

CHIEF FOIA OFFICER REPORT
Medium-Volume Agencies

2019

(Reporting period - March 2018 to March 2019)

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Chief FOIA Officer

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 Leadership

1. The FOIA requires each agency to designate a Chief FOIA Officer who is a senior official at least at the Assistant Secretary or equivalent level. Is your agency's Chief FOIA Officer at or above this level?

Answer: Yes, we believe so. The FOIA program is the responsibility of our Office of the General Counsel ("OGC"). FMSHRC's Chief FOIA Officer is an Attorney-Advisor or Assistant General Counsel in OGC, and she administers the FOIA program under the authority of the General Counsel, Michael McCord.

2. Please provide the name and title of your agency's Chief FOIA Officer.

Answer: Stacey Demps-Barrett, Attorney-Advisor, Office of the General Counsel

B. FOIA Training

3. 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: Yes.

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

Answer: Our Chief FOIA Officer, along with our Privacy Act Officer, attended the FOIA training for Attorneys and Access Professionals held on June 26-27, 2018.

5. 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: 25% of our FOIA professionals attended substantive FOIA training during this period.

6. 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: Due to the cancellation of the Continuing FOIA Education class on July 26, 2018, and last-minute conflicts in their schedules on June 26-27, 2018, our Deputy FOIA Officer and FOIA Public Liaison were unable to attend the trainings for which they were registered. Additionally, our staff was unable to attend other trainings that would have fit in to our schedule due to the courses filling up quickly. Moving forward, each of our FOIA professionals will work towards a goal of attending 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.

C. Outreach

7. Did your FOIA professionals engage in any outreach or dialogue with the requester community or open government groups regarding your administration of the FOIA? Please describe any such outreach or dialogue, and, if applicable, any specific examples of how this dialogue has led to improvements in your agency’s FOIA administration.

Answer: No.

D. Other Initiatives

8. Describe any efforts your agency has undertaken to inform non-FOIA professionals of their obligations under the FOIA. In 2016, the Department publicized FOIA-related performance standards for employees that have any role in administering the FOIA, including non-FOIA professionals. Please also indicate whether your agency has considered including FOIA-related performance standards in employee work plans for employees who have any role in administering the FOIA.

Answer: We provide FOIA training to all FMSHRC staff, including all new hires within their first 60 days. Additionally, we held an agency-wide FOIA training for all support staff on September 26, 2018, as well as a FOIA training for Administrative Law Judges, Commissioners, and Upper Management on November 14, 2018. Also, posted on our agency’s intranet is a list of “Frequently Asked FOIA Questions” and a Memorandum explaining to FMSHRC’s non-FOIA professionals how to recognize a FOIA request, the agency’s obligations under the FOIA, and how we must handle FOIA requests under various scenarios.

Due to the infrequent and inconsistent involvement of non-FOIA employees with FOIA matters, we see no need to include FOIA related performance standards in such employee work plans.

9. 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 dispositive 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.

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 2018, 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 2018 Annual FOIA Report.

Answer: One day.

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 2018 (please provide a total number or an estimate of the number).

Answer: One. However, this particular request was a consult that had not yet been submitted to the FOIA team for processing, and was for some reason, submitted directly to the Public Liaison. Upon receipt, however, the Public Liaison forwarded the request/consult to the FOIA officers so that the request could be logged-in and processing could begin.

5. Please describe the best practices used to ensure that your FOIA system operates efficiently and effectively and any challenges your agency faces in this area.

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 of the steps it has taken to ensure that it has an effective system in place for responding to requests. For instance, it is our practice to have both the Chief FOIA Officer and Assistant FOIA Officer (who are responsible for processing requests) copied on every request that is received and every subsequent communication that takes place. This is one of our best practices because it ensures that each FOIA staff member is fully apprised of 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. For fiscal year 2018, our average processing time was 2.4 days for simple requests and 16 days for complex requests.

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.fmsihrc.gov/meetings-arguments>

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

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

2. Please describe how your agency identifies records that have been requested and released three or more times (and are therefore required to be proactively disclosed pursuant to 5 U.S.C. § 552(a)(2)(D)).

Answer: Generally, when our FOIA log is being updated, we specifically keep an eye out for records that are the subject of multiple entries. However, most of our FOIA requests concern our open civil cases, and typically, records are only ever requested 1-2 times per case. The non-standard requests we receive, generally, concern records that are rarely ever the subject of multiple requests. Nonetheless, when non-standard requests are received, we run a key-word search of our FOIA log to see if the records have been requested already during the year.

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. Since then, FMSHRC has continued to consider and 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.

5. Please describe the best practices used to improve proactive disclosures and any challenges your agency faces in this area.

Answer: We have requested that the heads of each department identify documents that may be appropriate for proactive disclosure. In the meantime, if we are aware of certain documents that we believe are suitable for proactive disclosure, we touch base the relevant department head to notify them of our intent to publish.

The challenge we face as an agency is that we essentially already and routinely proactively disclose the documents that are appropriate for this initiative. Therefore, unless a major action has been taken in a case of significant interest to the public, we rarely have new documents right for proactive disclosure, which makes carrying out this initiative challenging at times.

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 that describes your agency's efforts in this area.

1. Is your agency leveraging technology to facilitate efficiency in conducting searches, including searches for emails? If so, please describe the type of technology used. If not, please explain why and please describe the typical search process used instead.

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 quickest manner. Additionally, when addressing requests that seek records from our cases, we are able to perform searches and 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 2018, our average processing time was 2.4 days for simple requests and 16 days for complex requests.

2. OIP issued guidance in 2017 encouraging agencies to regularly review their FOIA websites to ensure that they contain essential resources and are informative and user-friendly. Has your agency reviewed its FOIA website(s) during the reporting period to ensure it addresses the elements noted in the guidance?

Answer: Yes. Our FOIA Homepage is in compliance with the key information and resources requirements discussed in the 2017 Guidance.

3. Did your agency successfully post all four quarterly reports for Fiscal Year 2018?

Answer: Yes.

4. 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 2019.

Answer: N/A.

5. 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 2017 Annual FOIA Report and, if available, for your agency's Fiscal Year 2018 Annual FOIA Report.

Answer: The link to the 2017 raw data is listed here: <https://www.fmshrc.gov/content/2017-annual-foia-report>. However, while the 2018 raw data report is complete and ready for posting, the link will not be finalized until we have received approval from OIP of our FY 2018 FOIA report submitted in November 2018.

6. Please describe the best practices used in greater utilizing technology and any challenges your agency faces in this area.

Answer: Yes. We rely heavily on email as our primary mode of communication. This makes receiving and responding to requests quicker and more efficient. We have also made a valiant effort to go completely paperless, which promotes efficiency in our program. The main challenge faced by our agency is our lack of access to more sophisticated technology, which is largely due to our small size and accompanying small budget.

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 2018 Annual FOIA Report and, when applicable, your agency's 2017 Annual FOIA Report.

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? If your agency uses a multi-track system beyond simple, complex, and expedited to process requests, please describe the tracks you use and how they promote efficiency.

Answer: Yes.

2. If your agency uses a separate track for simple requests, was the agency overall average number of days to process simple requests twenty working days or fewer in Fiscal Year 2018?

Answer: Yes.

3. Please provide the percentage of requests processed by your agency in Fiscal Year 2018 that were placed in your simple track.

Answer: 83.8 %

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 2018, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2017?

Answer: Yes. FMSHRC did not have a backlog at the end of FY 2018. FMSHRC had two requests backlogged at the close of FY 2017, which were both closed at the start of 2018.

6. If not, did your agency process more requests during Fiscal Year 2018 than it did during Fiscal Year 2017?

Answer: N/A.

7. If your agency's request backlog increased during Fiscal Year 2018, please 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 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: N/A.

8. 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 2018. If your agency has no request backlog, please answer with “N/A.”

Answer: N/A

BACKLOGGED APPEALS

9. If your agency had a backlog of appeals at the close of Fiscal Year 2018, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2017?

Answer: FMSHRC did not have a backlog of appeals for FY 2017 or FY 2018.

10. If not, did your agency process more appeals during Fiscal Year 2018 than it did during Fiscal Year 2017?

Answer: N/A

11. If your agency’s appeal backlog increased during Fiscal Year 2018, please 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

12. 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 2018. If your agency did not receive any appeals in Fiscal Year 2018 and/or has no appeal backlog, please answer with "N/A."

Answer: N/A

C. Backlog Reduction Plans

13. In the 2018 guidelines for Chief FOIA Officer Reports, any agency with a backlog of over 1000 requests in Fiscal Year 2017 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 2018?

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

14. If your agency had a backlog of more than 1,000 requests in Fiscal Year 2018, what is your agency's plan to reduce this backlog during Fiscal Year 2019?

Answer: N/A

D. Status of 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.

OLDEST REQUESTS

15. In Fiscal Year 2018, did your agency close the ten oldest requests that were reported pending in your Fiscal Year 2017 Annual FOIA Report?

Answer: Yes.

16. 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 fewer than ten total oldest requests to close, please indicate that.

Answer: N/A

17. 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

18. Beyond work on the ten oldest requests, please describe any steps your agency took to reduce the overall age of your pending requests.

Answer: N/A

TEN OLDEST APPEALS

19. In Fiscal Year 2018, did your agency close the ten oldest appeals that were reported pending in your Fiscal Year 2017 Annual FOIA Report?

Answer: FMSHRC did not have any appeals to close from FY 2017.

20. 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 2017 Annual FOIA Report. If you had fewer than ten total oldest appeals to close, please indicate that.

Answer: N/A

21. Beyond work on the ten oldest appeals, please describe any steps your agency took to reduce the overall age of your pending appeals.

Answer: N/A

TEN OLDEST CONSULTATIONS

22. In Fiscal Year 2018, did your agency close the ten oldest consultations that were reported pending in your Fiscal Year 2017 Annual FOIA Report?

Answer: FMSHRC had one consultation during FY 2017. That consultation was timely closed in FY 2017.

23. 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 2017 Annual FOIA Report. If you had fewer than ten total oldest consultations to close, please indicate that.

Answer: N/A

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

24. Briefly explain any obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2018.

Answer: N/A

25. 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

26. 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 2018.

Answer: N/A

F. Success Stories

Out of all the activities undertaken by your agency since March 2018 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: Our FOIA team put together and carried out two separate and comprehensive FOIA trainings for our support staff, as well as our upper management teams. The trainings, which emphasized the importance of transparency in FOIA, consisted of training slides, real examples of issues faced by FMSHRC's FOIA teams, as well as a Trivia game at the close of the trainings, which tested the staff's FOIA knowledge in a fun way. The trainings were well received and described as very informative.