

**FISCAL YEAR 2024
CHIEF FOIA OFFICER REPORT**



U.S. Merit Systems Protection Board

March 2024

**2024 Chief FOIA Officer Report
for the Merit Systems Protection Board (MSPB)**

by
William D. Spencer
Executive Director 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 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: FOIA Leadership and Applying the Presumption of Openness

The guiding principle underlying the Attorney General's 2022 [FOIA Guidelines](#) is the presumption of openness. The Guidelines also highlight the importance of agency leadership in ensuring effective FOIA administration. Please answer the following questions about FOIA leadership at your agency and describe the steps your agency has taken to ensure that the presumption of openness is being applied to all decisions involving the FOIA.

A. Leadership Support for FOIA

1. The FOIA requires each agency to designate a Chief FOIA Officer who is a senior official at least 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.

2. Please provide the name and title of your agency's Chief FOIA Officer.

Answer: William D. Spencer, Executive Director.

3. What steps has your agency taken to incorporate FOIA into its core mission? For example, has your agency incorporated FOIA milestones into its strategic plan?

Answer: MSPB’s Strategic Plan identifies “transparency” as an MSPB organizational value and states that the agency “will make our decisions, merit systems studies, and other materials easy to understand and widely available and accessible on our website.” Additionally, and as described throughout this report, MSPB incorporates FOIA into its core mission through mandatory FOIA training of new employees and senior leaders, ongoing efforts between FOIA staff and program staff to identify opportunities for proactive disclosures and/or additional transparency into agency operations, and the designation of the agency’s Executive Director as Chief FOIA Officer.

B. Presumption of Openness

4. The Attorney General’s 2022 FOIA Guidelines provides that “agencies should confirm in response letters to FOIA requesters that they have considered the foreseeable harm standard when reviewing records and applying FOIA exemptions.” Does your agency provide such confirmation in its response letters?

Answer: Yes. An explanation of the foreseeable harm is added to all final response letters for requests that contain withholdings.

5. In some circumstances, agencies may respond to a requester that it can neither confirm nor deny the existence of requested records if acknowledging the existence of records would harm an interested protected by a FOIA exemption. This is commonly referred to as a *Glomar* response. If your agency tracks *Glomar* responses, please provide:
 - The number of times your agency issued a full or partial *Glomar* response (separate full and partial if possible);
 - The number of times a *Glomar* response was issued by exemption (e.g., Exemption 7(C) – 20 times, Exemption 1 -5 times).

Answer: While MSPB does not specifically track the issuance of *Glomar* responses, we are able to report that no *Glomar* responses were issued during the current Fiscal Year.

6. If your agency does not track the use of *Glomar* responses, are you planning on tracking this information in the future?

Answer: MSPB does not plan to formally track the issuance of *Glomar* responses because we issue a *Glomar* response very infrequently. However, MSPB recently procured a new FOIA management system, and we are learning ways in which the system can assist in tracking these responses.

7. 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: While maintaining the presumption of openness remains of the utmost importance to MSPB, we were unable to undertake any new initiatives this Fiscal Year because of the resources committed to decommissioning FOIAonline and the process related to the procurement and implementation of our new FOIA tracking system.

Section II: Ensuring Fair and Effective FOIA Administration

The Attorney General’s 2022 [FOIA Guidelines](#) provide that “[e]nsuring fair and effective FOIA administration requires ... proper training, and a full understanding of FOIA obligations by the entire agency workforce.” The Guidelines reinforce longstanding guidance to “work with FOIA requesters in a spirit of cooperation.” The Attorney General also urge[s] agency Chief FOIA Officers to undertake comprehensive review of all aspects of their agency’s FOIA administration” as part of ensuring fair and effective FOIA administration.

A. FOIA Training

1. 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: MSPB requires employees to complete mandatory FOIA training every other year. All employees completed mandatory FOIA training in Fiscal Year (FY) 2023. The FY 2023 FOIA training slides included a brief overview of the FOIA, current and precedential court decisions, and an explanation of how the FOIA is administered at MSPB. The training slides are maintained on the FOIA page of our agency’s intranet and are available throughout the year.

Additionally, all new MSPB employees receive the FOIA training slides during their onboarding activities and are provided with individual or small group training with the agency’s Director of Information Services, who oversees the FOIA program at MSPB. FOIA training for new employees includes senior leaders. MSPB is committed to ensuring that its employees are aware of the FOIA and their obligations as non-FOIA personnel.

2. Did your FOIA professionals or the personnel at your agency who have FOIA responsibilities attend substantive FOIA training during the reporting period such as that provided by the Department of Justice?

Answer: Yes. MSPB’s FOIA professionals conscientiously monitor training opportunities and attend the trainings that are pertinent to MSPB.

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

Answer: MSPB staff attended trainings offered by the DOJ's Office of Information Policy (OIP), including Advanced Freedom of Information Act Training, the Privacy Considerations training, and Continuing FOIA Education training, as well as the introductory OIP FOIA trainings for new MSPB staff with FOIA responsibilities.

4. Please 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%

5. 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 attend 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.

6. Describe any efforts your agency has undertaken to inform non-FOIA professionals of their obligations under the FOIA. In particular, please describe how often and in what formats your agency provides FOIA training or briefings to non-FOIA staff; and if senior leaders at your agency received a briefing on your agency's FOIA resources, obligations and expectations during the FOIA process?

Answer: As noted above, MSPB makes every effort to inform non-FOIA professionals of their obligations under the FOIA, including biannual mandatory training for all employees and mandatory FOIA training for new employees. Incoming senior leaders also receive substantive training on their FOIA obligations. Information about the agency's FOIA resources, obligations, and expectations is shared on a monthly basis with MSPB's Executive Director and Acting Chairman.

B. Outreach

7. As part of the standard request process, do your FOIA professionals proactively contact requesters concerning complex or voluminous requests in an effort to clarify or narrow the scope of the request so requesters can receive responses more quickly? Please describe any such outreach or dialogue and, if applicable, any specific examples.

Answer: Yes. MSPB’s FOIA professionals proactively contact requesters on a regular basis, via email and phone, concerning complex or voluminous requests in an effort to narrow the scope so that requesters can receive responses more quickly. Specific examples of voluminous requests include requests for entire appellate case files or large amounts of data, given MSPB’s mission to adjudicate employee appeals and conduct merit system studies. Once requestors better understand MSPB’s resource and technology limitations, and also learn from MSPB about how records are maintained and which records are likely releasable, some requestors are willing to narrow their requests.

8. Outside of the standard request process or routine FOIA Liaison or FOIA Requester Service Center interactions, did your FOIA professionals engage in any outreach or dialogue, with the requester community or open government groups regarding the administration of the FOIA? For example, did you proactively contact frequent requesters, host FOIA-related conference calls with open government groups, or provide FOIA training to members of the public? 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. Due to limited resources and workload in our FOIA program, MSPB’s FOIA professionals were unable to engage in any formal outreach or dialogue with the requester community.

9. 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 Fiscal Year 2023 (please provide a total number or an estimate of the number for the agency overall).

Answer: MSPB continues to experience very few instances (less than five) of requesters seeking the services of the FOIA Public Liaison in FY 2023.

C. Other Initiatives

10. Has your agency evaluated the allocation of agency personnel resources needed to respond to current and anticipated FOIA demands? If so, please describe what changes your agency has or will implement.

Answer: Yes. MSPB is committed to annually evaluating the allocation of agency personnel resources in light of current and anticipated FOIA demands. MSPB welcomed a new Government Information Specialist (GIS) in the beginning of FY 2023 who provides 0.5 FTE support to the FOIA program. Because MSPB transitioned FOIA case management systems in FY 2023 as a result of the decommissioning of FOIAonline—which required significant time and effort—

MSPB will continue to evaluate in FY 2024 whether additional resources beyond the current staffing are needed to respond to current and anticipated FOIA demands.

11. How does your agency use data processing metrics to ensure efficient management of your FOIA workload? For example, case management reports, staff processing statistics, etc. In addition, please specifically highlight any data analysis methods or technologies used.

Answer: MSPB's full-time Government Information Specialist, who is responsible for the day-to-day management of the FOIA program, routinely reviews workload and processing reports from our FOIA management system to ensure efficient management of the FOIA workload. As noted above, MSPB recently transitioned to a new FOIA management system and is excited to explore the new system's robust data processing metrics in FY 2024.

12. Optional – If there are any other initiatives undertaken by your agency to ensure fair and effective FOIA administration, please describe them here.

Answer: With the decommissioning of the FOIAonline platform at the end of FY 2023, MSPB has recently implemented a new FOIA case management system and is committed to ensuring that the system supports requesters' needs and allows for effective FOIA administration by agency personnel.

Section III: Proactive Disclosures

The Attorney General's 2022 [FOIA Guidelines](#) emphasize that "proactive disclosure of information is ... fundamental to the faithful application of the FOIA." The Guidelines direct agencies to post "records online quickly and systematically in advance of any public request" and reiterate that agencies should post records "in the most useful, searchable, and open formats possible."

1. Please describe what steps your agency takes to identify, track, and post (a)(2) proactive disclosures.

Answer: MSPB's non-FOIA program staff are aware of their obligations to post (a)(2) disclosures, and regularly coordinate with MSPB's webmaster to ensure that these disclosures are posted on MSPB's website. MSPB's management and FOIA staff work closely to identify and proactively disclose records that are likely to garner public interest. In addition, MSPB monitors new and processed FOIA requests to identify trends or similarities in requests that require posting under (a)(2)(D). MSPB's FOIA personnel work closely with MSPB's webmaster to track the number of (a)(2) postings to MSPB's website.

2. How long after identifying a record for proactive disclosure does it take your agency to post it?

Answer: MSPB makes every effort to expedite postings of records that are of great interest to the public. On average, records identified for proactive disclosure are posted within days of being identified.

3. Does your agency post logs of its FOIA requests?
 - If so, what information is contained in the logs?
 - Are they posted in CSV format? If not, what format are they posted in?

Answer: In the past, MSPB has posted logs of FOIA requests, but has not been able to prepare and post these logs in recent years due to workload and resource limitations.

MSPB's FOIA logs from past years are available on the FOIA page of the agency's [website](#) and contain the request number, the requester organization, the dates the request was received and closed, the disposition, and a brief description of the records sought in the request. The logs are posted as Portable Document Formats (PDF).

4. 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:

We post precedential and nonprecedential Board decisions:

<https://www.mspb.gov/decisions/nonprecdec.htm>

<https://www.mspb.gov/decisions/precdec.htm>

We posted Case Reports that provide descriptions of court and precedential Board decisions:

<https://www.mspb.gov/decisions/casereports.htm>

We posted Federal Register Notices:

<https://www.mspb.gov/publicaffairs/federalreg.htm>

We posted Press Releases:

<https://www.mspb.gov/publicaffairs/publicaffairs.htm>

We posted items under Plans, Budget & Performance:

<https://www.mspb.gov/about/annual.htm>

We posted items under a new Paperwork Reduction Act Information Collections page:

<https://www.mspb.gov/publicaffairs/paperwork-reduction-act.htm>

We posted our updated Shutdown Plan:

https://www.mspb.gov/MSPB_Shutdown_Plan_Sept_28_2023.pdf

We posted items authored by or affiliated with the work of MSPB's Office of Policy and Evaluation, including *Issues of Merit* newsletters and studies:

<https://www.mspb.gov/studies/newsletters.htm>

<https://www.mspb.gov/studies/featured.htm>

We posted an updated FAQ on the Lack of Quorum Period and Restoration of Full the Board:

https://www.mspb.gov/FAQs%20Absence%20of%20Board%20Quorum_July_12_2023.pdf

We posted numerous records during the transition to MSPB's new e-Appeal system:

<https://www.mspb.gov/e-appeal/index.htm>

Among the records available in our e-FOIA reading room (<https://www.mspb.gov/foia/e-foiareadingroom.htm>) we posted the following records:

Adjudicatory Records and Case Processing Information

https://www.mspb.gov/foia/files/HQ_Case_Processing_Data.pdf

Case Documents

https://www.mspb.gov/foia/files/Maclean_v_DHS-DC-1221-20-0235-W-2_Redacted.pdf

https://www.mspb.gov/foia/files/Michael_Fitzpatrick_v_Dept_of_Commerce-DC-1221-21-0423-W-1_Initial_Decision.pdf

https://www.mspb.gov/foia/files/Michael_Fitzpatrick_v_Dept_of_Commerce-DC-1221-21-0423-W-1_Hearing_Transcripts.pdf

Fiscal Year 2022 Annual Freedom of Information Act Report:

https://www.mspb.gov/foia/reports/FY_2022_Freedom_of_Information_Act_Report.pdf

2023 Chief FOIA Officer Report:

https://www.mspb.gov/foia/reports/FY_2023_Chief_FOIA_Officer_Report.pdf

5. 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.

6. If yes, please provide examples of such improvements. In particular, please describe steps your agency is taking to post information in open, machine-readable, and machine-actionable formats, to the extent feasible. If not posting in open formats, please explain why and note any challenges.

Answer: The records that are posted to our website are Section 508 compliant and, where appropriate, adhere to requirements for the record to be machine readable or actionable.

7. Does your proactive disclosure process or system involve any collaboration with agency staff outside the FOIA office, such as IT or data personnel? If so, describe the interaction.

Answer: Yes. MSPB's FOIA staff collaborate with program offices on records that are candidates for proactive disclosure and work closely with the agency's webmaster and Accessibility Program Manager to ensure that the record is accessible and posted appropriately.

8. Optional – Please describe the best practices used to improve proactive disclosures and any challenges your agency faces in this area.

Answer: MSPB's FOIA staff monitors incoming requests to spot trends and topics of public interest, and vigilantly monitors agency initiatives and current events concerning the agency. Additionally, program offices within MSPB communicate with the FOIA staff to bring matters of public concern or interest to their attention.

MSPB's challenge in this area is balancing limited resources among multiple objectives: timely processing of requests, backlog reduction, and maximizing opportunities to identify and make proactive disclosures. During FY 2023, MSPB's FOIA staff faced the heightened challenge of administering the FOIA program while also procuring and implementing a new FOIA case management system.

Section IV: Steps Take to Greater Utilize Technology

A key component of FOIA administration is using technology to make information available to the public and to gain efficiency in FOIA processing. The Attorney General's 2022 [FOIA Guidelines](#) emphasize the importance of making FOIA websites easily navigable and complying with the [FOIA.gov](#) interoperability requirements. Please

answer the following questions to describe how your agency is using technology to improve its FOIA administration and the public's access to information.

1. Has your agency reviewed its FOIA-related technology capabilities to identify resources needed to respond to current and anticipated FOIA demands?

Answer: Yes.

2. Please briefly describe any new types of technology your agency uses to support your FOIA program.

Answer: With the decommissioning of FOIAonline, MSPB procured and implemented a new FOIA request management system at the end of FY 2023. MSPB's new FOIA case management system offers greater document management capabilities, and MSPB anticipates that the enhanced features will benefit our FOIA program administration and offer a more streamlined procedure to electronically deliver responsive records to requesters.

3. Does your agency currently use any technology to automate record processing? For example, does your agency use machine learning, predictive coding, technology assisted review, or similar tools to conduct searches or make redactions? If so, please describe and, if possible, estimate how much time and financial resources are saved since implementing the technology.

Answer: Our new FOIA case management system offers enhanced technology which will allow us to better automate our record processing. As this technology was recently implemented, FOIA staff are in the process of learning how the technology can lead to improvements in our record processing.

4. 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. MSPB routinely reviews the FOIA website to ensure that it contains essential resources and is informative and user-friendly. During the reporting period, MSPB regularly updated the website to inform requesters as we transitioned to a new FOIA case management and FOIA e-filing system.

5. Did all four of your agency's [quarterly reports](#) for Fiscal Year 2023 appear on FOIA.gov?

Answer: Yes. MSPB submitted all four quarterly reports to FOIA.gov.

6. If your agency did not successfully post all quarterly reports on FOIA.gov, please explain why and provide your agency's plan for ensuring that such reporting is successful in Fiscal Year 2024.

Answer: Not applicable.

7. 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 2022 Annual FOIA Report and, if available, for your agency's Fiscal Year 2023 Annual FOIA Report.

Answer: MSPB posted raw data from our Fiscal Year 2022 Annual FOIA Report in both a human-readable CSV form and a machine-readable XML form. Both forms are available in our [e-FOIA Reading Room](#):

- Fiscal Year 2022 Report ([CSV](#))
- Fiscal Year 2022 Report ([XML](#))
- Fiscal Year 2023 Report ([CSV](#))
- Fiscal Year 2023 Report ([XML](#))

8. In February 2019, DOJ and OMB issued joint [Guidance](#) establishing interoperability standards to receive requests from the National FOIA Portal on FOIA.gov. Are all components of your agency in compliance with the guidance?

Answer: Yes. MSPB is able to receive requests submitted from the National FOIA Portal through MSPB's new FOIA management system.

9. Optional – Please describe the best practices used in greater utilizing technology and any challenges your agency faces in this area.

Answer: As noted above, MSPB implemented a new FOIA case management system at the end of FY 2023 that offers enhanced technological capabilities. MSPB's FOIA staff will explore these new capabilities in FY 2024 in an effort to gain new efficiencies for our FOIA program.

Section V: Steps Taken to Remove Barriers to Access, Improve Timeliness in Responding to Requests, and Reduce Backlogs

The Attorney General's 2022 [FOIA Guidelines](#) instruct agencies "to remove barriers to requesting and accessing government records and to reduce FOIA processing backlogs." Please answer the following questions to describe how your agency is removing barriers to access, improving timeliness in responding to requests, and reducing FOIA backlogs.

A. Remove Barriers to Access

1. Has your agency established alternative means of access to first-party requested records outside of the typical FOIA or Privacy Act process?

Answer: Yes.

2. If yes, please provide examples. If no, please indicate why not. Please also indicate if you do not know.

Answer: First-party requesters almost exclusively seek their MSPB appeal case file. Many requestors can access their current or recent appeal files through MSPB's e-Appeal system, a web-based system with access restricted to case parties only. MSPB launched a new, modernized version of e-Appeal at the beginning of FY 2024. Requestors are encouraged to use e-Appeal to access and download electronic copies of their appeal file whenever possible. However, a significant portion of first-party requesters seek their older records, the majority of which are in paper format and are maintained offsite at Federal Records Centers throughout the United States. In other circumstances, requestors seek a paper copy of their first-party record even when the record is available electronically.

3. Please describe any other steps your agency has taken to remove barriers to accessing government information.

Answer: Not applicable.

B. Timeliness

4. For Fiscal Year 2023, 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 2023 Annual FOIA Report.

Answer: 3.15 days.

5. 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 2023 Annual FOIA Report, please describe the steps your agency will take to ensure that request for expedited processing are adjudicated within ten calendar days or less.

Answer: Not applicable. MSPB continues to prioritize the adjudication of expedited requests and to grant such requests, when appropriate.

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

Answer: Yes. MSPB utilizes the traditional three-track system for FOIA requests: simple, complex, and expedited requests.

7. If your agency uses a separate track for simple requests, according to Annual FOIA Report section VII.A, was the agency overall average number of days to process simple requests twenty working days or fewer in Fiscal year 2023?

Answer: Yes. The average number of days to process simple requests in FY 2023 was 5.91 days.

8. If not, did the simple track average processing time decrease compared to the previous Fiscal Year?

Answer: Not applicable.

9. Please provide the percentage of requests processed by your agency in Fiscal Year 2023 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: 59%

10. 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.

C. Backlogs

Backlogged Requests

11. If your agency had a backlog of requests at the close of Fiscal Year 2023, according to Annual FOIA Report Section XII.D.2, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2022?

Answer: No. MSPB's backlog of requests increased from the backlog of requests reported at the end of FY 2022.

12. If not, according to Annual FOIA Report Section XII.D.1, did your agency process more requests during Fiscal Year 2023 than it did during Fiscal Year 2022?

Answer: Yes. MSPB processed 37 more requests during FY 2023 than it did during FY 2022.

13. If your agency's request backlog increased during Fiscal Year 2023, 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)
- Litigation
- Any other reasons – please briefly describe or provide examples when possible.

Answer: MSPB's FOIA request backlog increased during FY 2023 due to an increase in the number of incoming requests (83 more requests – an increase over requests received in FY 2022). Additionally, MSPB's FOIA staff dedicated significant time in FY 2023 to the procurement and implementation of a new FOIA case management system, given the decommissioning of FOIAonline, which impacted the ability of FOIA staff to process and close requests.

14. 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 2023. 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. This number can be greater than 100%. If your agency has no request backlog, please answer with "N/A."

Answer: 43%

Backlogged Appeals

15. If your agency had a backlog of appeals at the close of Fiscal Year 2023, according to Section XII.E.2 of the Annual FOIA Report, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2022?

Answer: No. MSPB's backlog of FOIA appeals at the end of FY 2023 remained the same as the previous year.

16. If not, according to section XII.E.1 of the Annual FOIA Report, did your agency process more appeals during Fiscal Year 2023 than it did during Fiscal Year 2022?

Answer: Yes. MSPB processed six more appeals in FY 2023 than it did in FY 2022.

17. If your agency's appeal backlog increased during Fiscal Year 2023, 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)
- Litigation
- Any other reasons – please briefly describe or provide examples when possible

Answer: Not applicable.

18. 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 2023. 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. This number can be greater than 100%. If your agency did not receive any appeals in Fiscal Year 2023 and/or has no appeal backlog, please answer with "N/A."

Answer: 10%

D. Backlog Reduction Plans

19. In the 2023 guidelines for Chief FOIA Officer Reports, any agency with a backlog of over 1000 requests in Fiscal Year 2022 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 2023?

Answer: MSPB did not have a backlog of over 1,000 requests in Fiscal Year 2022.

20. If your agency had a backlog of more than 1,000 requests in Fiscal Year 2023, please explain your agency's plan to reduce this backlog during Fiscal Year 2024.

Answer: Not applicable.

E. Reducing the Age of Requests, Appeals, and Consultations

Ten Oldest Requests

21. In Fiscal Year 2023, did your agency close the ten oldest pending perfected requests that were reported in Section VII.E. of your Fiscal Year 2022 Annual FOIA Report?

Answer: No.

22. 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 2022 Annual FOIA Report. If you had less than ten total oldest requests to close, please indicate that.

Answer: MSPB closed 2 of the 10 oldest requests by the end of FY 2023.

23. Beyond work on the ten oldest requests, please describe any steps your agency took to reduce the overall age of your pending requests.

Answer: MSPB continues to concentrate on backlog reduction. We continue to set goals of reducing the processing time for simple requests. By processing simple requests more efficiently and quickly and striving to keep pace with newly-received simple requests, we aim to reduce the number of new requests that are left pending at the end of the fiscal year. As noted above, FY 2023 was a particularly challenging year for MSPB's FOIA program given the increase in requests received (83 requests or an increase of 60%) and the time required by FOIA staff to procure and implement a new FOIA case management system.

Ten Oldest Appeals

24. In Fiscal Year 2023, did your agency close the ten oldest appeals that were reported pending in Section VI.C.5 of your Fiscal Year 2022 Annual FOIA Report?

Answer: Yes.

25. 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 2022 Annual FOIA Report. If you had less than ten total oldest appeals to close, please indicate that.

Answer: Not applicable.

26. Beyond work on the ten oldest appeals, please describe any steps your agency took to reduce the overall age of your pending appeals.

Answer: MSPB FOIA appeal staff work diligently to process appeals as they are filed which has resulted in no new appeals entering the backlog.

Ten Oldest Consultations

27. In Fiscal Year 2023, did your agency close the ten oldest consultations that were reported pending in Section XII.C. of your Fiscal Year 2022 Annual FOIA Report?

Answer: MSPB did not have any pending consultations at the end of FY 2022.

28. 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 2022 Annual FOIA Report. If you had less than ten total oldest consultations to close, please indicate that.

Answer: Not applicable.

Additional Information Regarding Ten Oldest

29. If your agency did not close its ten oldest pending requests, appeals, or consultations, please explain why and provide a plan describing how your agency intends to close those “ten oldest” requests, appeals, and consultations during Fiscal Year 2024.

Answer: MSPB has identified the ten oldest requests from our backlog for FY 2024, and we are working to set quarterly goals in an effort to close these ten requests by September 30, 2024. MSPB was unable to close these requests in FY 2023 given the complexity of the requests coupled with the demand on resources to procure and implement a new FOIA system.

F. Additional Information about FOIA Processing

30. Were any requests at your agency the subject of FOIA litigation during the reporting period? If so, please describe the impact on your agency’s overall FOIA request processing and backlog. If possible, please indicate:

- The number and nature of requests subject to litigation
- Common causes leading to litigation
- Any other information to illustrate the impact of litigation on your overall FOIA administration

Answer: No. MSPB did not have any requests that were the subject of FOIA litigation during the reporting period.