

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

CHIEF FOIA OFFICER REPORT

2014

Linda H. Ghosal, Esq.
Chief FOIA Officer

Section I: Steps Taken to Apply the Presumption of Openness

The guiding principle underlying the President's FOIA Memorandum and the Attorney General's FOIA Guidelines is 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. To do so, you should answer the questions listed below and then include any additional information you would like to describe how your agency is working to apply the presumption of openness.

FOIA Training:

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

Answer: 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 2013 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. All FOIA matters are centrally handled with the Chief FOIA Officer's involvement and often, with consultation of the agency's General Counsel. As such, all FOIA staff have been apprised of the presumption of openness and FMSHRC has acted in favor of disclosure on FOIA matters.

2. If so, please provide the number of conferences or trainings held, a brief description of the topics covered, and an estimate of the number of participants from your agency who were in attendance.

Answer: N/A

3. Did your FOIA professionals attend any FOIA training during the reporting period such as that provided by the Department of Justice?

Answer: No. FMSHRC's FOIA staff, consisting of three individuals, working on a part-time basis on FOIA, have been handling FOIA for several years and have attended training in past years, but not during the current reporting period.

4. Provide an estimate of the percentage of your FOIA professionals who attended substantive FOIA training during this reporting period.

Answer: N/A

5. OIP has issued guidance that [every agency should make core, substantive FOIA training available to all their FOIA professionals at least once each year](#). Provide your agency's plan for ensuring that such training is offered to all agency FOIA professionals by March 2015. Your plan should anticipate an upcoming reporting requirement for your 2015 Chief FOIA Officer Reports that will ask whether all agency FOIA professionals attended substantive FOIA training in the past year.

Answer: The Chief FOIA Officer and Assisant FOIA Officer will attend substantive training provided by OIP during the upcoming year.

Outreach:

6. Did your FOIA professionals engage in any outreach and dialogue with the requester community or open government groups regarding your administration of the FOIA? If so, please briefly discuss that engagement.

Answer: No.

Discretionary Disclosures:

In his 2009 FOIA Guidelines, the Attorney General strongly encouraged agencies to make discretionary releases of information even when the information might be technically exempt from disclosure under the FOIA. OIP encourages agencies to make such discretionary releases whenever there is no foreseeable harm from release.

7. Does your agency have a formal process in place to review records for discretionary release? If so, please briefly describe this process. If your agency is decentralized, please specify whether all components at your agency have a process in place for making discretionary releases.

Answer: Yes, 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.

8. During the reporting period did your agency make any discretionary releases of otherwise exempt information?

Answer: Yes.

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

Answer: Exemption 5.

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

Answer: The records disclosed consisted of interagency and intra-agency communications pertaining to sequestration.

11. If your agency was not able to make any discretionary releases of information, please explain why.

Answer: N/A

Other Initiatives:

12. Did your agency post all of the required quarterly FOIA reports for Fiscal Year 2013? If not, please explain why not and what your plan is for ensuring that such reporting is successfully accomplished for Fiscal Year 2014.

Answer: Yes, FMSHRC posted all quarterly reports pursuant to DOJ OIP's instructions. However, technical difficulties prevented the FY2013 quarter 4 report from appearing on FOIA.gov. These difficulties have since been resolved.

13. Describe any other initiatives undertaken by your agency to ensure that the presumption of openness is being applied. If any of these initiatives are online, please provide links in your description.

Answer: FMSHRC's newly designed website was launched this fiscal year (www.fmshrc.gov). Viewers can still access all the data previously contained on the agency's prior website, including Commission and administrative law judges' orders and decisions, all audio recordings of recent Commission decisional meetings and oral arguments, a list of the Commission's current appellate docket, and all reports submitted to Congress. However, the re-design is much more user-friendly, making it easier to navigate the site and find pertinent material.

In addition, FMSHRC has digitized and made available in PDF format on its website its reporter from the inception of the agency to the present, in which all

substantive trial and appellate decisions and orders are issued
(<http://www.fmsihrc.gov/decisions/bluebook>).

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

As the Attorney General emphasized in his FOIA Guidelines, "[a]pplication of the proper disclosure standard is only one part of ensuring transparency. Open government requires not just a presumption of disclosure, but also an effective system for responding to FOIA requests." It is essential that agencies effectively manage their FOIA program.

Describe here the steps your agency has taken to ensure that your management of your FOIA program is effective and efficient. To do so, answer the questions below and then include any additional information that you would like to describe how your agency ensures that your FOIA system is efficient and effective.

Personnel:

During Sunshine Week 2012 OPM announced the creation of a new job series entitled the Government Information Series, to address the work performed by FOIA and Privacy Act professionals. Creation of this distinct job series was a key element in recognizing the professional nature of their work.

1. Has your agency converted all of its FOIA professionals to the new Government Information Specialist job series?

Answer: No.

2. If not, what proportion of personnel has been converted to the new job series?

Answer: N/A

3. If not, what is your plan to ensure that all FOIA professionals' position descriptions are converted?

Answer: FMSHRC is a small agency. As such, FMSHRC does not have staff dedicated exclusively to FOIA. Thus, this job series classification is not applicable.

Processing Procedures:

4. For Fiscal Year 2013 did your agency maintain an average of ten or less calendar days to adjudicate requests for expedited processing? If not, describe the steps your agency will take to ensure that requests for expedited processing are adjudicated within ten calendar days or less.

Answer: Yes.

5. Has your agency taken any steps to make the handling of consultations and referrals more efficient and effective, such as entering into agreements with other agencies or components on how to handle certain categories or types of records involving shared equities so as to avoid the need for a consultation or referral altogether, or otherwise implementing procedures that speed up or eliminate the need for consultations. If so, please describe those steps.

Answer: No. FMSHRC receives very few consultations and referrals each year. For those received, the agency currently handles them in an expeditious and effective manner.

Requester Services:

6. Do you use e-mail or other electronic means to communicate with requesters when feasible?

Answer: Yes. Email is often our primary means of communication.

7. Does your agency notify requesters of the mediation services offered by the Office of Government Information Services (OGIS) at NARA?

Answer: No. Until FY 2013, FMSHRC has not had any appeals of its FOIA decisions. The one appeal it did have was decided in the requester's favor, thus, making the need for mediation services unnecessary. Going forward, FMSHRC plans to include information regarding the mediation services offered by OGIS.

8. 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, eliminating redundancy, etc.

Answer: FMSHRC's FOIA staff does everything possible to fulfill all FOIA requests within the 20-day statutory requirement. Should additional time be required, the Chief FOIA Officer is informed and monitors the processing of such requests to ensure they are handled expeditiously.

Section III: Steps Taken to Increase Proactive Disclosures

Both the President and Attorney General focused on the need for agencies to work proactively to post information online without waiting for individual requests to be received.

Describe here the steps your agency has taken both to increase the amount of material that is available on your agency website, and the usability of such information, including providing examples of proactive disclosures that have been made during this past reporting period (i.e., from March 2013 to March 2014). In doing so, answer the questions listed below and describe any additional steps taken by your agency to make and improve proactive disclosures of information.

Posting Material:

1. Do your FOIA professionals have a system in place to identify records for proactive disclosures?

Answer: Yes, FMSHRC's General Counsel and Office of the Chairman identify records for proactive disclosure.

If so, describe the system that is in place.

Answer: FMSHRC is an adjudicatory agency and many of its records are public. As a routine matter, the agency publishes its decisions and orders on its website and posts recordings of appellate oral arguments and public meetings. The agency also posts on its website all reports it is required to submit within the Federal government.

2. Provide examples of material that your agency has posted this past reporting period, including links to where this material can be found online.

Answer:

1. Decisions and orders: <http://www.fmshrc.gov/decisions>

2. Audio recordings of oral arguments and public meetings: <http://www.fmshrc.gov/meetings-arguments>

3. Reports: <http://www.fmshrc.gov/reports-budget-submissions>

4. Pending appellate docket information: <http://www.fmshrc.gov/content/cases-currently-review-commission-1>

Making Posted Material More Useful:

3. Beyond posting new material, is your agency taking steps to make the posted 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 posted material, improving search capabilities on the site, posting material in open formats, making information available through mobile applications, providing explanatory material, etc.?

Answer: Yes.

4. If so, provide examples of such improvements.

Answer: FMSHRC re-designed its website in the past fiscal year, making the site more user-friendly. The site is easier to navigate as the material is more clearly laid

out and organized in simpler categories. All documents are accessible in plain text and PDF format. The site now contains enhanced search capabilities of FMSHRC decisions. In addition, the site contains a PDF version of each volume of the agency's official reporter publishing all substantive agency decisions and orders.

5. Did your agency use any means to publicize or highlight important proactive disclosures for public awareness? If so, was social media utilized?

Answer: No.

6. Has your agency encountered challenges that make it difficult to post records you otherwise would like to post? If so, please briefly explain what those challenges are.

Answer: No.

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

Answer: None.

Section IV: Steps Taken to Greater Utilize Technology

A key component of the President's FOIA Memorandum was the direction to "use modern technology to inform citizens about what is known and done by their Government." In addition to using the internet to make proactive disclosures, agencies should also be exploring ways to utilize technology in responding to requests. Over the past several years agencies have reported widespread use of technology in receiving and tracking FOIA requests and preparing agency Annual FOIA Reports. For 2014, as we have done over the past years, the questions have been further refined and now also address different, more innovative aspects of technology use.

Online tracking of FOIA requests:

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

Answer: No.

2. If yes, how is this tracking function provided to the public? For example, is it being done through regularly updated FOIA logs, online portals, or other mediums?

Answer: N/A

3. 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.

Answer: N/A

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

Answer: N/A

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

Answer: No, FMSHRC is a small agency with limited personnel capabilities. The agency receives a relatively low number of requests annually (less than 200), which does not justify the time and expense of implementing a system to provide real-time tracking of requests. In addition, most requests are fulfilled quickly and within the statutory time frame. Moreover, FOIA officials keep open lines of communication with requesters and often inform them of the status of their requests via email, especially if a delay is anticipated.

Use of technology to facilitate processing of requests:

6. 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?

Answer: Yes.

If so, describe the technological improvements being made.

Answer: FMSHRC has recently implemented an electronic case management system that will enable FOIA staff to access the contents of all case files electronically, improving efficiency and potentially shortening the time for processing requests. Moreover, the electronic documents will be easier to share with requesters.

7. Are there additional technological tools that would be helpful to achieving further efficiencies in your agency's FOIA program?

Answer: At this time, FMSHRC is not aware of additional technological tools that would further assist FOIA staff.

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

The President and the Attorney General have emphasized the importance of improving timeliness in responding to requests. This section addresses both time limits and backlog

reduction. Backlog reduction is measured both in terms of numbers of backlogged requests or appeals and by looking at whether agencies closed their ten oldest requests, appeals, and consultations. *For the figures required in this Section, please use those contained in the specified sections of your agency's 2013 Annual FOIA Report and, when applicable, your agency's 2012 Annual FOIA Report.*

Simple Track Requests:

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.

- a. Does your agency utilize a separate track for simple requests?

Answer: Yes.

- b. If so, for your agency overall, for Fiscal Year 2013, was the average number of days to process simple requests twenty working days or fewer?

Answer: 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?

Answer: N/A

Backlogs and "Ten Oldest" Requests, Appeals and Consultations:

2. Section XII.A of your agency's Annual FOIA Report, entitled "Backlogs of FOIA Requests and Administrative Appeals" shows the numbers of any backlogged requests or appeals from the fiscal year. Section VII.E, entitled "Pending Requests – Ten Oldest Pending Requests," Section VI.C.(5), entitled "Ten Oldest Pending Administrative Appeals," and Section XII.C., entitled "Consultations on FOIA Requests – Ten Oldest Consultations Received from Other Agencies and Pending at Your Agency," show the ten oldest pending requests, appeals, and consultations. You should refer to these numbers from your Annual FOIA Reports for both Fiscal Year 2012 and Fiscal Year 2013 when completing this section of your Chief FOIA Officer Report.

Backlogs

- a. If your agency had a backlog of requests at the close of Fiscal Year 2013, did that backlog decrease as compared with Fiscal Year 2012?

Answer: FMSHRC did not have a backlog.

- b. If your agency had a backlog of administrative appeals in Fiscal Year 2013, did that backlog decrease as compared to Fiscal Year 2012?

Answer: FMSHRC did not have a backlog.

Ten Oldest Requests

- c. In Fiscal Year 2013, did your agency close the ten oldest requests that were pending as of the end of Fiscal Year 2012?

Answer: Yes.

- d. If no, please provide the number of these requests your agency was able to close by the end of the fiscal year, as listed in Section VII.E of your Fiscal Year 2012 Annual FOIA Report. If you had less than ten total oldest requests to close, please indicate that. For example, if you only had seven requests listed as part of your "ten oldest" in Section VII.E. and you closed two of them, you should note that you closed two out of seven "oldest" requests.

Answer: N/A

Ten Oldest Appeals

- e. In Fiscal Year 2013, did your agency close the ten oldest administrative appeals that were pending as of the end of Fiscal Year 2012?

Answer: N/A

- f. If no, please provide the number of these appeals your agency was able to close, as well as the number of appeals your agency had in Section VI.C.(5) of your Fiscal Year 2012 Annual FOIA Report.

Answer: N/A

Ten Oldest Consultations

- g. In Fiscal Year 2013, did your agency close the ten oldest consultations received by your agency and pending as of the end of Fiscal Year 2012?

Answer: N/A

- h. If no, please provide the number of these consultations your agency did close, as well as the number of pending consultations your agency listed in Section XII.C. of your Fiscal Year 2012 Annual FOIA Report.

Answer: N/A

Reasons for Any Backlogs:

3. If you answered “no” to any of the questions in item 2 above, describe why your agency was not able to reduce backlogs and/or close the ten oldest pending requests, appeals, and consultations. In doing so, answer the following questions then include any additional explanation:

Request and/or Appeal Backlog

- a. Was the lack of a reduction in the request and/or appeal backlog a result of an increase in the number of incoming requests or appeals?

Answer: Yes.

- b. Was the lack of a reduction in the request and/or appeal backlog caused by a loss of staff?

Answer: No.

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

Answer: No.

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

Answer: Several requests were received on the final day or days of the fiscal year and thus were not processed or fulfilled until the next fiscal year. However, they were completed timely (within the statutory time period).

“Ten oldest” Not Closed

- e. Briefly explain the obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2012.

Answer: N/A

- f. If your agency was unable to close any of its ten oldest requests or appeals because you were waiting to hear back from other agencies on consultations you sent, please provide the date the request was initially received by your agency, the date when your agency sent the consultation, and the date when you last contacted the agency where the consultation was pending.

Answer: N/A

Plans for Closing of Ten Oldest Pending Requests, Appeals, and Consultations and Reducing Backlogs:

Given the importance of these milestones, it is critical that Chief FOIA Officers assess the causes for not achieving success and create plans to address them.

4. If your agency did not close its ten oldest pending requests, appeals, and consultations, please provide a plan describing how your agency intends to close those “ten oldest” requests, appeals, and consultations during Fiscal Year 2014.

Answer: N/A

5. If your agency had a backlog of more than 1000 pending requests and did not reduce that backlog in Fiscal Year 2013, provide your agency’s plan for achieving backlog reduction in the year ahead.

Answer: N/A

Interim Responses:

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.

6. Does your agency have a system in place to provide interim responses to requesters when appropriate?

Answer: Yes.

7. If your agency had a backlog in Fiscal Year 2013, please provide an estimate of the number or percentage of cases in the backlog where a substantive, interim response was provided during the fiscal year, even though the request was not finally closed.

Answer: N/A

Use of FOIA’s Law Enforcement “Exclusions”

In order to increase transparency regarding the use of the FOIA’s statutory law enforcement exclusions, which authorize agencies under certain exceptional circumstances to “treat the records as not subject to the requirements of [the FOIA],” 5 U.S.C. § 552(c)(1), (2), (3), please answer the following questions:

1. Did your agency invoke a statutory exclusion during Fiscal Year 2013?

Answer: No.

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

Answer: N/A

Spotlight on Success

Out of all the activities undertaken by your agency since March 2013 to increase transparency and improve FOIA administration, please briefly describe here at least one success story that you would like to highlight as emblematic of your agency's efforts. The success story can come from any one of the five key areas. As noted above, these agency **success stories** will be highlighted during Sunshine Week by OIP. To facilitate this process, all agencies should use bullets to describe their success story and limit their text to a half page. The success story is designed to be a quick summary of a key achievement. A complete description of all your efforts will be contained in the body of your Chief FOIA Officer Report.

Answer: During the past fiscal year, FMSHRC's staff worked extremely hard to make two key changes that the agency anticipates will greatly improve the efficiency of the agency's operations: (1) the re-design of the agency's website and (2) the design and implementation of the agency's new electronic case management system. Both will provide agency staff with greater and more efficient access to records across departments and thereby enable FOIA staff to better serve the public in providing information and agency records.