

CHIEF FOIA OFFICER REPORT
High-Volume Agencies

2021

(Reporting period - March 2020 to March 2021)

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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 the Assistant Secretary or equivalent level. *See* 5 U.S.C. § 552(j)(1) (2018). Is your agency's Chief FOIA Officer at this level?

Answer: Yes. The FOIA program is the responsibility of our Office of the General Counsel ("OGC"). I, FMSHRC's Chief FOIA Officer, am an Assistant General Counsel in OGC, and I administer 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 or Assistant General Counsel, Office of the General Counsel

B. FOIA Training

3. The FOIA directs agency Chief FOIA Officers to ensure that FOIA training is offered to agency personnel. *See* 5 U.S.C. § 552(a)(j)(2)(F). Please describe the efforts your agency has undertaken to ensure proper FOIA training is made available and used by agency personnel.

Answer: We provide FOIA training to all FMSHRC staff, including all new hires within their first 60 days at the Commission. We held new hire FOIA training virtually in September and November 2020. This training consists of the agency's FOIA responsibilities, how the FOIA works, the FOIA scenarios the particular employees are likely to encounter in their department, and the role they will play in ensuring that the FOIA is properly carried out.

4. 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: No. However, we attended four of the trainings offered in 2019.

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

Answer: N/A

6. 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%.

7. 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 COVID-19, our agency, like nearly all of the Federal Government was on a telework schedule. As such, I assumed that all trainings were canceled for the foreseeable future. Towards the end of the year, upon perusing OIP’s website, I noticed that OIP was offering virtual trainings. Because I did not receive an email or other notification about the virtual trainings being offered, I was not aware that they were an option. Moving forward, each of our FOIA professionals will work towards a goal of attending at least one virtual or in-person core training session offered by OIP during each reporting period. We will try our best to search OIP’s website for opportunities and register for the necessary courses.

C. Outreach

8. 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

9. 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 at the Commission, and have conducted new hire training twice this year as part of the onboarding process for new employees. Additionally, we hold agency-wide FOIA training for all support staff every 2-3 years, our last occurring on September 2018. We also hold FOIA training for our Administrative Law Judges, Commissioners, and upper management, the last occurring in November 2018 and April 2019. We generally train them on the agency’s FOIA responsibilities, how the FOIA works, and the role they will play in administering the FOIA program. Finally, 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.

10. Optional -- 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>.

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 that describes your agency's efforts in this area.

1. For Fiscal Year 2020, 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 2020 Annual FOIA Report.

Answer: Zero.

2. If your agency's average number of days to adjudicate requests for expedited processing was above ten calendar days, according to Section VIII.A of your agency's Fiscal Year 2020 Annual FOIA Report, 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.

Answer: No.

- 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.

4. Standard Operating Procedures (SOPs): Having SOPs can improve the consistency and quality of an agency's FOIA process. In addition, describing an agency's standard practices for handling FOIA

requests on agency FOIA websites can help requesters better understand how their request will be handled.

- a) Does your agency have SOPs that outline general processes for handling FOIA requests and appeals?

Answer: While we do not have anything specifically titled “SOPs,” we have information provided in our FOIA guide, which is posted on the Commission’s website that generally outlines our procedures for processing FOIA requests.

- b) If not, does your agency have plans to create FOIA SOPs?

Answer: Yes, when we update the Commission’s FOIA guide this year we will incorporate the term Standard Operating Procedures (SOPs) in the section of the guide that outlines our process.

- c) If yes, how often are they reviewed/updated to account for changes in law, best practices, and technology?

Answer: We will make an effort to review and update the SOP annually, in addition to when changes in the law or our process are made.

- d) In addition to having SOPs, does your agency post or otherwise describe your standard processes for handling requests on your website?

Answer: Yes. A description can be found in the Commission’s FOIA Guide. Additionally, after the amendments to our FOIA Rules are finalized, our updated Rules will more clearly outline our standard process for handling requests.

5. 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 2020 (please provide a total number or an estimate of the number).

Answer: Zero times.

6. Does your agency frequently receive common categories of first-party requests? If so, please describe the types of requests and if your agency has explored establishing alternative means of access to these records outside of the FOIA process?

Answer: No.

7. The FOIA Improvement Act of 2016 required all agencies to update their FOIA regulations within 180 days. Has your agency updated its FOIA regulations in accordance with the FOIA Improvement Act of 2016? If not, what is your agency's plan to update your regulations?

Answer: We are currently updating the Commission’s FOIA Regulations. Due to a change in our approving board, which included a period of time where the Commission was without a necessary majority 5-member board, our Rules’ amendments were delayed. The update shall be completed during the 2021 fiscal year.

8. Please explain how your agency worked to mitigate the impact of the COVID-19 pandemic on FOIA processing. Examples could include, but are not limited to: altering workflows, implementing new technology, providing notices and instructions or otherwise communicating directly with requesters.

Answer: We continued to rely heavily on our email system and internal docketing database to carry out our FOIA duties. These standard Commission practices, which are technology based, allowed the Commission to continue its program relatively uninterrupted during the telework status necessitated by COVID-19.

9. Optional -- Please describe:

- Best practices used to ensure that your FOIA system operates efficiently and effectively
- Any challenges your agency faces in this area.

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 any material that your agency has proactively disclosed during the past reporting year, including records that have been requested and released three or more times in accordance with 5 U.S.C. § 552(a)(2)(D). Please include links to these materials as well.

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. 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.

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

Answer: FMSHRC website has been re-designed to make it more user-friendly. The site is easier to navigate as the material is more clearly laid out and organized into 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, FMSMRC 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.

4. Optional -- Please describe:

- Best practices used to improve proactive disclosures
- Any challenges your agency faces in this area

Answer: We have requested that the head 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 with the relevant department head to notify them of our intent to publish.

The challenge we face as an agency is that we already 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 suitable for proactive disclosure. It 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. Please briefly describe the types of technology your agency uses to support your FOIA program. In addition, please highlight if your agency is leveraging or exploring any new technology that you have not previously reported. If so, please describe the type of technology.

Answer: Currently, the Commission utilizes a combination of our email system to track FOIA correspondence, the Commission's internal case docketing system called e-CMS, and the various Microsoft Office programs to administer our program. No. At this time, we are not exploring any new technology to assist in the administration of our FOIA program.

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. We also make updates to the site as needed throughout the year.

3. Did your agency successfully post all four quarterly reports for Fiscal Year 2020?

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 2021.

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 2019 Annual FOIA Report and, if available, for your agency's Fiscal Year 2020 Annual FOIA Report.

Answer: The link for the FY 2019 report is <https://www.fmshrc.gov/content/2019-annual-foia-report>. The link for the FY 2020 report is <https://www.fmshrc.gov/content/2020-annual-foia-report>.

6. Optional -- Please describe:

- Best practices used in greater utilizing technology
- Any challenges your agency faces in this area

Answer: We rely heavily on email as our primary mode of communication. This makes receiving and responding to requests quicker and more efficient. We also went completely paperless in March of 2020. While going completely paperless will require some adjustment on our part, we expect this to result in greater 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 commensurate 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 2019 and 2020 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 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 2020?

Answer: Yes.

3. Please provide the percentage of requests processed by your agency in Fiscal Year 2020 that were placed in your simple track. Please use the following calculation based on the data from your Annual FOIA Report: (processed simple requests from Section VII.C.1) divided by (requests processed from Section V.A.) x 100.

Answer: 76.9%.

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 2019 and Fiscal Year 2020 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 2020, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2019?

Answer: FMSHRC did not have a backlog at the end of FY 2019 or FY 2020.

6. If not, according to Annual FOIA Report Section V.A, did your agency process more requests during Fiscal Year 2020 than it did during Fiscal Year 2019?

Answer: No.

7. If your agency's request backlog increased during Fiscal Year 2020, 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 2020. Please use the following calculation based on data from your Annual FOIA Report: (backlogged requests from Section XII.A) divided by (requests received from Section V.A) x 100. 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 2020, according to Section XII.A of the Annual FOIA Report, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2019?

Answer: N/A.

10. If not, according to section VI.A of the Annual FOIA Report, did your agency process more appeals during Fiscal Year 2020 than it did during Fiscal Year 2019?

Answer: N/A.

11. If your agency's appeal backlog increased during Fiscal Year 2020, 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 2020. Please use the following calculation based on data from your Annual FOIA Report: (backlogged appeals from Section XII.A) divided by (appeals received from Section VI.A) x 100. If your agency did not receive any appeals in Fiscal Year 2020 and/or has no appeal backlog, please answer with "N/A."

Answer: N/A.

C. Backlog Reduction Plans

13. In the 2020 guidelines for Chief FOIA Officer Reports, any agency with a backlog of over 1000 requests in Fiscal Year 2019 was asked to provide a plan for achieving backlog reduction in the year ahead. Did your 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 2020?

Answer: N/A.

14. If your agency had a backlog of more than 1,000 requests in Fiscal Year 2020, what is your agency's plan to reduce this backlog during Fiscal Year 2021?

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 2018 and Fiscal Year 2019 when completing this section of your Chief FOIA Officer Report.

OLDEST REQUESTS

15. In Fiscal Year 2020, did your agency close the ten oldest pending perfected requests that were reported in Section VII.E. of your Fiscal Year 2019 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 2019 Annual FOIA Report. If you had fewer than ten total oldest requests to close, please indicate that.

Answer: N/A.

17. 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

18. In Fiscal Year 2020, did your agency close the ten oldest appeals that were reported pending in Section VII.C.5 of your Fiscal Year 2019 Annual FOIA Report?

Answer: FMSHRC did not have any appeals to close from FY 2019.

19. 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 2019 Annual FOIA Report. If you had fewer than ten total oldest appeals to close, please indicate that.

Answer: N/A.

20. 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

21. In Fiscal Year 2020, did your agency close the ten oldest consultations that were reported pending in Section XII.C of your Fiscal Year 2019 Annual FOIA Report?

Answer: FMSHRC closed all of its 2019 consultations during FY 2019.

22. 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 2019 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

23. Briefly explain any obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2020.

Answer: N/A.

24. 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.

25. 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 2021.

Answer: N/A.

F. Success Stories

Out of all the activities undertaken by your agency since March 2020 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 continued to process its request in much the same way in spite of the interruptions by COVID-19. We saw very little increase in the average time it takes our team to process a request.