

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

CHIEF FOIA OFFICER REPORT

2013

Linda H. Ghosal, Esq.
Chief FOIA Officer

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

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 2012 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. A member of FMSHRC's FOIA staff, the Assistant FOIA Officer, did attend DOJ's FOIA training on June 20, 2012.

2. 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.

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

This question is not applicable.

4. Provide a narrative description, or some examples of, the types of information that your agency released as a matter of discretion.

This question is not applicable.

5. 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. 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.

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. 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.

3. Has your agency assessed whether adequate staffing is being devoted to FOIA administration?

Yes, during recent budget considerations, in evaluating the agency's personnel needs, FMSHRC Senior management identified the potential need to hire an additional full-time employee, who would assist in the administration of FOIA, in addition to other agency duties.

4. Describe any other steps your agency has undertaken to ensure that your FOIA system operates efficiently and effectively, such as conducting self-assessments to find greater efficiencies, improving search processes, streamlining consultations, eliminating redundancy, etc.

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. Provide examples of material that your agency has posted this past year.

FMSHRC continuously updates its list of pending cases on its appellate docket, its list of judicial appeals, and weekly statistics on new case filings as compared with prior years. FMSHRC also 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. 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 on the site, creating mobile applications, providing explanatory material, etc.?**

Yes, FMSHRC has a number of guidance documents on the agency's website, including a frequently asked questions section. Currently, the agency has contact information on its website to allow for members of the public to submit inquiries. FMSHRC is in the process of re-designing its website. In addition, it is working on an e-case management system, which in the future, would allow public access to limited data in the agency's docket system.

- 3. If so, provide examples of such improvements.**

In the newly re-designed website, FMSHRC will contain an online comment section that will quickly and easily allow the public to submit comments, suggestions and feedback directly to the agency from its website. The e-case management system will allow parties to FMSHRC proceedings to access docket information directly from the web, which will improve the access to information more efficiently.

- 4. Describe any other steps taken to increase proactive disclosures at your agency.**

FMSHRC's website re-design and an e-case management system are the two major initiatives that will enable the agency to improve in making proactive disclosures.

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 so, describe the information that is provided to the requester through the tracking system. For example, some tracking systems might tell the requester whether the request is “open” or “closed,” while others will provide further details to the requester throughout the course of the processing, such as “search commenced” or “documents currently in review.” List the specific types of information that are available through your agency's tracking system.

This question is not applicable.

5. In particular, does your agency tracking system provide the requester with an estimated date of completion for his or her request?

This question is not applicable.

6. If your agency does not provide online tracking of requests, is your agency taking steps to establish this capability?

No, not at this time.

Use of technology to facilitate processing of requests:

7. 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 stores them in a designated location on its network, which is accessible by all FOIA staff. It uses off-the-shelf software programs to manage those electronic documents. Its e-case management system will utilize more advanced technology to manage, search and share records related to the agency's docket.

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

FMSHRC's e-case management system will allow individuals within the agency to access the contents of a case file from any work terminal and will provide limited access to parties via the internet. In the future, access may be expanded to

members of the public via the internet. A majority of FMSHRC's FOIA requests are for records contained in case files.

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 2012, 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?

This question is not applicable. Please 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 2012 as compared to Fiscal Year 2011. 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 2011 and Fiscal Year 2012 should be used for this section.

a. If your agency had a backlog of requests at the close of Fiscal Year 2012, did that backlog decrease as compared with Fiscal Year 2011?

FMSHRC did not have a backlog in either FY2012 or FY2011.

- b. If your agency had a backlog of administrative appeals in Fiscal Year 2012, did that backlog decrease as compared to Fiscal Year 2011?**

FMSHRC did not have a backlog in either FY2012 or FY2011.

- c. In Fiscal Year 2012, did your agency close the ten oldest requests that were pending as of the end of Fiscal Year 2011?**

Yes.

- d. In Fiscal Year 2012, did your agency close the ten oldest administrative appeals that were pending as of the end of Fiscal Year 2011?**

FMSHRC did not have any pending administrative appeals at the end of the fiscal year.

- 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:

- a. **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.

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

This question is not applicable.

- c. **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.

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

This question is not applicable.

4. **OIP has issued guidance encouraging agencies to make interim releases whenever they are working on requests that involve a voluminous amount of material or require searches in multiple locations. By providing rolling releases to requesters agencies facilitate access to the requested information. If your agency had a backlog in Fiscal Year 2012, please provide an estimate of the number of cases in the backlog where a substantive, interim response was provided during the fiscal year, even though the request was not finally closed.**

This question is not applicable.

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

During the past year, FMSHRC has received requests for information, as opposed to specific documents. If the agency was in possession of the information, it provided such to the requester. Where the agency was not in possession of such information, FOIA staff obtained contact information and provided that to the requester where the requester may be able to obtain the information he or she was seeking.