

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

CHIEF FOIA OFFICER REPORT

2016

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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 2009 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 FOIA training or conference during the reporting period such as that provided by the Department of Justice?

- Such training or events can include offerings from OIP, your own agency or another agency or organization.

Answer: Yes. Our Chief FOIA Officer and Assistant FOIA Officer attended the "Freedom of Information Act for Attorneys and Access Professionals" held at the Department of Justice on July 14-15, 2015. In addition, our FOIA Liaison completed the online "Public Liaison Training" on July 20, 2015.

2. 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: Two out of three or 66.6% of our FOIA professionals attended training during this period.

3. 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: Although our Public Liaison completed the online "Public Liaison Training" this past year, she did not attend an OIP substantive training session. Moving forward,

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each of our FOIA professionals will attend at least one core training session offered by OIP during each reporting period.

B. Outreach:

NOT REQUIRED OF AGENCY

C. Discretionary Releases:

4. Does your agency have a distinct process or system 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 of your agency have such a process or system in place?

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.

5. During the reporting period, did your agency make any discretionary releases of information?

Answer: No.

6. What exemption(s) would have covered the material released as a matter of discretion? For a discussion of the exemptions that allow for discretionary releases, please see OIP's guidance on implementing the President's and Attorney General's FOIA Memoranda.

Answer: N/A

7. Provide a narrative description, as well as some specific examples, of the types of information that your agency released as a matter of discretion during the reporting year.

Answer: N/A

8. If your agency was not able to make any discretionary releases of information, please explain why, for example, you should note here if your agency did not have an opportunity to make discretionary disclosures because you provided full releases in response to all requests or the only exemptions that were applied were those that do not lend themselves to discretionary release (i.e. Exemptions 1, 3, 4, 6, 7A, 7B, 7C, 7F).

Answer: FMSHRC or "the Commission" is an adjudicatory agency and our records are generally public. FMSHRC has always operated under the presumption of openness with regard to FOIA, and thus, seldom encounters records subject to discretionary disclosure.

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During the reporting year, we did not encounter any FOIA requests subject to such disclosures. The only Exemptions applied were those that do not lend themselves to discretionary release.

D. Other Initiatives:

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.

- If any of these initiatives are online, please provide links in your description.

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. 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

The Attorney General's 2009 FOIA Guidelines emphasized 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 your 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.

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A. Processing Procedures:

1. For Fiscal Year 2015, 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 2015 Annual FOIA Report.

- Please note here if your agency did not adjudicate any requests for expedited processing during Fiscal Year 2015.

Answer: FMSHRC did not adjudicate any requests for expedited processing during Fiscal Year 2015.

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. On July 2, 2015, OIP issued new guidance to agencies on the proper procedures to be used in the event an agency has a reason to inquire whether a requester is still interested in the processing of his or her request. Please confirm here that to the extent your agency may have had occasion to send a "still interested" inquiry, it has done so in accordance with the new guidelines for doing so, including affording requesters thirty working days to respond.

Answer: Yes. There were several instances this past year in which a "still interested" inquiry ("SI") was sent, typically via email which is the preferred method of communication for nearly all of our requesters. In most cases, the inquiry was sent because some time had elapsed since we last heard from the requester. In other cases, if we became aware that production of the requested information would take considerably longer than initially expected and we were already aware that the requester preferred the information within a certain time-frame, we updated the requester on the new developments and inquired if he/she were still interested in receiving the information. Requesters are always given at least thirty (30) business days to respond to our SI inquiry. All requests with an SI inquiry this past year were closed after a response had been received from the requester.

B. Requester Services:

4. Agency FOIA Requester Service Centers and FOIA Public Liaisons serve as the face and voice of an agency. In this capacity they provide a very important service for requesters, informing them about how the FOIA process works and providing specific details on the handling of their individual requests. The FOIA also calls on agency FOIA Requester Service Centers and FOIA Public Liaisons to assist requesters in resolving disputes. Please explain here any steps your agency has taken to strengthen these services to better inform requesters about their requests and to prevent or resolve FOIA disputes.

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- If your agency has not taken any steps recently to strengthen these services, either because there has been no need to due to low demand or because these services are already robust, please briefly explain that that here.

Answer: As the Commission is quasi-judicial in nature, most of our requested records are public; and thus, it is rare that we have to deny a request. Also, the number of requests received at FMSHRC is relatively low. Because of this, our FOIA docket is manageable; and our FOIA officers are able to remain directly involved with each request and communicate directly with requesters during the processing period. Additionally, it is our practice to decide and fill requests within a week of receipt, which often circumvents the need to provide specific details on the handling of their individual requests.

FMSHRC had its first and only appeal of a FOIA decision in FY 2013, which was decided in the requester's favor. Prior to that and since then, we have not had the occasion in which our FOIA Liaison was needed to assist a requester in resolving a dispute. FMSHRC's current policy for handling FOIA requests has proven to be an effective tool in the prevention of FOIA disputes, and because of this, we have not had the need to strengthen our Requester Services.

D. Other Initiatives:

5. If there are 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., please describe them here.

Answer: FMSHRC's FOIA staff does everything possible to fully complete 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. 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

Both the President and Attorney General's memoranda 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.

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A. Posting Material:

1. Describe your agency's process or system for identifying "frequently requested" records required to be posted online under Subsection (a)(2) of the FOIA. For example, does your agency monitor its FOIA logs or is there some other system in place to identify these records for posting.

Answer: Yes. FMSHRC's FOIA officers monitor our FOIA log to classify frequently requested material. When material is detected, it is brought to the attention of our General Counsel and Office of the Chairman who are charged with identifying records for proactive disclosure. The General Counsel and Chairman's office also consult with FOIA officers to identify records that may be of general interest to the public for the purpose of posting on the agency's website.

2. Does your agency have a distinct process or system in place to identify records for proactive disclosure? If so, please describe your agency's process or system.

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

3. When making proactive disclosures of records, are your agency's FOIA professionals involved in coding the records for Section 508 compliance or otherwise preparing them for posting? If so, provide an estimate of how much time is involved for each of your FOIA professionals and your agency overall.

- Please note that this question is directed at the efforts of actually posting the records online once all disclosure determinations have been made. For example, efforts to load the records in your web content platform or making the releasable documents accessible in compliance with Section 508 of the Rehabilitation Act.

Answer: No. FMSHRC's FOIA officers are not involved with coding or preparing the material for posting.

4. Has your agency encountered challenges that make it difficult to post records you otherwise would like to post?

Answer: No.

5. If so, please briefly explain those challenges.

Answer: N/A

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

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

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

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

- For example, this can be done through social media or with the offering of e-mail subscription services.

Answer: No, we have not, nor does FMSHRC utilize social media. However, in the future, we intend to use a section of our website titled "Latest FMSHRC News," which appears on the right side of FMSHRC's home webpage, to highlight important proactive disclosures for public awareness.

B. Other Initiatives:

8. If there are any other steps your agency has taken to increase proactive disclosures, 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 via an online database.

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.

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.

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A. Making Material Posted Online More Useful:

1. 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?

- Steps can include soliciting feedback on the content and presentation of posted material, improving search capabilities on your agency website, posting material in open formats, making information available through mobile applications, providing explanatory material, etc.

Answer: Yes.

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

- If your agency is already posting material in its most useful format, please describe these efforts.

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.

B. Use of Technology to Facilitate Processing of Requests:

NOT REQUIRED OF AGENCY

C. Other Initiatives:

3. Did your agency successfully post all four quarterly reports for Fiscal Year 2015?

- Please see OIP's guidance for posting of quarterly reports to ensure that your agency is following all required steps (including using the correct file type and URL structure) so that your quarterly reports are properly appearing on FOIA.gov. (If your reports are posted to your website but not appearing on FOIA.gov, please contact OIP in order to resolve the issue.)

Answer: Yes. FMSHRC posted all quarterly reports for FY 2015 pursuant to DOJ OIP's instructions. However, a technical issue prevented certain quarters from appearing on FOIA.gov. FMSHRC has resolved the issue in consultation with OIP.

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 2016.

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Answer: N/A

5. Do your agency's FOIA professionals use e-mail or other electronic means to communicate with requesters whenever feasible? See OIP Guidance, "The Importance of Good Communication with FOIA Requesters 2.0: Improving Both the Means and the Content of Requester Communications." (Nov. 22, 2013). If yes, what are the different types of electronic means utilized by your agency to communicate with requesters?

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

6. If your agency does not communicate electronically with requesters as a default, are there any limitations or restrictions for the use of such means? If yes, does your agency inform requesters about such limitations? *See id.*

Answer: N/A

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

The President's FOIA Memorandum and the Attorney General's 2009 FOIA Guidelines have 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 2015 Annual FOIA Report and, when applicable, your agency's 2014 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?

Answer: Yes.

2. If so, for your agency overall in Fiscal Year 2015, was the average number of days to process simple requests twenty working days or fewer?

Answer: Yes.

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3. Please provide the percentage of requests processed by your agency in Fiscal Year 2015 that were placed in your simple track.

Answer: 83.57%.

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 Years 2014 and Fiscal Year 2015 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 2015, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2014?

Answer: FMSHRC had no requests backlogged at the end of FY 2014 or FY 2015.

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:

- 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

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 2015. If your agency did not receive any requests in Fiscal Year 2015 and/or has no request backlog, please answer with "N/A."

- To calculate your agency's percentage, you must divide the number of backlogged requests reported in Section XII.A. of your Fiscal Year 2015 Annual FOIA Report by the number of requests received in Fiscal Year 2015, which can be found in Section V.A. of

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your Annual FOIA Report. Once divided, you can multiply that number by 100 to get the percentage.

Answer: N/A

Backlogged Appeals

8. If your agency had a backlog of appeals at the close of Fiscal Year 2015, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2014?

Answer: FMSHRC did not have a backlog of appeals.

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 2015. If your agency did not receive any appeals in Fiscal Year 2015 and/or has no appeal backlog, please answer with "N/A."

- To calculate your agency's percentage, you must divide the number of backlogged appeals reported in Section XII.A of your Fiscal Year 2014 Annual FOIA Report by the number of appeals received in Fiscal Year 2014, which can be found in Section VI.A. of your Annual FOIA Report. Once divided, you can multiply that number by 100 to get the percentage.

Answer: N/A

C. Backlog Reduction Plans:

NOT REQUIRED OF AGENCY

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

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"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 Years 2014 and Fiscal Year 2015 when completing this section of your Chief FOIA Officer Report.

Ten Oldest Requests

11. In Fiscal Year 2015, did your agency close the ten oldest requests that were reported pending in your Fiscal Year 2014 Annual FOIA Report?

Answer: Yes.

12. 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 2014 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 six of them, you should note that you closed six out of seven "oldest" requests.

Answer: N/A

13. 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: Zero.

Ten Oldest Appeals

14. In Fiscal Year 2015, did your agency close the ten oldest appeals that were reported pending in your Fiscal Year 2014 Annual FOIA Report?

Answer: N/A

15. 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 2013 Annual FOIA Report. If you had less than ten total oldest appeals to close, please indicate that.

- For example, if you only had seven appeals listed as part of your "ten oldest" in Section VII.C.(5) and you closed six of them, you should note that you closed six out of seven "oldest" appeals.

Answer: N/A

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Ten Oldest Consultations

16. In Fiscal Year 2015, did your agency close the ten oldest consultations that were reported pending in your Fiscal Year 2014 Annual FOIA Report?

Answer: N/A

17. 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 2014 Annual FOIA Report. If you had less than ten total oldest consultations to close, please indicate that.

- For example, if you only had seven consultations listed as part of your "ten oldest" in Section XII.C and you closed six of them, you should note that you closed six out of seven "oldest" consultations.

Answer: N/A

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

18. Briefly explain any obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2014.

Answer: None.

19. 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

20. 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 2016.

Answer: N/A

F. Interim Responses:

NOT REQUIRED OF AGENCY

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Use of the FOIA's Law Enforcement Exclusions

1. Did your agency invoke a statutory exclusion, 5 U.S.C. § 552(c)(1), (2), (3), during Fiscal Year 2014?

Answer: No.

2. If so, please provide the total number of times exclusions were invoked.

Answer: N/A

Success Story

NOT REQUIRED OF AGENCY