

2014 Chief FOIA Officer Report
for the Merit Systems Protection Board (MSPB)

by
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Clerk of the Board and
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The MSPB (www.mspb.gov) is an independent, quasi-judicial agency in the Executive Branch that serves as the guardian of Federal merit systems. Our mission is to protect the merit system principles and promote an effective Federal workforce free of prohibited personnel practices. We carry out our statutory responsibilities and authorities primarily by adjudicating individual employee appeals and by conducting merit systems studies. In addition, MSPB reviews the significant actions of the Office of Personnel Management to assess the degree to which those actions may affect merit system principles and prohibited personnel practices.

The MSPB is headquartered in Washington, DC, with eight Regional and Field Offices.

Section I: Steps Taken to Apply the Presumption of Openness

FOIA Training:

1. Did your agency hold an agency FOIA conference, or otherwise conduct training during this reporting period?

Answer: No.

2. If so, please provide the number of conferences or trainings held, a brief description of the topics covered, and an estimate of the number of participants from your agency who were in attendance.

Answer: Not applicable.

3. Did your FOIA professionals attend any FOIA training during the reporting period such as that provided by the Department of Justice?

Answer: Yes.

4. Provide an estimate of the percentage of your FOIA professionals who attended substantive FOIA training during this reporting period.

Answer: 50%

5. OIP has issued guidance that [every agency should make core, substantive FOIA training available to all their FOIA professionals at least once each year](#). Provide your agency's plan for ensuring that such training is offered to all agency FOIA professionals by March 2015. Your plan should anticipate an upcoming reporting requirement for your 2015 Chief FOIA Officer Reports that will ask whether all agency FOIA professionals attended substantive FOIA training in the past year.

Answer: MSPB's two core FOIA professionals monitor all available FOIA training opportunities and make efforts to attend any which will enhance their knowledge of current FOIA law and procedures. Additionally, MSPB encourages employees with recently-added FOIA duties to attend substantive FOIA training: one MSPB FOIA professional is scheduled to attend a 3-day FOIA training in April 2014.

Outreach:

6. Did your FOIA professionals engage in any outreach and dialogue with the requester community or open government groups regarding your administration of the FOIA? If so, please briefly discuss that engagement.

Answer: No. Although we did not do this during the reporting period, we plan to do so in 2014.

Discretionary Disclosures:

7. Does your agency have a formal process 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 at your agency have a process in place for making discretionary releases.

Answer: Yes. MSPB routinely reviews exemptible information responsive to FOIA requests for discretionary release.

8. During the reporting period did your agency make any discretionary releases of otherwise exempt information?

Answer: No.

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

Answer: Not applicable.

10. Provide a narrative description, or some examples of, the types of information that your agency released as a matter of discretion.

Answer: Not applicable.

11. If your agency was not able to make any discretionary releases of information, please explain why.

Answer: We did not have any FOIA requests that raised the possibility of making a discretionary release.

Other Initiatives:

12. Did your agency post all of the required quarterly FOIA reports for Fiscal Year 2013? If not, please explain why not and what your plan is for ensuring that such reporting is successfully accomplished for Fiscal Year 2014.

Answer: Yes.

13. Describe any other initiatives undertaken by your agency to ensure that the presumption of openness is being applied. If any of these initiatives are online, please provide links in your description.

Answer: There were no new initiatives undertaken during the reporting period.

**Section II: Steps Taken to Ensure that Your Agency
Has an Effective System in Place for Responding to Requests**

Personnel:

1. Has your agency converted all of its FOIA professionals to the new Government Information Specialist job series?

Answer: No.

2. If not, what proportion of personnel has been converted to the new job series?

Answer: None.

3. If not, what is your plan to ensure that all FOIA professionals' position descriptions are converted?

Answer: We will coordinate with our Director of Human Resources to convert the position descriptions in 2014.

Processing Procedures:

4. For Fiscal Year 2013 did your agency maintain an average of ten or less calendar days to adjudicate requests for expedited processing? If not, describe the steps your agency will take to ensure that requests for expedited processing are adjudicated within ten calendar days or less.

Answer: No, MSPB did not expedite any requests in FY 2013.

5. Has your agency taken any steps to make the handling of consultations and referrals more efficient and effective, such as entering into agreements with other agencies or components on how to handle certain categories or types of records involving shared equities so as to avoid the need for a consultation or referral altogether, or otherwise implementing procedures that speed up or eliminate the need for consultations. If so, please describe those steps.

Answer: No.

Requester Services:

6. Do you use e-mail or other electronic means to communicate with requesters when feasible?

Answer: Yes.

7. Does your agency notify requesters of the mediation services offered by the Office of Government Information Services (OGIS) at NARA?

Answer: Yes.

8. Describe 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.

Answer: We continually review our FOIA system, "[FOIAonline](#)," for any deficiencies and we work with our partner agencies to continuously enhance the system for greater efficiency, improve search processes, and eliminate redundancy. For example, 3 videos recently were posted to help instruct users how to perform the basic functions of: creating an account, making a request, and searching requests. See <https://foiaonline.regulations.gov/foia/action/public/home/resources>.

Section III: Steps Taken to Increase Proactive Disclosures

Posting Material:

1. Do your FOIA professionals have a system in place to identify records for proactive disclosures?

Answer: Yes.

2. If so, describe the system that is in place.

Answer: We have routine processes in place to post Board decisions, agency reports, media interviews, Federal Register notices, etc. Additionally, when the Board undertakes any new initiatives, it considers whether records associated with them are suitable for proactive disclosures on our website.

3. Provide examples of material that your agency has posted this past reporting period, including links to where this material can be found online.

Answer: We posted information on the following initiatives, including proactively disclosing a substantial number of documents.

Under "Significant Cases," we posted relevant Board issuances, Federal Register notices, and amicus briefs that addressed the Whistleblower Protection Enhancement Act of 2012. See

<http://www.mspb.gov/SignificantCases/index.htm>.

During the revision of our initial appeal form, we posted the various revisions, timeline, Federal Register notices, and comments received from the public. See <http://www.mspb.gov/appeals/revisedappealform.htm>.

We continued our Regulatory Review Initiative and posted information about proposed options to revise the Board's jurisdictional regulation and 20+ comments received in response to the Federal Register notice. See <http://www.mspb.gov/regulatoryreview/index.htm>.

We also posted 8 agency administrative files relevant to the 32,000+ Department of Defense furlough appeals to facilitate easier access by appellants to this information. See <http://www.mspb.gov/furloughappeals/index.htm>.

Making Posted Material More Useful:

4. 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, such as soliciting feedback on the content and presentation of posted material, improving search capabilities on the site, posting material in open formats, making information available through mobile applications, providing explanatory material, etc.?

Answer: Yes.

5. If so, provide examples of such improvements.

Answer: In response to a usability review of our website by the General Services Administration in January 2013, we improved and relocated the Search field on our website so it appears at the top of each page, and searches include the website and our document management system. We also used Twitter ([@USMSPB](#)) to publicize and solicit feedback on our posted material.

6. Did your agency use any means to publicize or highlight important proactive disclosures for public awareness? If so, was social media utilized?

Answer: Yes. We used press releases, listservs, and Twitter ([@USMSPB](#)) to publicize or highlight important proactive disclosures for public awareness.

7. Has your agency encountered challenges that make it difficult to post records you otherwise would like to post? If so, please briefly explain what those challenges are.

Answer: Yes. Additional staffing would allow us to provide more services to our requester community, e.g., evaluating records for posting.

8. Describe any other steps taken to increase proactive disclosures at your agency.

Answer: We continually review ways to increase proactive disclosures.

Section IV: Steps Taken to Greater Utilize Technology

Online tracking of FOIA requests:

1. Can a FOIA requester track the status of his/her request electronically?

Answer: Yes.

2. If yes, how is this tracking function provided to the public? For example, is it being done through regularly updated FOIA logs, online portals, or other mediums?

Answer: The tracking function is provided to the public through [FOIAonline](#).

3. Describe the information that is provided to the requester through the tracking system. For example, some tracking systems might tell the requester whether the request is "open" or "closed," while others will provide further details to the requester throughout the course of the processing, such as "search commenced" or "documents currently in review." List the specific types of information that are available through your agency's tracking system.

Answer: [FOIAonline](#) enables a requester to do the following: track the progress of each request, e.g., whether the request is open or closed, submit FOIA requests to multiple agencies, and automatically receive notification when an agency has received a request.

4. In particular, does your agency tracking system provide the requester with an estimated date of completion for his/her request?

Answer: No.

5. If your agency does not provide online tracking of requests, is your agency taking steps to establish this capability? If not, please explain why.

Answer: Not applicable.

Use of technology to facilitate processing of requests:

6. Beyond using technology to redact documents, is your agency taking steps to utilize more advanced technology to facilitate overall FOIA efficiency, such as improving record search capabilities, utilizing document sharing platforms for consultations and referrals, or employing software that can sort and de-duplicate documents?

Answer: There were no new initiatives to use more advanced technology during the reporting period.

7. If so, describe the technological improvements being made.

Answer: Not applicable.

8. Are there additional technological tools that would be helpful to achieving further efficiencies in your agency's FOIA program?

Answer: Yes. As we move toward all-electronic case files, it is obviously easier if we do not have to scan documents first before redacting them, and it is easier, less costly, and more efficient to produce case documents electronically than on paper. In this process, we also are exploring ways to produce entire case files in an indexed, organized fashion.

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

Simple Track Requests:

1. 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.

a. Does your agency utilize a separate track for simple requests?

Answer: Yes.

b. If so, for your agency overall, for Fiscal Year 2013, was the average number of days to process simple requests twenty working days or fewer?

Answer: No.

c. If your agency does not track simple requests separately, was the average number of days to process non-expedited requests twenty working days or fewer?

Answer: Not applicable.

Backlogs and “Ten Oldest” Requests, Appeals and Consultations:

2. 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. 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 2012 and Fiscal Year 2013 when completing this section of your Chief FOIA Officer Report.

Backlogs

a. If your agency had a backlog of requests at the close of Fiscal Year 2013, did that backlog decrease as compared with Fiscal Year 2012?

Answer: We did not have a backlog.

b. If your agency had a backlog of administrative appeals in Fiscal Year 2013, did that backlog decrease as compared to Fiscal Year 2012?

Answer: No.

Ten Oldest Requests

- c. In Fiscal Year 2013, did your agency close the ten oldest requests that were pending as of the end of Fiscal Year 2012?

Answer: Yes.

- d. 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 2012 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 two of them, you should note that you closed two out of seven "oldest" requests.

Answer: Not applicable.

Ten Oldest Appeals

- e. In Fiscal Year 2013, did your agency close the ten oldest administrative appeals that were pending as of the end of Fiscal Year 2012?

Answer: No.

- f. If no, please provide the number of these appeals your agency was able to close, as well as the number of appeals your agency had in Section VI.C.(5) of your Fiscal Year 2012 Annual FOIA Report.

Answer: 0 and 1.

Ten Oldest Consultations

- g. In Fiscal Year 2013, did your agency close the ten oldest consultations received by your agency and pending as of the end of Fiscal Year 2012?

Answer: We did not have any consultations in FY 2013.

- h. If no, please provide the number of these consultations your agency did close, as well as the number of pending consultations your agency listed in Section XII.C. of your Fiscal Year 2012 Annual FOIA Report.

Answer: Not applicable.

Reasons for Any Backlogs:

3. If you answered "no" to any of the questions in item 2 above, describe why your agency was not able to reduce backlogs and/or close the ten oldest pending

requests, appeals, and consultations. In doing so, answer the following questions then include any additional explanation:

Request and/or Appeal Backlog

- a. Was the lack of a reduction in the request and/or appeal backlog a result of an increase in the number of incoming requests or appeals?

Answer: No.

- b. Was the lack of a reduction in the request and/or appeal backlog caused by a loss of staff?

Answer: No.

- c. Was the lack of a reduction in the request and/or appeal backlog caused by an increase in the complexity of the requests received?

Answer: Yes.

- d. What other causes, if any, contributed to the lack of a decrease in the request and/or appeal backlog?

Answer: None.

“Ten oldest” Not Closed

- e. Briefly explain the obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2012.

Answer: MSPB needed additional time to coordinate a response to the one backlogged appeal due to the complexity of the information being requested.

- f. If your agency was unable to close any of its ten oldest requests or appeals 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: Not applicable.

Plans for Closing of Ten Oldest Pending Requests, Appeals, and Consultations and Reducing Backlogs:

4. If your agency did not close its ten oldest pending requests, appeals, and consultations, please provide a plan describing how your agency intends to close those “ten oldest” requests, appeals, and consultations during Fiscal Year 2014.

Answer: We are pleased to report that the one backlogged appeal reported in the 2013 Annual FOIA Report was closed in early FY 2014.

5. If your agency had a backlog of more than 1000 pending requests and did not reduce that backlog in Fiscal Year 2013, provide your agency's plan for achieving backlog reduction in the year ahead.

Answer: Not applicable.

Interim Responses:

6. Does your agency have a system in place to provide interim responses to requesters when appropriate?

Answer: Yes.

7. If your agency had a backlog in Fiscal Year 2013, please provide an estimate of the number or percentage of cases in the backlog where a substantive, interim response was provided during the fiscal year, even though the request was not finally closed.

Answer: We did not have a backlog.

Use of FOIA's Law Enforcement "Exclusions"

1. Did your agency invoke a statutory exclusion during Fiscal Year 2013?

Answer: No.

2. If so, what was the total number of times exclusions were invoked?

Answer: Not applicable.

Spotlight on Success

We continue to successfully use [FOIAonline](#), and we plan to further make use of its capabilities by uploading FOIA responses into the system. This is very helpful for monitoring pending requests and deadlines. Also, we reduced administrative appeals by increasing our communication with requesters to resolve any questions or concerns regarding their FOIA request or our response. Finally, as indicated in our response to Question 3 in Section III, we continue to post documents on our website associated with important initiatives to both enhance our transparency and increase proactive disclosures. An upcoming effort will be in conjunction with resetting our agency's research agenda in 2014.