

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

**CHIEF FOIA OFFICER REPORT
Medium-Volume Agencies**

2017

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Chief FOIA Officer

Section I: Steps Taken 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?

Answer: Yes. Our Assistant FOIA Officer attended the Best Practices Workshop – Best Practices of FOIA Training Programs held at the Department of Justice on May 25, 2016.

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

Answer: Our Assistant FOIA Officer attended the Best Practices Workshop – Best Practices of FOIA Training Programs held at the Department of Justice on May 25, 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: One out of three or 33.3% of our FOIA professionals attended training during this period.

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.

B. Outreach

5. *NOT REQUIRED.*

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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 our FOIA staff, including all new hires within their first 60 days. Our last training was on August 10, 2016. On September 14, 2016, we provided our management and executive staff with OIP's Senior Executive Briefing.

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. 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

A. Processing Procedures

1. For Fiscal Year 2016, 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.

Answer: Two days.

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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. *NOT REQUIRED.*

4. Please provide an estimate of how many requests your agency processed in Fiscal Year 2016 that were from commercial use requesters. If your agency is decentralized, please identify any components within your agency that received a majority of their requests from commercial use requesters.

Answer: Roughly 40 requests.

B. Requester Services

5. *NOT REQUIRED.*

6. 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 how often requesters sought assistance from your agency's FOIA Public Liaison.

Answer: Zero.

7. The FOIA Improvement Act of 2016 requires agencies to make their reference material or guide for requesting records or information from the agency electronically available to the public. Please provide a link to your agency's FOIA reference guide.

Answer: <https://www.fmshrc.gov/guides/foia-guide>

C. Other Initiatives

8. 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.

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Section III: Steps Taken to Increase Proactive Disclosures

A. Posting Material

1. Describe your agency's process or system for identifying "frequently requested" records that should be posted online.

Answer: 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 offices 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 other 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. Has your agency encountered challenges that make it difficult to post records you otherwise would like to post?

Answer: No yet.

4. If so, please briefly explain those challenges.

Answer: N/A

5. 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>

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

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

7. 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 and we have not used web analytics.

Section IV: Steps Taken to Greater Utilize Technology

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?

Answer: Yes.

2. 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.

B. Other Initiatives:

3. Did your agency successfully post all four quarterly reports for Fiscal Year 2016?

Answer: Yes.

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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 2017.

Answer: N/A

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

For the figures required in this Section, please use the numbers contained in the specified sections of your agency's 2016 Annual FOIA Report and, when applicable, your agency's 2015 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 2016, 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 2015 that were placed in your simple track.

Answer: 76.7%.

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 2015 and Fiscal Year 2016 when completing this section of your Chief FOIA Officer Report.

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Backlogged Requests

5. If your agency had a backlog of requests at the close of Fiscal Year 2016, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2015?

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

- 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 2016.

Answer: N/A

Backlogged Appeals

8. If your agency had a backlog of appeals at the close of Fiscal Year 2016, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2015?

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 2016. If your

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agency did not receive any appeals in Fiscal Year 2016 and/or has no appeal backlog, please answer with "N/A."

Answer: N/A

C. 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 Years 2015 and Fiscal Year 2016 when completing this section of your Chief FOIA Officer Report.

Ten Oldest Requests

11. In Fiscal Year 2016, did your agency close the ten oldest requests that were reported pending in your Fiscal Year 2015 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 2015 Annual FOIA Report. If you had less than ten total oldest requests to close, please indicate that.

Answer: We only had one pending request to close from FY2015.

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: We only had one pending request to close from FY2015 and it was withdrawn. Yes, we provided interim responses to the requester prior to the withdrawal. We had no pending requests to close from FY2016.

Ten Oldest Appeals

14. In Fiscal Year 2016, did your agency close the ten oldest appeals that were reported pending in your Fiscal Year 2014 Annual FOIA Report?

Answer: The Agency did not have any 10 oldest appeals to close.

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 2015 Annual FOIA Report. If you had less than ten total oldest appeals to close, please indicate that.

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Answer: N/A

16. In Fiscal Year 2016, did your agency close the ten oldest consultations that were reported pending in your Fiscal Year 2015 Annual FOIA Report?

Answer: The Agency did not have any 10 oldest consultations to close.

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 2015 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

18. Briefly explain any obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2015.

Answer: N/A

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 2017.

Answer: N/A