

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

CHIEF FOIA OFFICER REPORT

2012

Section I: Steps Taken to Apply the Presumption of Openness

Describe the steps your agency has taken to ensure that the presumption of openness is being applied to all decisions involving the FOIA.

1. Did your agency hold an agency FOIA conference, or otherwise conduct training during this reporting period?

No, FMSHRC did not conduct any training during the past year. FMSHRC is a small agency and has not had any turnover of its FOIA staff since FMSHRC's 2011 Chief FOIA Officer's Report. FMSHRC's FOIA staff consists of the Chief FOIA Officer, the Assistant FOIA Officer and the FOIA Public Liaison, who perform their FOIA duties on a part-time basis.

2. Did your FOIA professionals attend any FOIA training, such as that provided by the Department of Justice?

No, FMSHRC's FOIA staff was unable to attend DOJ's training on the date it was provided in the past year.

3. Did your agency make any discretionary releases of otherwise exempt information?

No, FMSHRC is an adjudicatory agency and its records are generally public. During the past year, the agency has not encountered a request for records subject to discretionary disclosure.

4. What exemptions would have covered the information that was released as a matter of discretion?

This question is not applicable.

5. Describe your agency's process to review records to determine whether discretionary releases are possible.

If a request is made for records which fall under a FOIA exemption, the Chief FOIA Officer discusses the potential for disclosure with the agency's General Counsel, who in turn discusses the matter with the agency's Chairman, if necessary, to discern whether disclosure is permissible.

6. Describe any other initiatives undertaken by your agency to ensure that the presumption of openness is being applied.

The Chief FOIA Officer reviews each non-routine request and assesses whether disclosure is permissible.

7. Did your agency have an increase in the number of responses where records were released in full?

Yes, FMSHRC had 100% full disclosure in 2011 compared to just one instance of partial disclosure in 2010.

8. Did your agency have an increase in the number of responses where records were released in part?

No, FMSHRC had 0 responses where records were released in part in 2011.

Section II: Steps Taken to Ensure that Your Agency Has an Effective System in Place for Responding to Requests

1. Do FOIA professionals within your agency have sufficient IT support?

Yes, FOIA staff have full time direct access to IT professionals, placed physically in the same office.

2. Is there regular interaction between agency FOIA professionals and the Chief FOIA Officer?

Yes, FMSHRC is a small agency and the Chief FOIA Officer is directly engaged in daily FOIA matters.

3. Do your FOIA professionals work with your agency's Open Government Team?

Yes, the Chief FOIA Officer serves on the agency's Open Government team.

4. Describe the steps your agency has taken to assess whether adequate staffing is being devoted to FOIA administration.

In budget preparations, FMSHRC Senior management evaluate the agency's personnel needs based on time commitments of current staff in specific subject areas and determine areas where more personnel resources are needed.

5. Describe any other steps your agency has undertaken to ensure that your FOIA system operates efficiently and effectively.

FMSHRC utilizes a main central email address where a majority of the agency's FOIA requests are received. Emails from this address are automatically forwarded to the FOIA staff. In addition, the Chief FOIA Officer evaluates the FOIA log periodically to ensure that the agency is timely responding to its FOIA requests.

Section III: Steps Taken to Increase Proactive Disclosures

1. Has your agency added new material to your website since last year?

FMSHRC continuously updates its list of pending cases and case statistics, and posts Commission and administrative law judges' orders and decisions, all audio recordings of recent Commission decisional meetings and oral arguments and all reports submitted to Congress.

2. Provide examples of the records, datasets, videos, etc., that have been posted this past year.

FMSHRC maintains a list of its appellate docket on its website, a list of judicial appeals, weekly statistics on new case filings as compared with prior years, and audio recordings of Commission decisional meetings and oral arguments.

3. Describe the system your agency uses to routinely identify records that are appropriate for posting.

The agency's Chairman and SES personnel review all records and determine what agency records are appropriate for posting on the agency's website. That information is shared with the agency's Chief FOIA Officer and Website Coordinator, who ensures the records are appropriately posted.

4. Beyond posting new material, is your agency taking steps to make the information more useful to the public, especially to the community of individuals who regularly access your agency's website, such as soliciting feedback on the content and presentation of the posted material, improving search capabilities, providing explanatory material, etc.?

FMSHRC has a number of guidance documents on the agency's website, including a frequently asked questions section. The agency has contact information on its website to allow for members of the public to submit inquiries. It is also in the process of working with IT professionals to update its website to allow for the possibility of direct public feedback.

5. Describe any other steps taken to increase proactive disclosures at your agency.

FMSHRC has been in the process of procuring an e-filing docket system, which will allow parties to submit pleadings electronically and permit many case-related documents to be made publically available online.

Section IV: Steps Taken to Greater Utilize Technology

Electronic receipt of FOIA requests:

1. Can FOIA requests be made electronically to your agency?

Yes, FOIA requests may be received via email.

2. If your agency processes requests on a decentralized basis, do all components of your agency receive requests electronically?

FMSHRC's FOIA program is centralized.

Online tracking of FOIA requests:

3. Can a FOIA requester track the status of his/her request electronically?

No, not at this time.

4. If not, is your agency taking steps to establish this capability?

No, not at this time.

Use of technology to facilitate processing of requests:

5. Beyond using technology to redact documents, is your agency taking steps to utilize more advanced technology to facilitate overall FOIA efficiency, such as improving record search capabilities, utilizing document sharing platforms for consultations and referrals, or employing software that can sort and de-duplicate documents?

At this time, FMSHRC utilizes a scanner to duplicate and make documents electronic and uses off-the-shelf software programs to manage those electronic documents. Beyond email, it is not utilizing other technology to facilitate the processing of FOIA requests.

6. If so, describe the technological improvements being made.

Please see response to question 5 above.

Section V: Steps Taken to Improve Timeliness in Responding to Requests and Reduce Backlogs

1. Section VII.A of your agency's Annual FOIA Report, entitled "FOIA Requests – Response Time for All Processed Requests," includes figures that show your agency's average response times for processed requests. For agencies utilizing a multi-track system to process requests, there is a category for "simple" requests, which are those requests that are placed in the agency's fastest (non-expedited) track, based on the low volume and/or simplicity of the records requested. If your agency does not utilize a separate track for processing simple requests, answer the question below using the figure provided in your report for your non-expedited requests.
 - a. **Does your agency utilize a separate track for simple requests?**

Yes.
 - b. **If so, for your agency overall, for Fiscal Year 2011, was the average number of days to process simple requests twenty working days or fewer?**

Yes.
 - c. **If your agency does not track simple requests separately, was the average number of days to process non-expedited requests twenty working days or fewer?**

See answers above.
2. Sections XII.D.(2) and XII.E.(2) of your agency's Annual FOIA Report, entitled "Comparison of Numbers of Requests/Appeals from Previous and Current Annual Report – Backlogged Requests/Appeals," show the numbers of any backlog of pending requests or pending appeals from Fiscal Year 2011 as compared to Fiscal Year 2010. You should refer to those numbers when completing this section of your Chief FOIA Officer Report. In addition, Section VII.E, entitled "Pending Requests – Ten Oldest Pending Requests," and Section VI.C.(5), entitled "Ten Oldest Pending Administrative Appeals," from both Fiscal Year 2010 and Fiscal Year 2011 should be used for this section.
 - a. **If your agency had a backlog of requests at the close of Fiscal Year 2011, did that backlog decrease as compared with Fiscal Year 2010?**

FMSHRC did not have a backlog in either FY2011 or FY2010.

- b. If your agency had a backlog of administrative appeals in Fiscal Year 2011, did that backlog decrease as compared to Fiscal Year 2010?**

FMSHRC did not have a backlog in either FY2011 or FY2010.

- c. In Fiscal Year 2011, did your agency close the ten oldest requests that were pending as of the end of Fiscal Year 2010?**

Yes.

- d. In Fiscal Year 2011, did your agency close the ten oldest administrative appeals that were pending as of the end of Fiscal Year 2010?**

FMSHRC did not have any pending administrative appeals in FY2011.

- 3. If you answered “no” to any of the above questions, describe why that has occurred. In doing so, answer the following questions then include any additional explanation:**

Request Backlog:

- a. Was the lack of a reduction in the request backlog a result of an increase in the number of incoming requests?**

This question is not applicable.

- b. Was the lack of a reduction in the request backlog caused by a loss of staff?**

This question is not applicable.

- c. Was the lack of a reduction in the request backlog caused by an increase in the complexity of the requests received?**

This question is not applicable.

- d. What other causes, if any, contributed to the lack of a decrease in the request backlog?**

This question is not applicable.

Administrative Appeal Backlog:

- e. Was the lack of a reduction in the backlog of administrative appeals a result of an increase in the number of incoming appeals?**

This question is not applicable.

- f. Was the lack of a reduction in the appeal backlog caused by a loss of staff?**

This question is not applicable.

- g. Was the lack of a reduction in the appeal backlog caused by an increase in the complexity of the appeals received?**

This question is not applicable.

- h. What other causes, if any, contributed to the lack of a decrease in the appeal backlog?**

This question is not applicable.

- 1. Does your agency routinely set goals and monitor the progress of your FOIA caseload?**

Yes, FMSHRC strives to complete and close out all FOIA requests within 20 business days of receipt.

- 2. Has your agency increased its FOIA staffing?**

No, FMSHRC did not increase its staffing in FY2011.

- 3. Has your agency made IT improvements to increase timeliness?**

No, FMSHRC has not made any IT improvements in FY2011.

- 4. If your agency receives consultations from other agencies, has your agency taken steps to improve the efficiency of the handling of such consultations, such as utilizing IT to share the documents, or establishing guidelines or agreements with other agencies on the handling of particular information to speed up or eliminate the need for consultations?**

No, FMSHRC has not received consultations from other agencies.

Use of FOIA's Law Enforcement "Exclusions"

1. Did your agency invoke a statutory exclusion during Fiscal Year 2011?

No.

2. If so, what is the total number of times exclusions were invoked?

This question is not applicable.

Spotlight on Success

FMSHRC has received a number of requests for information that are not contained in records possessed by the agency. However, the agency has utilized its docketing system to obtain the requested information by generating reports for the requester. This permits the agency to expeditiously gather the information requested at minimum expense for both the requester and the agency.