

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

CHIEF FOIA OFFICER REPORT Medium-Volume Agencies

2018

(Reporting period - March 2017 to March 2018)

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Section 1: Steps Taken to Apply the Presumption of Openness

The guiding principle underlying DOJ's FOIA Guidelines is the presumption of openness.

Please answer the following questions in order to describe the steps your agency has taken to ensure that the presumption of openness is being applied to all decisions involving the FOIA. You may also include any additional information that illustrates how your agency is working to apply the presumption of openness.

A. FOIA Training

1. Did your FOIA professionals or the personnel at your agency who have FOIA responsibilities attend any substantive FOIA training or conference during the reporting period such as that provided by the Department of Justice?

Answer: While our Chief FOIA Officer and FOIA Public Liaison were able to attend the Chief FOIA Officer's Council Meeting on July 27, 2017, our staff members did not attend a substantive training course provided by DOJ. However, our Chief FOIA Officer, Assistant FOIA Officer, and FOIA Public Liaison attempted, unsuccessfully, to register for the FOIA for Attorneys and Access Professionals on two occasions during the 2017 year, but the courses were full. In one instance, we attempted registration for the June course only two days after registration had opened and we still were unable to get in to the class.

2. If yes, please provide a brief description of the type of training attended or conducted and the topics covered.

Answer: The Chief FOIA Officer's Council Meeting held at NARA on July 27, 2017, focused on requester services and improving coordination between agency FOIA Public Liaisons and OGIS in light of the FOIA Improvement Act of 2016.

3. Provide an estimate of the percentage of your FOIA professionals and staff with FOIA responsibilities who attended substantive FOIA training during this reporting period.

Answer: 0.00% of our FOIA professionals attended substantive FOIA training during this period.

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4. OIP has **directed agencies** to “take steps to ensure that all of their FOIA professionals attend substantive FOIA training at least once throughout the year.” If your response to the previous question is that less than 80% of your FOIA professionals attended training, please explain your agency’s plan to ensure that all FOIA professionals receive or attend substantive FOIA training during the next reporting year.

Answer: Moving forward, each of our FOIA professionals will attend at least one core training session offered by OIP during each reporting period. We will try our best to register for the necessary courses on the very first day of open registration as we believe this will give us a greater chance of getting seats in the classes.

B. Outreach

5. Did your FOIA professionals engage in any outreach or dialogue with the requester community or open government groups regarding your administration of the FOIA?

Answer: No.

C. Other Initiatives

6. Describe any efforts your agency has undertaken to inform non-FOIA professionals of their obligations under the FOIA.

Answer: We provide FOIA training to all FMSHRC staff, including all new hires within their first 60 days. This year, we held FOIA training for new staff on May 15, 2017. Additionally, posted on our agency’s intranet is a list of “Frequently Asked FOIA Questions” and a Memorandum explaining to FMSHRC’s non-FOIA staff how to recognize a FOIA request, the agency’s obligations under the FOIA, and how we must all handle FOIA requests under different scenarios.

7. If there are any other initiatives undertaken by your agency to ensure that the presumption of openness is being applied, please describe them here.

Answer: In addition to posting all FY Quarterly reports, Annual FOIA reports, Chief FOIA Officer reports, and FOIA Logs on our agency’s website at <http://www.fmshrc.gov/foia>, viewers can access all Commission and Administrative Law Judges’ orders and decisions (<http://www.fmshrc.gov/decisions>), all audio recordings of recent Commission decisional meetings and oral arguments (<http://www.fmshrc.gov/meetings-arguments>), a list of the Commission’s current appellate docket (<http://www.fmshrc.gov/content/cases-review>), and all reports submitted to Congress (<http://www.fmshrc.gov/reports-budget-submissions>). Also, FMSHRC’s case reporter has been digitized and made available in PDF format on the website. This digitized reporter, in which all substantive trial and appellate decisions and orders are issued, covers all cases from the agency’s inception to the present and can be found at <http://www.fmshrc.gov/decisions/bluebook>.

To assist the public in independently accessing the information, FMSHRC launched a newly designed website in FY 2015, which can be found at www.fmshrc.gov. The re-design is much more user-friendly, making it easier to navigate the site and find pertinent material.

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Additionally, the agency is currently constructing a section of the website that will allow the public to search the status of cases before the Commission.

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

DOJ's FOIA Guidelines emphasize that "[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.

Please answer the following questions to describe the steps your agency has taken to ensure that the management of your FOIA program is effective and efficient. You should also include any additional information that describes your agency's efforts in this area.

1. For Fiscal Year 2017, what was the average number of days your agency reported for adjudicating requests for expedited processing? Please see Section VIII.A. of your agency's Fiscal Year 2017 Annual FOIA Report.

Answer: Two days.

2. If your agency's average number of days to adjudicate requests for expedited processing was above ten calendar days, please describe the steps your agency will take to ensure that requests for expedited processing are adjudicated within ten calendar days or less.

Answer: N/A

3. During the reporting period, did your agency conduct a self-assessment of its FOIA program? If so, please describe the methods used, such as reviewing Annual Report data, using active workflows and track management, reviewing and updating processing procedures, etc.

- Note: In September 2017, OIP released a FOIA Self-Assessment Toolkit as a resource for agencies conducting a self-assessment of their FOIA program. The Toolkit is available on OIP's website for all agencies to use.

Answer: No.

4. The FOIA Improvement Act of 2016 requires additional notification to requesters about the services provided by the agency's FOIA Public Liaison. Please provide an estimate of the number of times requesters sought assistance from your agency's FOIA Public Liaison during FY 2017 (please provide a total number or an estimate of the number).

Answer: Zero.

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5. Optional Survey Question: If possible, please provide an estimate of the average number of pages that your agency processes for each request. You may provide estimates for each track.

Answer: N/A

6. If there are any other steps your agency has undertaken to ensure that your FOIA system operates efficiently and effectively, such as improving search processes, eliminating redundancy, etc., please describe them here.

Answer: FMSHRC's FOIA staff does everything possible to fully complete all FOIA requests within the 20-day statutory period. Should additional time be required, the Chief FOIA Officer is informed and monitors the processing of such requests to ensure they are handled expeditiously. The Chief and Assistant FOIA officers are also copied on all progress of every request so that in the event that one officer is unavailable, the other, having the full background, can step in quickly to complete the request.

Section III: Steps Taken to Increase Proactive Disclosures

The Department of Justice has long focused on the need for agencies to work proactively to post information online without waiting for individual requests to be received.

Please answer the following questions to describe the steps your agency has taken to increase the amount of material that is available on your agency websites. In addition to the questions below, you should also describe any additional steps taken by your agency to make and improve proactive disclosures of information.

1. Provide examples of material that your agency has proactively disclosed during the past reporting year, including links to the posted material.

Answer:

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

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

3. Pending appellate docket information: <http://www.fmshrc.gov/content/cases-review>

2. Did your agency use any means to publicize or highlight important proactive disclosures for public awareness? If yes, please describe these efforts.

Answer: On the homepage of FMSHRC's website, there is a link to a section of the site entitled "Latest FMSHRC News." This section is used to highlight any new proactive disclosures, as well as the latest and important information about the agency.

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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?

Answer: Yes.

4. If yes, please provide examples of such improvements.

Answer: In FY 2015 FMSHRC re-designed its website to make it 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 for 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. In 2016, FMSHRC continued to devise new ways to improve the website experience for our visitors. In the meantime, we do our best to keep the website updated and running smoothly for its visitors.

5. If there are any other steps your agency has taken to improve proactive disclosures, please describe them here. For example, has your agency engaged requesters in determining how and what to post? Has your agency used web analytics to inform your proactive disclosures?

Answer: FMSHRC is currently constructing a new section of the agency's website that will allow the public to conduct status checks of its cases via an online database. No, we have not engaged requesters, as we are generally aware that the concerned public is most interested in having information from our cases posted on our website, which we already do as a matter of course. No, we have not used web analytics.

Section IV: Steps Taken to Greater Utilize Technology

A key component of FOIA administration is using technology to make information more accessible. In addition to using the internet to make proactive disclosures, agencies should also be exploring ways to utilize technology in responding to requests.

Please answer the following questions to describe how your agency is utilizing technology to improve its FOIA administration and the public's access to information. You should also include any additional information that describes your agency's efforts in this area.

1. Has your agency identified any best practices to leverage 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? If yes please describe the best practices, the types of technology used and the impact on your agency's processing.

Answer: Yes. We fill nearly all of our FOIA requests through email. By processing requests via email, it saves a significant amount of time when communicating with requesters and it allows us to provide the requested information in the most prompt manner. Additionally, when addressing requests that seek records from our cases, we are able to perform searches and

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retrieve documents instantly from our internal customized docket database. Utilizing our available technology has had an enormous impact on our ability to efficiently and quickly process our FOIA requests, which is reflected in our agency's processing time. In particular, for fiscal year 2017, our average processing time was 2.07 days for simple requests and 3.5 days for complex requests.

2. Did your agency successfully post all four quarterly reports for Fiscal Year 2017?

Answer: Yes.

3. If your agency did not successfully post all quarterly reports, with information appearing on FOIA.gov, please explain why and provide your agency's plan for ensuring that such reporting is successful in Fiscal Year 2018.

Answer: N/A

4. The FOIA Improvement Act of 2016 requires all agencies to post the raw statistical data used to compile their Annual FOIA Reports. Please provide the link to this posting for your agency's Fiscal Year 2016 Annual FOIA Report and, if available, for your agency's Fiscal Year 2017 Annual FOIA Report.

Answer: To date, our agency has not posted the raw statistical data used to compile our annual FOIA reports for Fiscal Years 2016 and 2017. We intend to have it posted within the coming weeks.

5. If there are any other steps your agency has taken to improve use of technology in FOIA, please describe them here.

Answer: FMSHRC is currently constructing a new section of the agency's website that will allow the public to conduct status checks of its cases and to access certain documents via an online database. This feature will greatly reduce the need to request certain information through the FOIA.

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

The Department of Justice has emphasized the importance of improving timeliness in responding to requests. This section of your Chief FOIA Officer Report 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 the numbers contained in the specified sections of your agency's 2017 Annual FOIA Report and, when applicable, your agency's 2016 Annual FOIA Report.

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A. Simple Track

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.

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

Answer: Yes.

2. If so, for your agency overall in Fiscal Year 2017, was the average number of days to process simple requests twenty working days or fewer?

Answer: Yes.

3. Please provide the percentage of requests processed by your agency in Fiscal Year 2017 that were placed in your simple track.

Answer: 75.5%

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

Answer: N/A

B. Backlogs

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. You should refer to these numbers from your Annual FOIA Reports for both Fiscal Year 2016 and Fiscal Year 2017 when completing this section of your Chief FOIA Officer Report.

BACKLOGGED REQUESTS

5. If your agency had a backlog of requests at the close of Fiscal Year 2017, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2016?

Answer: No. FMSHRC's backlog increased for FY 2017 by two requests. FMSHRC did not have a backlog at the end of FY 2016.

6. If not, explain why and describe the causes that contributed to your agency not being able to reduce its backlog. When doing so, please also indicate if any of the following were contributing factors:

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- An increase in the number of incoming requests.
- A loss of staff.
- An increase in the complexity of the requests received. If possible, please provide examples or briefly describe the types of complex requests contributing to your backlog increase.
- Any other reasons – please briefly describe or provide examples when possible.

Answer: One of the backlogged requests for FY 2017 was inadvertently sent to the FOIA “junk” folder when it was received by our email server. It was not discovered until well after the first 20 days had passed. The second backlogged request was complex in that it required a substantial amount of review time and consultation with other FMSHRC personnel because it involved the release of two years’ worth of meeting minutes for FMSHRC’s management officials.

7. If you had a request backlog please report the percentage of requests that make up the backlog out of the total number of requests received by your agency in Fiscal Year 2017.

Answer: 1.9%

BACKLOGGED APPEALS

8. If your agency had a backlog of appeals at the close of Fiscal Year 2017, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2016?

Answer: FMSHRC did not have a backlog of appeals for FY 2016 or FY 2017.

9. If not, explain why and describe the causes that contributed to your agency not being able to reduce its backlog. When doing so, please also indicate if any of the following were contributing factors:

- An increase in the number of incoming appeals.
- A loss of staff.
- An increase in the complexity of the requests received. If possible, please provide examples or briefly describe the types of complex requests contributing to your backlog increase.
- Any other reasons – please briefly describe or provide examples when possible.

Answer: N/A

10. If you had an appeal backlog please report the percentage of appeals that make up the backlog out of the total number of appeals received by your agency in Fiscal Year 2017. If your agency did not receive any appeals in Fiscal Year 2017 and/or has no appeal backlog, please answer with "N/A."

Answer: N/A

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C. Backlog Reduction Plans

11. In the 2017 guidelines for Chief FOIA Officer Reports, any agency with a backlog of over 1000 requests in Fiscal Year 2016 was asked to provide a plan for achieving backlog reduction in the year ahead. Did you agency implement a backlog reduction plan last year? If so, describe your agency's efforts in implementing this plan and note if your agency was able to achieve backlog reduction in Fiscal Year 2017?

Answer: No. A backlog reduction plan was not required for FMSHRC.

12. If your agency had a backlog of more than 1,000 requests in Fiscal Year 2017, what is your agency's plan to reduce this backlog during Fiscal Year 2018?

Answer: N/A

D. Status of Ten Oldest Requests, Appeals, and Consultations

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 2016 and Fiscal Year 2017 when completing this section of your Chief FOIA Officer Report.

TEN OLDEST REQUESTS

13. In Fiscal Year 2017, did your agency close the ten oldest requests that were reported pending in your Fiscal Year 2016 Annual FOIA Report?

Answer: FMSHRC did not have any requests pending at the close of FY 2016.

14. 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 2016 Annual FOIA Report. If you had less than ten total oldest requests to close, please indicate that.

Answer: N/A

15. Of the requests your agency was able to close from your ten oldest, please indicate how many of these were closed because the request was withdrawn by the requester. If any were closed because the request was withdrawn, did you provide any interim responses prior to the withdrawal?

Answer: N/A

TEN OLDEST APPEALS

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16. In Fiscal Year 2017, did your agency close the ten oldest appeals that were reported pending in your Fiscal Year 2016 Annual FOIA Report?

Answer: FMSHRC did not have any appeals to close from FY 2016.

17. If no, please provide the number of these appeals your agency was able to close by the end of the fiscal year, as listed in Section VII.C.(5) of your Fiscal Year 2016 Annual FOIA Report. If you had less than ten total oldest appeals to close, please indicate that.

Answer: N/A

TEN OLDEST CONSULTATIONS

18. In Fiscal Year 2017, did your agency close the ten oldest consultations that were reported pending in your Fiscal Year 2016 Annual FOIA Report?

Answer: FMSHRC did not have any consultations for FY 2016.

19. If no, please provide the number of these consultations your agency was able to close by the end of the fiscal year, as listed in Section XII.C. of your Fiscal Year 2016 Annual FOIA Report. If you had less than ten total oldest consultations to close, please indicate that.

Answer: N/A

E. Additional Information on Ten Oldest Requests, Appeals, and Consultations & Plans

20. Briefly explain any obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2017.

Answer: N/A

21. If your agency was unable to close any of its ten oldest requests 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

22. If your agency did not close its ten oldest pending requests, appeals, or consultations, please provide a plan describing how your agency intends to close those “ten oldest” requests, appeals, and consultations during Fiscal Year 2017.

Answer: N/A

F. Success Stories

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Out of all the activities undertaken by your agency since March 2017 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, OIP will highlight these agency success stories during Sunshine Week. 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 key achievements. A complete description of all your efforts will be contained in the body of your Chief FOIA Officer Report.

Answer:

- *FMSHRC is a very small agency with only two staff members assigned to handle daily FOIA requests on a part-time basis. We also lack access to the most sophisticated FOIA resources likely utilized by larger Federal agencies. In spite of that, FMSHRC is proud to of the steps it has taken to ensure that it has an effective system in place for responding to requests. For instance, by requiring that both the Chief FOIA Officer and Assistant FOIA Officer are copied on every request that is received and every subsequent communication that takes place, it ensures that each FOIA staff member is fully up to date on each and every pending request. Should the assigned officer not be able to act on a request, the unassigned officer can step in and take control with no time lost and complete the request within the projected timeframe. For years, this system has ensured that very few requests fall through the cracks and it has helped to keep our average processing time to less than six days.*
- *FMSHRC is also happy with its simple but effective use of technology. The Commission is a quasi-judicial agency, which means that many of our files involve specific litigation cases. As such, the majority of the FOIA requests received here are centered on the cases. In recent years, the agency has transitioned over to an electronic filing system, which allows us immediate access to each document and pleading entered into every case. Additionally, FMSHRC has greatly encouraged the use of email among our requester community when making FOIA requests. Consequently, by streamlining the FOIA process to email and making customary use of the files instantly available in our online docketing system, we are able to efficiently and quickly process the majority of our FOIA requests. As noted above, for fiscal year 2017, our average processing time was three days for simple requests and twelve days for complex requests.*