

**2018 Chief FOIA Officer Report
for the Merit Systems Protection Board (MSPB)**

by
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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

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. MSPB's FOIA professionals conscientiously monitor training opportunities for both themselves and other MSPB staff with collateral FOIA responsibilities. We also send attorneys and support staff in the Office of the Clerk of the Board--without direct FOIA responsibilities--and members of the Information Services Team (which handles FOIA, privacy, and records management) to substantive FOIA training to provide cross-training and raise awareness.

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

Answer: Staff participated in training provided by the Office of Information Policy (OIP) at the Department of Justice. Training attended included full-day informational seminars and half-day sessions such as the Best Practices workshops and the Annual and Chief FOIA Officer Report workshops. Staff also attended training on broader topics, including in-depth discussions about the 2016 amendments and FOIA litigation updates. Additionally, FOIA staff attended the

Federal Privacy Council's "Privacy Boot Camp" to receive cross-training and additional education on privacy issues, given the interplay between privacy and FOIA.

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: 100%

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: Not applicable.

B. Outreach

5. Did your FOIA professionals engage in any outreach or dialogue with the requester community or open government groups regarding your administration of the FOIA?

Answer: No. Due to limited resources and workload in our FOIA program, we were unable to engage in any outreach or dialogue with the requester community.

C. Other Initiatives

6. Describe any efforts your agency has undertaken to inform non-FOIA professionals of their obligations under the FOIA.

Answer: MSPB took several steps this year to raise awareness of FOIA obligations for non-FOIA professionals. In April 2017, MSPB's new Chief Privacy Officer (CPO) sent an email to all employees at MSPB's headquarters and our Washington Regional Office explaining the purpose and history of Sunshine Week, highlighted the changes made by the 2016 FOIA Amendments, and provided a brief summary of MSPB's FOIA program. Following this email, MSPB offered two in-person "FOIA 101" trainings to non-FOIA professionals located at these offices. The training was developed and delivered by our dedicated FOIA Government Information Specialist (GIS) and the CPO, and attended by many MSPB staff, including our Acting Chairman and other senior leadership. The training provided a description of the types of records subject to the FOIA, a brief overview of the exemptions and the applicability of each exemption to a record, and the

typical types of requests that MSPB receives. Employees actively participated in the presentation and were given the opportunity to ask questions and engage in dialogue concerning how the FOIA is administered throughout the agency. We will continue our efforts to provide training to the remaining non-FOIA professionals at MSPB in FY 2018 by offering remote training to the seven regional and field offices that are outside of the Washington Metropolitan Area.

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: The FOIA training that was delivered to non-FOIA professionals emphasized that above all, the FOIA is a disclosure statute. The training also discussed the substantive and procedural amendments to the FOIA, such as the newly codified “foreseeable harm” standard, as well as the newly codified sunset provision on the deliberative process privilege. Additionally, MSPB’s FOIA team continues to enhance its efforts to reach out to program offices to better understand the nature of the responsive records. Through these efforts, we continuously improve our efforts to determine the degree of foreseeable harm associated with the release of certain information, while identifying and releasing segregable portions of records to ensure transparency in our FOIA program.

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

1. For Fiscal Year 2017, what was the average number of days your agency reported for adjudicating requests for expedited processing?

Answer: 4.92 days.

2. If your agency’s average number of days to adjudicate requests for expedited processing was above 10 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: The average number of days reported for adjudicating requests for expedited processed has remained stable over the last 2 years, i.e., less than an average of 5 days and well under the 10 calendar days as dictated by the statute.

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: MSPB conducted regular informal self-assessments during weekly meetings to discuss, evaluate, and tweak current processing methods. We also used observations gleaned from the quarterly reports, which we compared to previous years, and annual reports to provide us with the current state of our FOIA program and inform the path forward. We have begun to use individual modules from the FOIA Self-Assessment Toolkit which was released by OIP earlier this year. With the continued stabilization of our FOIA program, we were able to devote time to learning about methods used by other agencies and apply the lessons learned to our own agency and current situation.

4. 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 2017 (please provide a total number or an estimate of the number).

Answer: In accordance with the FOIA Improvement Act of 2016, we inform requesters of their right to seek assistance from the FOIA Public Liaison and include a phone number and an email address for the Liaison in every correspondence to a requester. We did not receive any requests for the service of the Liaison during FY 2017.

5. (Optional Survey Question) If possible, please provide an estimate of the average number of pages that your agency processes for each request. You may provide estimates for each track.

Answer: The average number of pages processed for a request in our simple track is approximately **450 pages**. This number was determined through a sampling of the average number of pages of simple requests closed in the fourth quarter of FY 2017.

The average number of pages processed for a request in our complex track is approximately **750 pages**. This number was determined through a sampling of the average number of pages of complex requests closed in the fourth quarter of FY 2017.

6. 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: As noted in our 2017 report, MSPB filled a critical vacancy in early FY 2017 for the supervisory position of CPO, which serves as the FOIA Public Liaison and has management responsibility for FOIA program. The CPO and the dedicated GIS worked closely to leverage all available resources more fully this year and to ensure we are continuously monitoring our progress and improving our processing time. When circumstances permitted, we also utilized attorneys assigned to the Office of the Clerk of the Board without primary FOIA responsibilities to assist with the review of voluminous, complex case files. This assistance allowed our GIS to focus attention on the administration of the FOIA program and processing new requests, while maintaining momentum on reducing our backlog. Additionally, we recruited a law school intern for the summer to assist with the initial review of simple requests for MSPB case files.

Section III: Steps Taken to Increase Proactive Disclosures

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

Answer:

- We posted MSPB decisions:
<https://www.mspb.gov/decisions/decisions.htm>
- We post weekly Case Reports that provide descriptions of court and Board decisions to inform and help the public locate Board precedents:
<https://www.mspb.gov/decisions/casereports.htm>
- We posted electronic versions of print publications for the *Issues of Merit* newsletter:
<https://www.mspb.gov/MSPBSEARCH/viewdocs.aspx?docnumber=1477762&version=1483321&application=ACROBAT>
<https://www.mspb.gov/MSPBSEARCH/viewdocs.aspx?docnumber=1442317&version=1447804&application=ACROBAT>
- We began posting our FOIA logs:
<https://www.mspb.gov/foia/MSPB%20FY17%20FOIA%20Log%20Quarter%201.pdf>
<https://www.mspb.gov/foia/MSPB%20FY17%20FOIA%20Log%20Quarter%202.pdf>
<https://www.mspb.gov/foia/MSPB%20FY17%20FOIA%20Log%20Quarter%203.pdf>
<https://www.mspb.gov/foia/MSPB%20FY17%20FOIA%20Log%20Quarter%204.pdf>
- We collaborated with our Office of Policy and Evaluation (OPE) to post the 2016 Merit Principles Survey Data in our e-FOIA Reading Room:
<https://www.mspb.gov/foia/SurveyData.htm>

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

Answer: We used Twitter ([@USMSPB](#)) to raise public awareness of some of the postings.

3. 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.

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

Answer: We redesigned our e-FOIA Reading Room in early calendar year 2017. The links to posted records were made more visible and the descriptions clearer and more concise to provide an accurate description of the record. We grouped and organized linked records to make browsing and searching easier. Information on our program and links to FOIA resources were also highlighted. In light of the recent guidance issued by OIP concerning agency e-FOIA Reading Rooms, we plan to further assess our website to ensure it remains as user-friendly as possible.

5. 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: Efforts to improve proactive disclosures have continued by increasing awareness and education of MSPB staff. Program offices have the knowledge of issues and topics in which the public would have the most interest, including the records that would be of the most interest. The FOIA staff, with the help of management, also keeps abreast of the current national news for trending topics.

Section IV: Steps Taken to Greater Utilize Technology

1. Has your agency identified any best practices to leverage 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? If yes, please describe the best practices, the types of technology used and the impact on your agency's processing.

Answer: MSPB has undertaken an initiative to better understand all of the systems we currently utilize, for example, to further our comprehension of existing email search and de-duplication capabilities. Working with agency information technology professionals, our FOIA team engaged with an outside contractor to more fully understand our existing IT systems, capabilities, and settings. Additionally, MSPB has begun to more fully utilize FOIAonline to internally rout FOIA tasks, such as searching for or recalling offsite records and sending them for offsite scanning. MSPB participated in ongoing discussions with our FOIAonline partners to identify ways that better leverage the system and offer additional capabilities to facilitate overall FOIA efficiency. Finally, MSPB recognized the value of ensuring that all responsive records scanned for FOIA are returned with optimal character recognition capability, and this requirement was included in our 2017 solicitation for a new copying / scanning contract.

2. Did your agency successfully post all four quarterly reports for Fiscal Year 2017?

Answer: Yes.

3. 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 2018.

Answer: Not Applicable.

4. 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 2016 Annual FOIA Report and, if available, for your agency's Fiscal Year 2017 Annual FOIA Report.

Answer: MSPB posted raw data from our Fiscal Year 2016 Annual FOIA Report in both a human-readable CSV form and machine-readable XML form. Both forms of raw data are available in our e-FOIA Reading Room:

- FY 2016 Report (CSV)
<https://www.mspb.gov/xml/MSPB%20FOIA%20FY%2016%20raw%20data.csv>
- FY 2016 Report (XML)
<https://www.mspb.gov/xml/MSPB%20FOIA%20FY16%20Final.xml>

We will post the raw data for the Fiscal Year 2017 Annual FOIA Report as soon as it is available.

5. If there are any other steps your agency has taken to improve use of technology in FOIA, please describe them here.

Answer: See Section VI, number 1, above.

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

A. Simple Track

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

Answer: Yes.

2. If so, for your agency overall in Fiscal Year 2017, was the average number of days to process simple requests twenty working days or fewer?

Answer: No. With the stabilization of staffing in our FOIA program, Fiscal Year 2017 was the first year that MSPB consistently placed new requests into the appropriate track, i.e., simple, complex, or expedited. Properly tracking the requests provided us with a clearer understanding of our backlog situation and assisted us in identifying those backlogged requests that could be closed more quickly. Although we made a concerted effort to process new simple requests within the statutory time period, our average number of days to process simple requests for Fiscal Year 2017 reflects a longer average because of the backlogged requests that were not properly identified at the time of docketing.

3. Please provide the percentage of requests processed by your agency in Fiscal Year 2017 that were placed in your simple track.

Answer: 74.7%

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: Not applicable.

B. Backlogs

BACKLOGGED REQUESTS

5. If your agency has a backlog of requests at the close of Fiscal Year 2017, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2016?

Answer: MSPB's backlog remained effectively the same from FY 2016 to FY 2017. Our backlog was 69 requests at the end of FY 2016 and 70 requests at the end of FY 2017.

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: While MSPB was unable to decrease its backlog, we made incredible strides in Fiscal Year 2017 in our FOIA program: we closed more requests than we received (190 requests closed, including 7 of our 10 oldest requests, compared to 172 requests received). MSPB continues to receive many complex requests for copies of MSPB appeal files, which are extensive and typically contain sensitive personal information and non-MSPB specific information which must be carefully reviewed.

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 2017.

Answer: 39.72%

BACKLOGGED APPEALS

8. If your agency had a backlog of appeals at the close of the Fiscal Year 2017, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2016?

Answer: MSPB did not have any backlogged appeals at the end of Fiscal Year 2017. This is a decrease from Fiscal Year 2016 in which we reported two backlogged appeals.

9. If not, explain why and describe the causes that contributed to your agency not being able to reduce 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: Not applicable.

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 2017. If your agency did not receive any appeals in Fiscal Year 2016 and/or has no appeal backlog, please answer with “N/A”.

Answer: Not applicable.

C. Backlog Reduction Plans

11. In the 2017 guidelines for the Chief FOIA Officer Reports, any agency with a backlog of over 1,000 requests in Fiscal Year 2016 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 2017?

Answer: MSPB did not have a backlog of over 1,000 requests in Fiscal Year 2016.

12. If your agency had a backlog of more than 1,000 requests in Fiscal Year 2017, what is your agency’s plan to reduce its backlog in Fiscal Year 2018?

Answer: MSPB did not have a backlog of over 1,000 requests in Fiscal Year 2017.

D. Status of Ten Oldest Requests, Appeals, Consultations

TEN OLDEST REQUESTS

13. In Fiscal Year 2017, did your agency close the ten oldest requests that were reported pending in your Fiscal Year 2016 Annual FOIA Report?

Answer: No.

14. 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 2016 Annual FOIA Report. If you had less than ten total oldest requests to close, please indicate that.

Answer: MSPB was able to close seven of the ten oldest requests as reported in our Fiscal Year 2016 Annual FOIA Report.

15. 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: None of the ten oldest requests were closed due to withdrawal of the request by the requester.

TEN OLDEST APPEALS

16. In Fiscal Year 2017, did your agency close the ten oldest appeals that were reported pending in your Fiscal Year 2016 Annual FOIA Report?

Answer: Yes. MSPB was able to close the oldest appeals that were pending at the end of Fiscal Year 2016.

17. 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 2016 Annual FOIA Report. If you had less than ten total oldest appeals to close, please indicate that.

Answer: MSPB reported four appeals as our oldest pending appeals. We were able to close all of them by the end of the fiscal year.

TEN OLDEST CONSULTATIONS

18. In Fiscal Year 2017, did your agency close the ten oldest consultations that were reported pending in your Fiscal Year 2016 Annual FOIA Report?

Answer: Not applicable. We did not report any pending consultations in our FY 2016 Annual FOIA Report.

19. 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 2016 Annual FOIA Report. If you had less than ten total oldest consultations to close, please indicate that.

Answer: Not Applicable.

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

20. Briefly explain any obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2017.

Answer: While MSPB is committed to closing its ten oldest requests in any year, MSPB has one full-time FOIA professional who is responsible for the daily administration of all aspects of MSPB's FOIA program. Our Fiscal Year 2017 oldest requests were voluminous requests for MSPB case files and presented challenging personal privacy concerns that make them difficult and time-consuming to process. Our processing of such requests is complex as we constantly balance our duty and commitment in promoting an open and transparent Government with our duty to protect individuals' privacy.

21. 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: Not Applicable.

22. 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 2018.

Answer: We have identified the 10 oldest requests currently pending for FY 2018. Our goal is to close a certain amount of old, backlogged requests each quarter, and we continue to utilize additional personnel resources within the Office of the Clerk of the Board to help us close these oldest requests.

F. Success Stories

Out of all the activities undertaken by your agency since March 2017 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.

Answer: The FOIA program at MSPB has stabilized and grown since March 2017. Now fully staffed with a full-time GIS and a CPO with an extensive background in FOIA, the program is consistently producing results as illustrated by: the improved administration of FOIA; producing a high volume of closed requests; and steadily working through our backlog. We strived to become more introspective this year to understand how we operate and to use that knowledge to improve our performance. We have gained confidence in our abilities and set goals for the fiscal year which were not only achieved, but surpassed.

Among our achievements since March 2017:

- Closing 190 requests in Fiscal Year 2017;
- Closing more of the ten oldest requests than the previous fiscal year;
- Utilizing staff resources more fully to achieve our closure rate;
- Recruiting a law school intern who assisted us in our efforts and was able to delve into the complexity of FOIA and its role in promoting an open Government; and,
- Developing and presenting in-person training to non-FOIA professionals to raise awareness of FOIA and their responsibilities in its proper administration at MSPB.