

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

CHIEF FOIA OFFICER REPORT

2011

Part I: Steps Taken to Apply the Presumption of Openness

1. Describe the steps the Federal Mine Safety and Health Review Commission (“FMSHRC”) has taken to ensure that the presumption is being applied to all decisions involving the Freedom of Information Act (“FOIA”).

a. How have the President’s FOIA Memorandum and the Attorney General’s FOIA Guidelines been publicized throughout the agency?

When the President’s Memorandum and the Attorney General’s FOIA Guidelines were released, FMSHRC distributed them to the agency’s FOIA professionals and SES management personnel. FMSHRC also linked to these documents from its FOIA page on its website.

In addition, the agency’s Chief FOIA Officer issued an agency-wide memorandum to all staff reviewing the agency’s FOIA procedures and highlighting the administration’s emphasis on open government and expeditious handling of FOIA requests. The agency’s FOIA Officers also conducted training for the agency’s staff involved in handling FOIA matters to apprise them of the agency’s procedures in processing requests and to emphasize the agency’s priority in handling such matters in light of the administration’s FOIA guidance.

b. What training has been attended and/or conducted on the new FOIA Guidelines?

The Chief FOIA Officer and Assistant FOIA Officer attended DOJ trainings addressing the new Guidelines and as stated above, an agency-wide memorandum on FOIA procedures was circulated and the agency’s FOIA Officers conducted refresher training for agency staff on its FOIA procedures.

c. How has FMSHRC created or modified its internal guidance to reflect the presumption of openness?

The agency’s FOIA staff is limited and its procedure for processing FOIA requests centralized. Therefore, the agency’s internal guidance on FOIA has not been reduced to writing, aside from the agency-wide memorandum discussed above. Communication on FOIA matters often occurs in face-to-face meetings with the agency’s FOIA professionals, which include the Chief FOIA Officer, the Assistant FOIA Officer and the Public Liaison. In these meetings, the President’s Memorandum and Attorney General’s Guidelines

are discussed. In addition, these documents have been added to the agency's FOIA binder, which contains pertinent reference materials on FOIA and is distributed to the agency's FOIA professionals.

Moreover, FMSHRC is an administrative adjudicatory agency and its records are public in nature. As such, FMSHRC has always operated under the presumption of openness with regard to FOIA.

d. To what extent has FMSHRC made discretionary releases of otherwise exempt information?

As stated above, FMSHRC is an adjudicatory agency and its records are generally public. Therefore, the agency seldom encounters records subject to discretionary disclosure.

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

This question is not applicable.

f. How does FMSHRC review records to determine whether discretionary releases are possible?

The Chief FOIA Officer will review the subject records and, in consultation with the General Counsel, determine whether disclosure is appropriate.

g. Describe any other initiatives undertaken by FMSHRC to ensure that the presumption of openness is being applied.

The Chief FOIA Officer is apprised of all FOIA requests and reviews the requests and the release of records, thus ensuring the presumption of openness is applied.

2. Report the extent to which the number of requests where records have been released in full and the number of requests where records have been released in part has changed from those numbers as reported in the previous year's Annual FOIA Report.

FMSHRC continues to provide the full release of records in most instances, where permissible. In FY 2009, the agency received 46 requests. The agency had no information in response to 5 requests and another Federal agency provided the information in response to one other request. Of the remaining 40 requests, full disclosure was provided. In FY 2010, the agency received 98 requests. The agency had no records in response to 9 requests and 4 requests were withdrawn. Of the remaining 85 requests, the agency provided the full release of all responsive records, except in one case where personal contact information of

private individuals was redacted. In FY 2011 to date, the agency has received 62 requests and provided the full release of its records in response to those requests.

Part II: Steps Taken to Ensure that Your Agency has an Effective System for Responding to Requests

Describe steps taken to ensure that FMSHRC system for responding to requests is effective and efficient.

a. Do FOIA professionals within FMSHRC have sufficient IT support?

The agency has an IT professional on-site who provides IT support to all agency employees, including FOIA officials. In addition, the Chief FOIA Officer works closely with the agency's Website Coordinator, who is on-site, to ensure that the agency's website is up-to-date and accurate.

b. Describe how FMSHRC's FOIA professionals interact with its Open Government Team.

The Chief FOIA Officer is also responsible for overseeing the agency's compliance with the President's Open Government Directive.

c. Describe the steps FMSHRC has taken to assess whether adequate staffing is being devoted to responding to FOIA requests.

The agency recently engaged in that inquiry, determining that the agency's two employees working on FOIA part-time were devoting an extraordinary amount of time on FOIA matters, and decided to assign an additional employee to serve as Assistant FOIA Officer at the beginning of FY2011.

d. Describe any other steps FMSHRC has undertaken to ensure that its FOIA system operates efficiently and effectively.

The Chief FOIA Officer is informed of all FOIA requests and monitors open and outstanding requests to ensure that they are timely processed.

Part III: Steps Taken to Increase Proactive Disclosures

Describe steps taken to increase the amount of material that is available on FMSHRC's website, including providing examples.

a. Has FMSHRC added new material to its website since last year?

FMSHRC continues to update records and information on its website. Specifically, the agency continually updates its decisions and orders, audio

recordings of oral arguments and Commission decisional meetings, rulemaking, status reports of its docket, and all reports submitted to Congress. New material is added weekly.

The agency is in the process of updating its website to make it easier to navigate and more user-friendly, and will likely engage in a major re-design of the site in the current fiscal year. It is also currently entertaining bids to create an e-filing system for its docket, which will permit parties to submit pleadings electronically. The agency expects components of this system to be publicly available online.

b. What types of records have been posted?

The agency continues to add its decisions and orders, audio recordings of oral arguments and Commission decisional meetings, rulemaking, status reports of its docket, and all reports submitted to Congress to its website.

c. What system do you have in place to routinely identify records that are appropriate for posting?

The agency's Chairman and SES personnel review all records and determine what agency records are appropriate for posting on the agency's website. That information is shared with the agency's Chief FOIA Officer and Website Coordinator, who ensures the records are appropriately posted.

d. How do you utilize social media in disseminating information?

Given the agency's small size and limited staff, the agency does not utilize social media at this time.

e. Describe any other steps taken to increase proactive disclosures at FMSHRC.

The Chief FOIA Officer is investigating the possibility of proactive disclosure of trial records in the agency's cases. In addition to the e-filing system, the agency is considering the possibility of posting transcripts of hearings before its administrative law judges on its website.

Part IV: Steps Taken to Greater Utilize Technology

1. Electronic receipt of requests:

a. What proportion of components within FMSHRC which receive FOIA requests have the capability to receive such requests electronically?

The agency does not have components for purposes of this question. All FOIA requests are received by the Chief FOIA Officer, and may be received electronically.

- b. To what extent have you increased the number of components doing so since the filing of your last Chief FOIA Officer Report?**

There has been no change since the last report.

- c. What methods does your agency use to receive requests electronically?**

Requests may be received via email.

2. Electronic tracking of requests:

- a. What proportion of components within FMSHRC which receive FOIA requests have the capability to track such requests electronically?**

The agency does not have components for purposes of this question. Requests are logged into an off-the-shelf spreadsheet software product, which is stored on the agency's network, and may be tracked via that database.

- b. To what extent have you increased the number of components doing so since the filing of your last Chief FOIA Officer Report?**

There has been no change since the last report.

- c. What methods does FMSHRC use to track requests electronically?**

The agency's FOIA liaison logs all FOIA requests into an Excel spreadsheet and updates the status as requests are completed. That log is posted to the agency's website and is updated monthly.

3. Electronic processing of requests:

- a. What proportion of components within FMSHRC which receive FOIA requests have the capability to process such requests electronically?**

The agency does not have components for purposes of this question. FMSHRC is able to process a majority of its requests electronically.

- b. To what extent have you increased the number of components doing so since the filing of your last Chief FOIA Officer Report?**

Overall, FMSHRC has increased the number of requests fulfilled electronically.

c. What methods does FMSHRC use to process requests electronically?

Currently, FMSHRC utilizes scanners and email, where practical, to transmit records electronically.

4. Electronic Preparation of Annual FOIA Report:

a. What type of technology does FMSHRC use to prepare its Annual FOIA Report, i.e. specify whether the technology is FOIA-specific or a generic data-processing system?

The only technology used is off-the-shelf word and data processing software programs. Most calculations are done manually via a calculator.

b. If you are not satisfied with your existing system to prepare your Annual FOIA Report, describe the steps you have taken to increase your use of technology for next year.

Given the small size of FMSHRC and the relatively low number of requests the agency receives, the agency's current technology capabilities are adequate.

Part V: Steps Taken to Reduce Backlogs and Improve Timeliness in Responding to Requests

1. If you have a backlog, report here whether your backlog is decreasing.

FMSHRC does not currently have a backlog. Generally, FMSHRC has an ontime performance rate.

2. If there has not been a reduction in the backlog as measured by either of these metrics, describe why that has occurred.

FMSHRC does not currently have a backlog. Generally, FMSHRC has an ontime performance rate.

3. Describe steps taken to reduce any backlogs and to improve timeliness in responding to requests and administrative appeals.

a. Does FMSHRC routinely set goals and monitor the progress of its FOIA caseload?

Yes, the agency's goal is to fulfill all FOIA requests in an expeditious manner and within the 20 day time frame provided under the FOIA.

b. Has FMSHRC increased its FOIA staffing?

Yes, in 2010, the agency designated another employee to serve in the capacity of Assistant FOIA Officer, who performs that function on a part-time basis.

c. Has FMSHRC made IT improvements to increase timeliness?

Yes, the agency has provided individual desktop scanners, enabling documents to be scanned and shared electronically among pertinent staff within the agency and to be transmitted electronically to FOIA requesters as appropriate.

d. Has FMSHRC's Chief FOIA Officer been involved in overseeing FMSHRC's capacity to process requests?

Yes, given the agency's small size and limited staff, the Chief FOIA Officer is directly involved in fulfilling all FOIA requests.

4. Describe a success story that you would like to highlight as emblematic of your efforts.

In 2010, the agency's Assistant FOIA Officer created a "Request Control Form," which was added to the agency's website. A FOIA requester may complete and transmit the form electronically, thereby improving the ease in submitting FOIA requests. Because the form standardizes requests, it enables the agency's FOIA staff to readily identify the records the requester seeks and increases the overall time for processing such requests. The form also serves as a means to track requests internally, thereby allowing multiple staff to easily manage each request.