

**2017 Chief FOIA Officer Report
for the Merit Systems Protection Board (MSPB)**

by

William D. Spencer
Acting CIO and
Chief FOIA Officer

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 FOIA responsibilities. We also send attorneys 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 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 and the American Society of Access Professionals. Training attended included full-day informational seminars and half-day sessions such as the Best Practices workshops, the Annual and Chief FOIA Officer Report workshops, and the 2016 FOIA Amendments Act update. Staff also attended trainings on broader topics, including an overview of the exemptions, proper ways to apply redactions, and in-depth discussions on specific exemptions.

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 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. With the addition of a new, full-time Government Information Specialist (GIS), search memos to program offices are more thorough and detailed. Additionally, during Sunshine Week 2016, MSPB’s Chief FOIA Officer sent a series of agency-wide emails that explained the purpose and history of Sunshine Week; how MSPB’s FOIA program operates, including how requests are processed; the statutory deadline requirements; and each employee’s role regarding FOIA. The all-employee emails included links to MSPB’s FOIA reports, OIP’s FOIA Infographic, and ways to obtain more information on FOIA. During Sunshine Week, MSPB’s senior staff members received a separate email asking them to view OIP’s video specifically for agency senior executives and reminding them that “FOIA is everyone’s responsibility.”

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: With the codification of the “foreseeable harm” standard in the 2016 FOIA Amendments Act, we have further emphasized this consideration in our analysis when we review records for release. For example, where a full release is not possible, our FOIA team consults with program staff to better understand the nature of the requested records, with the goal determining how we can provide more transparency by making a partial disclosure, if possible.

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

A. Processing Procedure:

1. For Fiscal Year 2016, what was the average number of days your agency reported for adjudicating requests for expedited processing?

Answer: 2.74 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 processing dropped substantially from last year. With the stabilization of our staffing situation, we have made it a priority to focus on the requirements for our FOIA program as outlined in 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: As our staffing challenges stabilized, we continually assessed our performance throughout the year. Our new GIS worked to develop new methods and strategies to effectively and timely process incoming requests and to begin the work of reducing the existing backlog. Our self-assessments occurred during weekly meetings where current processing methods were discussed and tweaked. We also used observations gleaned from the quarterly and annual

reports to provide us with the current state of our FOIA program and inform the path forward. We will continue these self-assessment efforts in the coming year with the recent addition of our Chief Privacy Officer & Director of Information Services, who has a strong background in FOIA litigation.

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: We processed approximately 21 requests (of approximately 31) from commercial use requesters. However, MSPB's regulations provide that we do not charge fees under \$100 and we did not estimate or calculate the total fees for each of the commercial requesters.

B. Requester Service:

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: While requesters have called MSPB's main FOIA number for information and help with their requests, no caller has specifically sought the help of the FOIA Public Liaison.

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

Answer: <http://www.mspb.gov/foia/request.htm>

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: Prior to December 2016, MSPB allowed FOIA requesters to submit requests to our headquarters office or directly to any of our 8 regional and field offices. This system had been in place for a long time and was reflective of a time in years past when records were mostly paper and accessible in only one physical location. Given the combined effect of the prevalence and

accessibility of electronic records, the statutory requirement to post frequently requested records, and continuous need to identify records for proactive disclosure, MSPB centralized all FOIA operations to the Office of the Clerk of the Board. This change reduces confusion for requestors when submitting their requests and ensures greater consistency in MSPB's FOIA processes.

We also worked internally to better understand our existing technology and how we can effectively use such technology to most effectively and efficiently conduct electronic searches for certain types of records requests.

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: We use the [FOIAonline](#) system to identify frequently requested records. For example, we received numerous requests for a series of identical or related records, and we were able to locate the records using FOIAonline and post them on our 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. 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, we consider whether records associated with them are suitable for proactive disclosure on our website. As awareness of FOIA has grown within MSPB, non-FOIA professionals have started to reach out with ideas for proactive disclosures. For example, an MSPB program office anticipated that a recently-created dataset would be of interest to the public and likely the subject of future FOIA requests, and initiated discussions with our FOIA staff on how best to make this data available. We anticipate that the dataset will be posted as a proactive disclosure in spring 2017.

3. Has your agency encountered challenges that make it difficult to post records you otherwise would like to post?

Answer: Yes.

4. If so, briefly explain those challenges and how your agency is working to overcome them.

Answer: Because we have only 1 full-time employee dedicated to FOIA, our resources to identify, prepare, and proactively post records are limited.

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

Answer:

- We posted documents concerning the departure of our Chairman, including a press release and FAQ (<https://www.mspb.gov/MSPBSEARCH/viewdocs.aspx?docnumber=1376617&version=1381992&application=ACROBAT>) and (<https://www.mspb.gov/MSPBSEARCH/viewdocs.aspx?docnumber=1376654&version=1382029&application=ACROBAT>);
- We posted an electronic version of a print publication titled *The Merit Systems Principles: Keys to Managing the Federal Workforce* (<https://www.mspb.gov/mspbsearch/viewdocs.aspx?docnumber=1371890&version=1377261&application=ACROBAT>);
- We posted documents that, together, create a primer on adverse action procedures for Federal employees (https://www.mspb.gov/studies/adverse_action_report/); and
- 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/MSPBSEARCH/viewdocs.aspx?docnumber=1381519&version=1386905&application=ACROBAT>).

6. 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](https://twitter.com/USMSPB)) to raise public awareness of the postings.

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: As awareness of FOIA grows among MSPB program staff, there has been a willingness to consider whether the public would benefit from proactively disclosing a record before requests are received for the document. For example, a program office proactively identified a

dataset used by its staff that would likely be the subject of multiple FOIA requests and initiated discussions with the FOIA office on how best to proactively post it.

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 March 2016, we made substantial revisions to our FOIA Requester Service Center page to make it more user-friendly. We continue to evaluate the usefulness of that information and have made additional changes to the page, as appropriate. All FOIA materials, including our annual reports, FY 2016 raw data report, and e-FOIA Reading Room, are available from this page. Our FOIA Requester Service Center page summarizes the categories of records available elsewhere on the MSPB website and includes hyperlinks to allow requesters to easily access those records.

In addition, the MSPB website is organized so that records for new and relevant topics—most likely to be of interest to the public—are highlighted and easily accessible from the home page. We continue to use Twitter to inform the public when new information or records are available on our website, including new press releases, reports, and newsletters.

B. Other Initiatives

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

Answer: MSPB successfully posted quarterly reports for the second through fourth quarter of FY 2016.

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 FY 2017.

Answer: Due to many FOIA staffing changes throughout FY 2015 and early FY 2016, MSPB did not have a full-time dedicated FOIA professional until the end of the second quarter of FY 2016. Since that time, MSPB has been able to timely post each quarterly report.

**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 2016, was the average number of days to process simple requests twenty working days or fewer?

Answer: No.

3. Please provide the percentage of requests processed by your agency in Fiscal Year 2016 that were placed in your simple track.

Answer: 89%

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 request at the close of Fiscal Year 2016, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2015? If not, explain why and describe the causes that contributed to your agency not being able to reduce its backlog.

Answer: MSPB experienced an increase in our backlog from FY 2015 to FY 2016. Our backlog was 44 requests at the end of FY 2015 and increased to a backlog of 69 requests at the end of 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: MSPB's backlog increased from FY 2015 to FY 2016, mostly as a result of the personnel turnover throughout the year, including 6 months without a dedicated, full-time GIS. Additionally, MSPB received more FOIA requests in FY 2016 than in FY 2015 (206 compared to 165), and many of the requests received are complex requests for copies of MSPB appeal files, which are extensive and typically contain information which must be redacted under Exemption (b)(6).

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: 47%

BACKLOGGED APPEALS

8. If your agency had a backlog of appeals at the close of the Fiscal Year 2016, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2015? If not, explain why and describe the causes that contributed to your agency not being able to reduce backlog.

Answer: MSPB had no backlog of FOIA appeals at the end of FY 2015. We had a backlog of two FOIA appeals at the end of FY 2016 (an increase).

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 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: Although MSPB ended FY 2016 with two backlogged appeals, both of which were complex, those appeals have now been closed.

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

Answer: 18%

C. Status of Ten Oldest Requests, Appeals, and Consultations

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: No.

12. If no, please provide the number of the 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: In FY 2016, MSPB was able to close 5 of the oldest 10 requests that were reported pending in our FY 2015 Annual FOIA Report.

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: Of the 5 requests that were closed, 2 were closed with a disposition of withdrawn. No interim release was provided to the requester for either of the withdrawn requests.

TEN OLDEST APPEALS

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

Answer: Not applicable; MSPB had no appeals pending at the end of FY 2015.

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.

Answer: Not applicable.

TEN OLDEST CONSULTATIONS

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: Not applicable. We did not report any pending consultations in our FY 2015 Annual FOIA Report.

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: Not Applicable.

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: As explained above, e.g., in response to Section V.B.6., MSPB continued to face significant personnel challenges in our FOIA program through FY 2016, and the remaining 10 oldest requests from FY 2015 were complex and time consuming.

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: Not Applicable.

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: We have already identified the 10 oldest requests currently pending for FY 2017. We have made it a goal to close a certain amount of old, backlogged requests each quarter, and we are temporarily utilizing 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 2016 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: With the onboarding of a full-time, seasoned GIS in mid-FY 2016, combined with the FY 2017 onboarding of our Chief Privacy Officer & Director of Information Services with a strong background in both privacy and FOIA litigation, the overall capabilities of our FOIA program have improved substantially. Among our achievements since March 2016:

- Fully utilizing [FOIAonline](#) as the electronic repository for all FOIA records;
- Engaging MSPB’s IT staff to educate them on the requirements of FOIA and how to effectively utilize our existing technologies to conduct searches;
- Prioritizing more frequent and transparent communication with requestors, including relaying our recent staffing challenges and the realities of our backlog and workload;
- Increasing the number of interim releases; and

- Employing a team-oriented, thoughtful approach to processing complex FOIA requests given MSPB's unique role as an independent agency with quasi-judicial functions involving the Federal workforce.