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2012 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. In September 2011, we hired a new Director of the Information Services Team (IST) in the Office of the Clerk of the Board. The Director is responsible for developing and implementing FOIA policies and procedures throughout the agency. Also, he is the MSPB's FOIA Public Liaison.

I. Steps Taken to Apply the Presumption of Openness

1. Did your agency hold an agency FOIA conference, or otherwise conduct training during this reporting period? **Answer:** No.
2. Did your FOIA professionals attend any FOIA training, such as that provided by the Department of Justice? **Answer:** Yes, please see the following:
 - Chief FOIA Officer meeting on the Chief FOIA Officer Report
 - FOIA Town Hall meeting
 - American Society of Access Professionals (ASAP) Training Series Summer School
 - Annual FOIA Report and Chief FOIA Officer Report Refresher training

3. Did your agency make any discretionary releases of otherwise exempt information? **Answer:** No.
4. What exemptions would have covered the information that was released as a matter of discretion? **Answer:** None.
5. Describe your agency's process to review records to determine whether discretionary releases are possible. **Answer:** We did not make any discretionary releases of otherwise exempt information since our last report. The vast majority of our FOIA requests result in the provision of documents, so exemptions are not routinely invoked by MSPB.
6. Describe any other initiatives undertaken by your agency to ensure that the presumption of openness is being applied. **Answer:** The MSPB has undertaken two initiatives to ensure that the presumption of openness is being applied: (1) The MSPB began posting on our website nonprecedential orders issued on or after October 1, 2011. Nonprecedential decisions were not previously on MSPB's website. A nonprecedential order is one that the Board has determined does not add significantly to the body of MSPB case law. The Board's nonprecedential and precedential decisions are both now found on our website at www.mspb.gov under the "MSPB Decisions" tab. The MSPB more recently made nonprecedential decisions dating back to October 5, 2010 available on our website. (2) The MSPB took significant actions to improve the transparency of its adjudication processes and decisions. In 2010, for the first time in 24 years, the Board heard oral arguments in two cases with broad impact on the Government and the merit systems. In 2011, the Board heard oral argument on another case, and we expect to continue to hear oral arguments in cases that have broad Government-wide impact on the Federal civil service and the merit systems.
7. Did your agency have an increase in the number of responses where records were released in full? **Answer:** No.
8. Did your agency have an increase in the number of responses where records were released in part? **Answer:** No.

Compared to FY 2010, in FY 2011, MSPB showed a significant decrease in the number of FOIA requests processed. After conducting a thorough review of our FOIA procedures, we discovered that other agency requests and Privacy Act requests had been included in the same database as our FOIA requests. This problem was rectified and now we only include FOIA requests in our Annual FOIA Report.

	FY 2010	FY 2011
Total Number of Requests Processed	401	113
Full Grants	348	103
Partial Grants	27	9
Subtotal of Full and Partial Grants	375	112
Percentage of Full and Partial Grants	94%	99%
Full Denials	22	1
Percentage of Full Denials	5%	1%

II. Steps Taken to Ensure that MSPB has an Effective System in Place for Responding to FOIA Requests

1. Do FOIA professionals within your agency have sufficient IT support?
Answer: Yes, IT support was very helpful in coordinating the installation of a new electronic capability to submit FOIA requests online via our new FOIA Web Portal. The FOIA Web Portal routes the request to the appropriate MSPB office for a direct response to the requester, and it provides a database that enables more efficient internal processing of FOIA requests. Also, the system creates the MSPB Annual FOIA Report for submission to the Department of Justice. In addition to using the FOIA Web Portal, requesters may continue to submit FOIA requests via email, postal mail, and fax. Details on how to submit FOIA requests are available on our website at www.mspb.gov/foia/foia.him.
2. Is there regular interaction between agency FOIA professionals and the Chief FOIA Officer? **Answer:** Yes, all complex and sensitive FOIA requests are brought to the attention of the Chief FOIA Officer.
3. Do your FOIA professionals work with your agency's Open Government Team? **Answer:** Yes.
4. Describe the steps your agency has taken to assess whether adequate staffing is being devoted to FOIA administration. **Answer:** We hired a new Director of our Information Services Team (IST) in the Office of the Clerk of the Board. The Director is responsible for developing and implementing

FOIA policies and procedures throughout the agency. Also, he is MSPB's FOIA Public Liaison.

5. Describe any other steps your agency has undertaken to ensure that your FOIA system operates efficiently and effectively. **Answer:** We have invested in a new FOIA Web Portal and new redaction software.

III. Steps Taken to Increase Proactive Disclosures

1. Has your agency added new material to your website since last year?
Answer: Yes, MSPB began posting on our website nonprecedential orders issued on or after October 1, 2011. Nonprecedential decisions were not previously on MSPB's website. A nonprecedential order is one that the Board has determined does not add significantly to the body of MSPB case law. The Board's nonprecedential and precedential decisions are both now found on our website at www.mspb.gov under the "MSPB Decisions" tab. The MSPB more recently made nonprecedential decisions dating back to October 5, 2010 available on our website.

The MSPB also posted on our website the Information Quality Guidelines to become complainant with the Information Quality Act.

2. Provide examples of the records, datasets, videos, etc., that have been posted this past year. **Answer:** We posted the following: (1) Information Quality Guidelines; (2) nonprecedential decisions; (3) filings associated with oral argument; and (4) training videos.
3. Describe the system your agency uses to routinely identify records that are appropriate for posting. **Answer:** In addition to records routinely requested as identified by our FOIA professionals, we utilize our internal Open Government working group to help identify records that are appropriate for posting.
4. Beyond posting new material, is your agency taking steps to make the information more useful to the public, especially to the community of individuals who regularly access your agency's website, such as soliciting feedback on the content and presentation of the posted material, improving search capabilities, providing explanatory material, etc? **Answer:** Yes, MSPB began posting on our website nonprecedential orders issued on or after October 1, 2011. Nonprecedential decisions were not previously on the MSPB's website. A nonprecedential order is one that the Board has determined does not add significantly to the body of MSPB case law.

The Board's nonprecedential and precedential decisions are both now found on our website at www.mspb.gov under the "MSPB Decisions," tab. The MSPB more recently made nonprecedential decisions dating back to October 5, 2010 available on our website. We also posted an FAQ for the Merit System Principle of the Month and the Prohibited Personnel Practice of the Month, as well as training videos about MSPB's adjudicatory process.

5. Describe any other steps taken to increase proactive disclosures at your agency. **Answer:** In conjunction with the oral argument in Latham, et al. on December 13, 2011, we proactively disclosed approximately 30 filings, an audio recording, and a transcript of the proceeding as we did with two oral arguments in 2010.

IV. Steps Taken to Improve Use of Technology

Electronic receipt of FOIA requests:

1. Can FOIA requests be made electronically to your agency? **Answer:** Yes.
2. If your agency processes requests on a decentralized basis, do all component of your agency receive requests electronically? **Answer:** Yes.

Online tracking of FOIA requests:

3. Can a FOIA requester track the status of his/her request electronically? **Answer:** Yes.
4. If not, is your agency taking steps to establish this capability? **N/A**

Use of technology to facilitate processing of requests:

5. Beyond using technology to redact documents, is your agency taking steps to utilize more advanced technology to facilitate overall FOIA efficiency, such as improving record search capabilities, utilizing document sharing platforms for consultations and referrals, or employing software that can sort and de-duplicate documents? **Answer:** Yes, the Director of IST is always assessing new technology to facilitate the efficiency of our FOIA program.
6. If so, describe the technological improvements being made. **Answer:** The MSPB implemented a new electronic capability to submit FOIA requests online via the internet on our new FOIA Web Portal. The FOIA Web

Portal routes the request to the appropriate MSPB office for a direct response to the requester, and it provides a database that enables more efficient internal processing of FOIA requests. Also, the system creates the MSPB Annual FOIA Report for submission to the Department of Justice. In addition to using the FOIA Web Portal, requesters may continue to submit FOIA requests via email, postal mail, and fax. Details on how to submit FOIA requests are available on our website at www.mspb.gov/foia/foia.him.

V: Steps Taken to Improve Timeliness in responding to Requests and Reduce Backlogs

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

Answer: No.

1b. If so, for your agency overall, for Fiscal Year 2011, was the average number of days to process simple requests twenty working days or fewer? **N/A**

1c. If your agency does not track simple requests separately, was the average number of days to process non-expedited requests twenty working days or fewer? **Answer:** Yes.

2a. If your agency had a backlog of requests at the close of Fiscal Year 2011, did that backlog decrease as compared with Fiscal Year 2010? **Answer:** Our backlog of requests remained the same.

2b. If your agency had a backlog of administrative appeals in Fiscal Year 2011, did that backlog decrease as compared to Fiscal Year 2010? **Answer:** We did not have a backlog of administrative appeals.

2c. In Fiscal Year 2011, did your agency close the ten oldest requests that were pending as of the end of Fiscal Year 2010? **Answer:** Yes.

2d. In Fiscal Year 2011, did your agency close the ten oldest administrative appeals that were pending as of the end of Fiscal Year 2010. **Answer:** Yes.

Request Backlog:

a. Was the lack of a reduction in the request backlog a result of an increase in the number of incoming requests? **Answer:** No.

- b. Was the lack of a reduction in the request backlog caused by a loss of staff? **Answer:** No.
- c. Was the lack of a reduction in the request backlog caused by an increase in the complexity of the requests received? **Answer:** No.
- d. What other causes, if any, contributed to the lack of a decrease in the request backlog? **Answer:** None.

Administrative Appeal Backlog:

- a. Was the lack of a reduction in the backlog of administrative appeals a result of an increase in the number of incoming appeals? **N/A**
 - b. Was the lack of a reduction in the appeal backlog caused by a loss of staff? **N/A**
 - c. Was the lack of a reduction in the appeal backlog caused by an increase in the complexity of the appeals received? **N/A**
 - d. What other causes, if any, contributed to the lack of a decrease in the appeal backlog? **N/A**
1. Does your agency routinely set goals and monitor the progress of your FOIA caseload? **Answer:** Yes. When complex cases arise, we set a timeline to have the case(s) completed. We monitor the FOIA caseload on a daily basis.
 2. Has your agency increased its FOIA staffing? **Answer:** Yes, we hired a new Director, Information Services Team (IST). The Director, IST, is responsible for developing and implementing FOIA policies and procedures throughout the agency. Also, he is the agency FOIA Public Liaison.
 3. Has your agency made IT improvements to increase timeliness? **Answer:** Yes, the MSPB implemented a new FOIA Web Portal and purchased redaction software to greatly improve our response time to requesters and thus enable the FOIA process to become more efficient and effective.
 4. If your agency receives consultations from other agencies, has your agency taken steps to improve the efficiency of the handling of such consultations, such as utilizing IT to share the documents, or establishing

guidelines or agreements with other agencies on the handling of particular information to speed up or eliminate the need for consultations? **Answer:** N/A

Use of FOIA's Law Enforcement "Exclusions"

The MSPB does not use the FOIA statutory law enforcement exclusions.

Spotlight on Success

The MSPB takes seriously its obligation to increase transparency. Our success story continues to be our efforts to use our internet website in support of transparency initiatives. For example, in December 2011, the three-Member Board held oral argument on a group of cases (Latham, et al.) with the potential to impact a large number of Federal employees. This was the third time the MSPB has conducted an oral argument in the past 18 months after not hearing oral arguments for over 20 years. The MSPB continues to utilize oral argument in appeals that present issues of special significance because of their broad potential impact on the Federal civil service and merit systems. We use these opportunities to create unique web pages with links to relevant legal authorities, press releases, Federal Register Notices, pleadings, transcripts, decisions, and audio recordings of the events.