

2015 Chief FOIA Officer Report
for the Merit Systems Protection Board (MSPB)

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

I. Steps Taken to Apply the Presumption of Openness

Section I: 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.

2. 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: 33%

3. In the 2014 Chief FOIA Officer Report Guidelines, OIP asked agencies to provide a plan for ensuring that core, substantive FOIA training is offered to all agency FOIA professionals at least once each year. Please provide the status of your agency's implementation of this plan.

Answer: High success. MSPB's FOIA professionals conscientiously monitor training opportunities for both themselves and other MSPB staff with FOIA responsibilities. Staff participated in training provided by the Office of Information Policy at the Department of Justice, the American Society of Access Professionals, and the Graduate School USA.

Section I: Discretionary Releases

4. Does your agency have a distinct process or system in place to review records for discretionary release? If so, please briefly describe this process.

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

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

Answer: Not applicable. MSPB did not have the opportunity to disclose records based on the requests received.

6. What exemption(s) would have covered the material released as a matter of discretion?

Answer: Not applicable.

7. Provide a narrative description, as well as some specific examples, of the types of information that your agency released as a matter of discretion during the reporting year.

Answer: Not applicable.

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

Answer: MSPB did not have the opportunity to disclose records based on the requests received.

Section I: Other Initiatives

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

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

Section II: Processing Procedures

1. For Fiscal Year 2014, what was the average number of days your agency reported for adjudicating requests for expedited processing?

Answer: 4.35 days.

2. If your agency's average number of days to adjudicate requests for expedited processing was above ten 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: Not applicable.

Section II: Requester Services

3. Does your agency notify requesters of the mediation services offered by the Office of Government Information Services (OGIS) at the National Archives and Records Administration?

Answer: Yes.

4. When assessing fees, does your agency provide a breakdown of how FOIA fees were calculated and assessed to the FOIA requester?

Answer: Yes.

5. If estimated fees estimates are particularly high, does your agency provide an explanation for the estimate to the requester?

Answer: Yes. However, we infrequently charge fees for processing FOIA requests. MSPB will not charge the requester if the fee for any request is less than \$100. We did not charge any fees in Fiscal Year 2014.

6. If there are any other steps your agency has undertaken to ensure that your FOIA system operates efficiently and effectively, such as conducting self-assessments to find greater efficiencies, improving search processes, eliminating redundancy, etc., please describe them here.

Answer: We did not undertake other steps in this regard during the reporting period.

Section III. Steps Taken to Increase Proactive Disclosures

Section III: Posting Material

1. Does your agency have a distinct process or system in place to identify 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, e.g., oral arguments, requests for amicus briefs, changes to our regulations, etc., we consider whether records associated with them are suitable for proactive disclosures on our website.

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

Answer: Yes. We coordinate with senior staff in preparation for making proactive disclosures.

3. Describe your agency's process or system for identifying "frequently requested" records that should be posted online.

Answer: We monitor FOIA requests for frequently requested records that should be posted online.

4. 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 related to the Special Panel in the matter of *Reynaldo Alvara v. Department of Homeland Security*, MSPB Docket No. DA-0752-10-0223-E-1 and EEOC Petition No. 0320110053 (<http://www.mspb.gov/SignificantCases/alvara.htm>).
- We posted documents on appealing the removal or transfer of SES employees of the Department of Veterans Affairs (www.mspb.gov/vases).
- We posted documents concerning the Board's Sunshine Act Meeting in September 2014 concerning the proposed research agenda for 2015-2018 (www.mspb.gov/sunshineactmeeting).
- We posted documents related to the Board's revisions to its regulations governing how jurisdiction is established over Board appeals (www.mspb.gov/regulatoryreview).

Section III: Other Initiatives

5. If there are any other steps your agency has taken to increase proactive disclosures, please describe them here.

Answer: We did not undertake other steps in this regard during the reporting period.

IV. Steps Taken to Greater Utilize Technology

Section IV: 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: We use Twitter ([@USMSPB](#)) to expand the reach of our information.

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

Answer: Yes.

4. If so, please briefly explain what those challenges are.

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

Section IV: Other Initiatives

5. Did your agency successfully post all four quarterly reports for Fiscal Year 2014?

Answer: Yes.

6. If your agency did not successfully post all quarterly reports, with information appearing on FOIA.gov, please explain why and provide your agency's plan for ensuring that such reporting is successful in Fiscal Year 2015.

Answer: Not applicable.

7. Do your agency's FOIA professionals use e-mail or other electronic means to communicate with requesters whenever feasible? If yes, what are the different types of electronic means that are utilized by your agency to communicate with requesters?

Answer: Yes. We use email, telephone, [FOIAonline](#), fax, and Twitter ([@USMSPB](#)) to communicate with requesters.

8. If your agency does not communicate electronically with requests as a default, are there any limitations or restrictions for the use of such means? If yes, does your agency inform requesters about such limitations?

Answer: Not applicable.

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

Section V: Simple Track Requests

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

Answer: Yes.

2. If so, for your agency overall in Fiscal Year 2014, was the average number of days to process simple requests twenty working days or fewer?

Answer: Yes.

3. Please provide the percentage of requests processed by your agency in Fiscal Year 2014 that were placed in your simple track.

Answer: 83.49%.

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.

Section V: Backlogged Requests

5. If your agency had a backlog of requests at the close of Fiscal Year 2014, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2013?

Answer: No, it increased as compared with the backlog reported at the end of Fiscal Year 2013.

6. 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 2014.

Answer: 4.52%

7. If your agency had a backlog of appeals at the close of Fiscal Year 2014, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2013?

Answer: The backlog of appeals remained the same (one) as compared with the backlog reported at the end of Fiscal Year 2013.

8. 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 2014.

Answer: 10%

Section V: Ten Oldest Requests

9. In Fiscal Year 2014, did your agency close the ten oldest requests that were reported pending in your Fiscal Year 2013 Annual FOIA Report?

Answer: Yes.

10. If no, please provide the number of these requests your agency was able to close by the end of the fiscal year. If you had less than ten total oldest requests to close, please indicate that.

Answer: Not applicable.

11. 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: No requests were closed because the requester withdrew the request.

Section V: Ten Oldest Appeals

12. In Fiscal Year 2014, did your agency close the ten oldest appeals that were reported pending in your Fiscal Year 2013 Annual FOIA Report?

Answer: Yes.

13. If no, please provide the number of these appeals your agency was able to close by the end of the fiscal year. If you had less than ten total oldest appeals to close, please indicate that.

Answer: We had less than ten total oldest appeals to close.

Section V: Ten Oldest Consultations

14. In Fiscal Year 2014, did your agency close the ten oldest consultations that were reported pending in your Fiscal Year 2013 Annual FOIA Report?

Answer: We did not have any consultations reported pending in the Fiscal Year 2013 Annual FOIA Report.

15. If no, please provide the number of these consultations your agency was able to close by the end of the fiscal year. If you had less than ten total oldest consultations to close, please indicate that.

Answer: Not applicable.

Section V: Ten Oldest Requests, Appeals, and Consultations

16. Briefly explain any obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2013.

Answer: We faced no obstacles in this regard.

17. 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.

18. 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 2015.

Answer: Not applicable.

Use of the FOIA’s Law Enforcement Exclusions

Did your agency invoke a statutory exclusion, 5 U.S.C. § 552(c)(1), (2), (3), during Fiscal Year 2014?

Answer: No.