

**FISCAL YEAR 2023  
CHIEF FOIA OFFICER REPORT**



**U.S. Merit Systems Protection Board**

**March 2023**

**2023 Chief FOIA Officer Report  
for the Merit Systems Protection Board (MSPB)**

by  
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Executive Director and  
Chief FOIA Officer

The MSPB ([www.mspb.gov](http://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: FOIA Leadership and Applying the Presumption of Openness**

The guiding principle underlying the Attorney General’s [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 interest protected by a FOIA exemption. This is commonly referred to as a *Glomar* response. With respect to these responses, please answer the below questions:

- a. In addition to tracking the asserted exemption, does your agency specifically track whether a request involved a *Glomar* response?

**Answer:** No. MSPB does not formally track the number of times a *Glomar* response is issued.

- b. If yes, please provide:
- i. The number of times your agency issued a full or partial *Glomar* response (separate full and partial if possible);
  - ii. The number of times a *Glomar* response was issued by exemption (e.g., Exemption 7(C) – 20 times, Exemption 1 – 5 times).

**Answer:** Not applicable.

- c. If your agency does not track the use of *Glomar* responses, what would your agency need to do to track in the future? If possible, please describe the resources and time involved.

**Answer:** MSPB needs the ability to track *Glomar* responses in our FOIA requests management software. We are in the process of replacing our current software in FY 2023, and we will include this as a requirement for the new system.

6. Optional – If there are any other initiatives undertaken by our agency to ensure the presumption of openness is being applied, please describe them here.

**Answer:** In an effort to raise awareness about FOIA and the presumption of openness, MSPB’s FOIA staff use opportunities during staff meetings and inter-office meetings to share trends in FOIA requests and processing and how those trends may relate to agency programs or initiatives. Additionally, non-FOIA staff at MSPB strive to identify records that could be proactively released.

## **Section II: Ensuring Fair And Effective FOIA Administration**

The Attorney General’s [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 strives to provide mandatory FOIA training every other year; employees were last required to complete FOIA training in Fiscal Year (FY) 2021. The FY 2021 training slides are available for reference by employees on the FOIA page of our agency’s intranet. They include a brief overview of the FOIA, current and precedential court decisions, and an explanation of how the FOIA is administered at MSPB.

Additionally, all new MSPB employees receive the FOIA training slides, as well as 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 DOJ's Office of Information Policy (OIP), including Advanced Freedom of Information Act Training. Training topics included an in-depth discussion on FOIA Exemptions 6 and 7(C), proactive disclosures, and procedural requirements such as a defining a reasonable search and a proper record.

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 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.

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 bi-annual mandatory training for all employees and mandatory FOIA training for new employees. Incoming senior leaders also receive substantive training on their FOIA obligations; in FY 2022, MSPB onboarded its 3 Senate-confirmed Board members, all of whom received in-person FOIA training specifically targeted for senior leaders. 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. Did your FOIA professionals engage in any outreach or dialogue, outside of the standard request process, with the requester community or open government groups regarding your administration of the FOIA? Please describe any such outreach or dialogue, and, if applicable, any specific examples of how this dialogue has led to improvements in your agency's FOIA administration.

**Answer:** No. 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.

8. 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.

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 2022 (please provide a total number or an estimate of the number).

**Answer:** MSPB continues to experience very few instances (less than five) of requesters seeking the services of the FOIA Public Liaison in Fiscal Year 2022.

### ***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. In mid-FY 2021, MSPB added a 0.5 FTE to further support the FOIA program; however, MSPB has not been able to adequately evaluate whether the additional resource is sufficient given that the individual providing the support departed MSPB in FY 2022. MSPB is committed to annually evaluating the allocation of agency personnel resources in light of current and anticipated FOIA demands.

11. How does your agency use data or 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, FOIAonline, to ensure efficient management of the FOIA workload.

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 sunseting of the FOIAonline platform at the end of FY 2023, MSPB is taking steps to ensure that any successor FOIA case management system will ensure fair and effective FOIA administration.

### **Section III: Proactive Disclosures**

The Attorney General’s [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 step occurs. MSPB’s management and FOIA staff work closely to identify and proactively disclose records that are likely to garner public interest. With the Senate confirmation of 3 Board members and the restoration of the Board’s quorum in FY 2022, MSPB was able to fully resume agency activities that had been on hold since January 2017 while MSPB was without a quorum, such as issuing of Board decisions and publishing reports to the President and Congress. As a result, MSPB has been able to post more (a)(2) disclosures.

MSPB also 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. 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).

**Answer:**

We post precedential and nonprecedential Board decisions:

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

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

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

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

We posted two Federal Register Notices:

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

We posted numerous items authored by or affiliated with the work of MSPB's Office of Policy and Evaluation, including MSPB's 2022-2026 Research Agenda, MSPB's report to the President and Congress on "Sexual Harassment in Federal Workplaces: Understanding and Addressing the Problem," and the September *Issues of Merit* newsletter:

[https://www.mspb.gov/studies/studies/MSPB\\_Research\\_Agenda\\_2022\\_2026\\_1963965.pdf](https://www.mspb.gov/studies/studies/MSPB_Research_Agenda_2022_2026_1963965.pdf)

[https://www.mspb.gov/studies/studies/Sexual\\_Harassment\\_in\\_Federal\\_Workplaces\\_Understanding\\_and\\_Addressing\\_the\\_Problem\\_1987037.pdf](https://www.mspb.gov/studies/studies/Sexual_Harassment_in_Federal_Workplaces_Understanding_and_Addressing_the_Problem_1987037.pdf)

[https://www.mspb.gov/studies/newsletters/Issues\\_of\\_Merit\\_September\\_2022\\_1963933.pdf](https://www.mspb.gov/studies/newsletters/Issues_of_Merit_September_2022_1963933.pdf)

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

[https://www.mspb.gov/FAQs\\_Absence\\_of\\_Board\\_Quorum\\_June\\_7\\_2022.pdf](https://www.mspb.gov/FAQs_Absence_of_Board_Quorum_June_7_2022.pdf)

We posted a Notice to Parties with a Pending Case Before the Full Board:

[https://www.mspb.gov/Notice\\_about\\_contact\\_information.pdf](https://www.mspb.gov/Notice_about_contact_information.pdf)

We posted 9 Press Releases:

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

We posted 6 items under Plans, Budget & Performance:

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



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

Ratification Orders for MSPB's Administrative Judges and Loaned Administrative Law Judges:

[https://www.mspb.gov/foia/files/AJ\\_Ratification\\_Order\\_3-4-2022.pdf](https://www.mspb.gov/foia/files/AJ_Ratification_Order_3-4-2022.pdf)

[https://www.mspb.gov/foia/files/ALJ\\_Ratification\\_Order\\_3-4-2022.pdf](https://www.mspb.gov/foia/files/ALJ_Ratification_Order_3-4-2022.pdf)

Recommended Approach for the Petition for Review Backlog  
<https://www.mspb.gov/foia/files/BacklogDecisionMemo.pdf>

Pending Petition for Review Data (through February 2022):  
[https://www.mspb.gov/foia/files/february\\_2022\\_pfrs\\_received\\_and\\_pending\\_counts-508.pdf](https://www.mspb.gov/foia/files/february_2022_pfrs_received_and_pending_counts-508.pdf)

Fiscal Year 2021 Annual Freedom of Information Act Report:  
[https://www.mspb.gov/foia/reports/FY%2021\\_FOIA\\_Annual\\_Report\\_For\\_Posting\\_Final-508.pdf](https://www.mspb.gov/foia/reports/FY%2021_FOIA_Annual_Report_For_Posting_Final-508.pdf)

2022 Chief FOIA Officer Report:  
[https://www.mspb.gov/foia/reports/FY\\_2022\\_Chief\\_FOIA\\_Officer\\_Report.pdf](https://www.mspb.gov/foia/reports/FY_2022_Chief_FOIA_Officer_Report.pdf)

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. In particular, please describe steps your agency is taking to post information in open, machine-readable, and machine-actional formats, to the extent feasible. If not posting in open formats, please explain why and note any challenges.

**Answer:** In FY 2021, MSPB unveiled a comprehensive redesign of its website using the U.S. Web Design System, which improved the customer experience by highlighting popular categories of records and offering better search capability by utilizing Search.gov. The new website also included a more robust and advanced search tool for the public to search the database of Board decisions more efficiently, which benefited the public in FY 2022 with the restoration of Board quorum and resumption of issuing Board decisions, which are routinely posted to the website within one business day of issuance. Additionally, MSPB devoted special attention in FY 2022 to ensure that posted information met the needs of the public and external

stakeholders given the restoration of the quorum, and that new information posted to the website is compliant with Section 508 of the Rehabilitation Act.

Records are posted in machine-readable and -actional formats when relevant, such as [Merit Principles Survey Data](#) that is available on the website in various formats to proactively meet customer needs.

5. Does your proactive disclosure process or system involve any collaboration with agency staff outside the FOIA office? If so, describe interaction.

**Answer:** Yes. MSPB's non-FOIA program staff are aware of their obligations to post (a)(2) disclosures, and they regularly coordinate directly with MSPB's webmaster to ensure that step occurs. MSPB's FOIA staff also collaborate with program offices on records that are or could be candidates for posting to the website.

6. 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.

#### **Section IV: Steps Taken 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 [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 utilizing 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:** MSPB began using a secure file sharing platform to assist in releasing records to requestors more quickly and efficiently. MSPB also continued efforts to

better leverage other current technology, e.g., the Microsoft Office 365 suite, to conduct both enterprise-level and targeted searches for records.

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:** No. MSPB does not employ any type of technology to automate record processing at this time.

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 continually reviews the FOIA website to ensure that it contains essential resources and is informative and user-friendly.

5. Did all four of your agency's [quarterly reports](#) for Fiscal Year 2022 appear on FOIA.gov?

**Answer:** Yes. MSPB posted all quarterly reports to FOIA.gov.

6. If your agency did not successfully post all quarterly reports to FOIA.gov, please explain why and provide your agency's plan for ensuring that such reporting is successful in Fiscal Year 2023.

**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 2021 Annual FOIA Report and, if available, for your agency's Fiscal Year 2022 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 of raw data are available in our [e-FOIA Reading Room](#):

- Fiscal Year 2021 Report ([CSV](#))
- Fiscal Year 2021 Report ([XML](#))
- Fiscal Year 2022 Report ([CSV](#))
- Fiscal Year 2022 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 current FOIA management system, FOIAonline.

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

**Answer:** MSPB's challenge in utilizing new technology is allocating the resources and time to research available technologies and understand how they would improve the FOIA program at MSPB. However, with the announcement of the decommissioning of FOIAonline at the end of FY 2023, MSPB will have to transition to a new FOIA processing platform by FY 2024.

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

The Attorney General's [FOIA Guidelines](#) instruct agencies "to remove barriers to requesting and accessing government records 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 FOIA 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 requesters are able to access their current or recent appeal files through MSPB's e-Appeal Online system, a web-based system with access restricted to case parties only. Requestors are encouraged to use e-Appeal to access and download electronic copies of their appeal file whenever circumstances allow. 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.

**B. Timeliness**

3. For Fiscal Year 2022, 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 2022 Annual FOIA Report.

**Answer:** 2 days.

4. 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 2022 Annual Report, please describe the steps your agency will take to ensure that requests for expedited processing are adjudicated within ten calendar days or less.

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

5. 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.

6. 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 2022?

**Answer:** Yes. MSPB's overall average response time for all processed simple requests was 5.24 days in FY 2022.

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

**Answer:** Not applicable.

8. Please provide the percentage of requests processed by your agency in Fiscal Year 2022 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:** 67%

9. 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**

10. If your agency had a backlog of requests at the close of Fiscal Year 2022, 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 2021?

**Answer:** No. MSPB's backlog of requests at the end of Fiscal Year 2022 increased slightly from the backlog of requests reported at the end of Fiscal Year 2021.

11. If not, according to Annual FOIA Report Section XII.D.1, did your agency process more requests during Fiscal Year 2022 than it did during Fiscal Year 2021?

**Answer:** No.

12. If your agency's request backlog increased during Fiscal Year 2022, please explain why and describe the causes that contribute 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
- 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)
- Impact of COVID-19 and workplace and safety precautions
- Any other reasons – please briefly describe or provide examples when possible

**Answer:** MSPB's FOIA request backlog increased slightly during Fiscal Year 2022 due to the complexity of requests and factors involving staff resources. For example, requests that seek adjudicatory data or records concerning adjudicatory processes are often complex requests, and in light of agency program resources dedicated to MSPB's restoration of the quorum in FY 2022 and the onboarding of 3 new Board members, MSPB's program resources to assist the FOIA team in processing these complex requests were more limited in FY 2022.

13. 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 2022. 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:** 45%

## Backlogged Appeals

14. If your agency had a backlog of appeals at the close of Fiscal Year 2022, 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 2021?

**Answer:** Yes.

15. If not, according to section XII.E.1 of the Annual FOIA Report, did your agency process more appeals during Fiscal Year 2022 than it did during Fiscal Year 2021?

**Answer:** Not applicable.

16. If your agency's appeal backlog increased during Fiscal Year 2022, please explain why and describe the causes that contributed 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
- 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)
- Impact of COVID-19 and workplace and safety precautions
- Any other reasons – please briefly describe or provide examples when possible

**Answer:** Not applicable.

17. 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 2022. 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 2022 and/or has no appeal backlog, please answer with "N/A."

**Answer:** 18%

#### ***D. Backlog Reduction Plans***

18. In the 2022 guidelines for Chief FOIA Officer Reports, any agency with a backlog of over 1000 requests in Fiscal Year 2021 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 2022?

**Answer:** MSPB did not have a backlog of over 1,000 requests in Fiscal Year 2021.

19. If your agency had a backlog of more than 1,000 requests in Fiscal Year 2022, please explain your agency's plan to reduce this backlog during Fiscal Year 2023.

**Answer:** Not applicable.

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

##### **Ten Oldest Requests**

20. In Fiscal Year 2022, did your agency close the ten oldest pending perfected requests that were reported in Section VII.E of your Fiscal Year 2021 Annual FOIA Report?

**Answer:** No.

21. 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 2021 Annual FOIA Report. If you had less than ten total oldest requests to close, please indicate that.

**Answer:** MSPB closed 4 of the 10 oldest requests by the end of Fiscal Year 2022.

22. 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.



### **Ten Oldest Appeals**

23. In Fiscal Year 2022, did your agency close the ten oldest appeals that were reported pending in Section VI.C.5 of your Fiscal Year 2021 Annual FOIA Report?

**Answer:** No. MSPB has two pending FOIA appeals which represent our total appeal backlog.

24. 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 2021 Annual FOIA Report. If you had less than ten total oldest appeals to close, please indicate that.

**Answer:** MSPB reported three backlogged FOIA appeals at the end of Fiscal Year 2021. We closed one of the backlogged appeals in Fiscal Year 2022 and two remain pending.

25. 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**

26. In Fiscal Year 2022, did your agency close the ten oldest consultations that were pending in Section XII.C. of your Fiscal Year 2021 Annual FOIA Report?

**Answer:** MSPB did not have any pending consultations in Fiscal Year 2021.

27. 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 2021 Annual FOIA Report. If you had less than ten oldest consultations to close, please indicate that.

**Answer:** Not applicable.

### **Additional Information Regarding Ten Oldest**

28. 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 2023.

**Answer:** MSPB has identified the ten oldest requests from our backlog for Fiscal Year 2023, and we are working towards setting quarterly goals in an effort to close these ten requests by September 30, 2023. MSPB was unable to close these requests in FY 2022 given the complexity of the requests coupled with unexpected impacts on staff resources.

***F. Additional Information about FOIA Processing***

29. 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, and 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.

29. How many requests during Fiscal Year 2022 involved unusual circumstances as defined by the FOIA? (This information is available in your agency's FY22 raw data).

**Answer:** 33 requests.