dallas. The letter alleged, among other things, that Champion hired illegal aliens and that Champion's then president had spoken to the writer of the letter and referred to illegal aliens in a derogatory fashion. The letter warned that Champion should be aware of the possibility of an investigation by immigration authorities. Soon thereafter, Atrium's then Chief Executive Officer sent Champion's president a note in response which stated:

Give me a call re the attached. If I were a betting man, which I am, I would bet
that what this says were told by you and your people is true. It sounds like this guy is going to sic the immigration people on you. I hope your records are clean.

Later, in July 2008, Atrium Companies received a complaint from an outside party alleging that Champion was employing undocumented aliens. While Atrium Companies conducted an investigation in response to the complaint, it did not uncover the alleged wrongdoing.

Homeland Security Investigations (HSI) began investigating Champion in March 2010. With the use of a confidential informant who worked at Champion, agents obtained multiple recordings in which two separate managers were informed by the confidential informant-worker that he/she was unlawfully present in the United States. Nevertheless, the managers allowed the worker to remain employed at Champion. Both managers captured on the recordings later told agents that it was common knowledge among management that Champion's workforce was predominantly illegal.

In November 2010, Champion was served with a federal grand jury subpoena requesting, among other documents, the Form I-9's for its employees. In December 2010, Champion responded to the subpoena by providing the requested documents. HSI's audit revealed that approximately 58% of Champion's 451-person workforce were undocumented aliens. Following the issuance of a Notice of Suspect Documents by HSI, all of the undocumented aliens were terminated from Champion by the end of April 2011.

In May 2011, HSI served Notices of Inspection upon Atrium Companies' remaining twelve subsidiaries. A subsequent audit of the Form I-9's produced by Atrium Companies revealed that approximately 8.3% of the company's 3,382 employees (excluding Champion employees) were undocumented aliens. As of the date of the execution of the Agreement to which this Exhibit A is attached, all of the undocumented aliens have been terminated.

All subsidiaries of Atrium Companies, including Champion, have used E-Verify since at least August 2008. Following the issuance of the grand jury subpoena, Atrium Companies revised its immigration compliance procedures to include new policies concerning the proper completion, retention, and auditing of Form I-9's, and for responding to SSA No Match letters. Atrium Companies also retained and consulted with immigration counsel.