



**FREEDOM OF INFORMATION ACT ANNUAL
REPORT TO THE ATTORNEY GENERAL FOR
FISCAL YEAR 2012**



FREEDOM OF INFORMATION ACT ANNUAL REPORT FOR FISCAL YEAR 2012

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I. BASIC INFORMATION REGARDING REPORT.

This is the Fiscal Year 2012 FOIA Report.

Paper copies of this report may be obtained from the FOIA links available at:
<http://www.mspb.gov/FOIA/foiareports.htm>.

Questions regarding this report may be directed to:

Darryl R. Aaron, FOIA Public Liaison
Bernard Parker, FOIA Action Officer
Office of the Clerk of the Board
1615 M Street, NW
Suite 500
Washington, DC 20419

Electronic copies of the report are on the Merit Systems Protection Board's ([MSPB](http://www.mspb.gov)) [website at www.mspb.gov](http://www.mspb.gov). Paper copies of the report may be obtained by writing to the above address.

II. HOW TO MAKE A FOIA REQUEST TO THE MSPB.

The MSPB has prepared a [FOIA Guide](#), which is on its website. Paper copies are also available in the MSPB's headquarters library, by calling 202-653-7200, or by emailing foia@mspb.gov. Requesters also will find contact information for the MSPB's [FOIA Liaisons](#) on its website.

1. Names, addresses, telephone numbers, and emails of MSPB offices where FOIA requests can be filed are found below:

Atlanta Regional Office

401 W. Peachtree Street, NW
10th Floor
Atlanta, GA 30308-3519
(404) 730-2755
FAX (404) 730-2767
foiaat@mspb.gov

Dallas Regional Office

1100 Commerce Street
Room 620
Dallas, TX 75242-9979
(214) 767-0555
FAX (214) 767-0102
foiada@mspb.gov

Western Regional Office

201 Mission Street
Suite 2310
San Francisco, CA 94105-1831
(415) 904-2772
FAX (415) 904-0580
foiasf@mspb.gov

Northeastern Regional Office

1601 Market Street,
Suite 1700
Philadelphia, PA 19103
(215) 597-9960
FAX (215) 597-3456
foiaph@mspb.gov

Washington DC Regional Office

1800 Diagonal Road
Suite 205
Alexandria, VA 22314-2840
(703) 756-6250
FAX (703) 756-7112
foiadc@mspb.gov

Denver Field Office

165 South Union
Boulevard
Suite 318
Lakewood, CO 80228-2211
(303) 969-5101
FAX (303) 969-5109
foiade@mspb.gov

New York Field Office

26 Federal Plaza
Room 3137-A
New York, NY 10278-0022
(212) 264-9372
FAX (212) 264-1417
foiany@mspb.gov

2. Brief description of why some requests are not granted and an overview of certain general categories of the Department's records to which the FOIA exemptions apply.

The MSPB always try to grant FOIA requests instances when a request is not granted it's because the request asks questions or wants documents created. Sometimes the MSPB case files contains personal privacy information thus its' withheld under FOIA exemption (b)(6).

III. ACRONYMS, DEFINITIONS, AND EXEMPTIONS

1. There are **no** MSPB-specific acronyms or terms used in this Report.
2. Definition of terms used in this Report:
 - a. **Administrative Appeal**- a request to a federal agency asking that it review at a higher administrative level a FOIA determination made by the agency at the initial request level.
 - b. **Average Number**- the number obtained by dividing the sum of a group of numbers by the quantity of numbers in the group. For example, of 3, 7, and 14, the average number is 8.
 - c. **Backlog**- the number of requests or administrative appeals that are pending at an agency at the end of the fiscal year that are beyond the statutory time period for a response.
 - d. **Component**- for agencies that process requests on a decentralized basis, a "component" is an entity, also sometimes referred to as an Office, Division, Bureau, Center, or Directorate, within the agency that processes FOIA requests. The FOIA now requires that agencies include in their Annual FOIA Report data for both the agency overall and for each principal component of the agency.
 - e. **Consultation**- the procedure whereby the agency responding to a FOIA request first forwards a record to another agency for its review because that other agency has an interest in the document. Once the agency in receipt of the consultation finishes its review of the record, it responds back to the agency that forwarded it. That agency, in turn, will then respond to the FOIA requester.
 - f. **Exemption 3 Statute**- a federal statute that exempts information from disclosure and which the agency relies on to withhold information under subsection (b)(3) of the FOIA.
 - g. **FOIA Request**- a FOIA request is generally a request to a federal agency for access to records concerning another person (i.e., a "third-party" request), or concerning an organization, or a particular topic of interest. FOIA requests also include requests made by requesters seeking records concerning themselves (i.e., "first-party" requests) when those requesters are not subject to the Privacy Act, such as non-U.S. citizens. Moreover, because all first-party requesters should be afforded the benefit of both the access provisions of the FOIA as well as those of the Privacy Act, FOIA requests also include any first-party requests where an agency determines that it must search beyond its Privacy Act "systems of records" or where a Privacy Act exemption applies, and the agency looks to FOIA to afford the greatest possible

access. All requests which require the agency to utilize the FOIA in responding to the requester are included in this Report.

Additionally, a FOIA request includes records referred to the agency for processing and direct response to the requester. It does not, however, include records for which the agency has received a consultation from another agency. (Consultations are reported separately in Section XII of this Report.)

- h. **Full Grant**- an agency decision to disclose all records in full in response to a FOIA request.
- i. **Full Denial**- an agency decision not to release any records in response to a FOIA request because the records are exempt in their entirety under one or more of the FOIA exemptions, or because of a procedural reason, such as when no records could be located.
- j. **Median Number**- the middle, not average, number. For example, of 3,7 and 14, the median number is 7.
- k. **Multi-Track Processing**- a system in which simple requests requiring relatively minimal review are placed in one processing track and more voluminous and complex requests are placed in one or more other tracks. Requests granted expedited processing are placed in yet another track. Requests in each track are processed on a first in/first out basis.
 - i. **Expedited Processing** - an agency will process a FOIA request on an expedited basis when a requester satisfies the requirements for expedited processing as set forth in the statute and in agency regulations.
 - ii. **Simple Request** - a FOIA request that an agency using multi-track processing places in its fastest (non-expedited) track based on the low volume and/or simplicity of the records requested.
 - iii. **Complex Request** - a FOIA request that an agency using multi-track processing places in a slower track based on the high volume and/or complexity of the records requested.
- l. **Partial Grant/Partial Denial** - in response to a FOIA request, an agency decision to disclose portions of the records and to withhold other portions that are exempt under the FOIA, or to otherwise deny a portion of the request for a procedural reason.
- m. **Perfect Request** - a request for records which reasonably describes such records and is made in accordance with published rules stating the time, place, fees (if any) and procedures to be followed.
- n. **Processed Request or Processed Administrative Appeal** - a request or administrative appeal for which an agency had taken final action.
- o. **Range in Number of Days** - the lowest and highest number of days to process requests or administrative appeals.
- p. **Time Limits** - the time period in the statute for an agency to respond to a FOIA request (ordinarily twenty working days from receipt of a

perfected FOIA request).

3. Include the following concise descriptions of the nine FOIA exemptions:
 - a. **Exemption 1:** classified national defense and foreign relations information
 - b. **Exemption 2:** internal agency rules and practices
 - c. **Exemption 3:** information that is prohibited from disclosure by other federal statutes
 - d. **Exemption 4:** trade secrets and other confidential business information
 - e. **Exemption 5:** inter-agency or intra-agency communications that are protected by legal privileges
 - f. **Exemption 6:** information involving matters of personal privacy
 - g. **Exemption 7:** records or information compiled for law enforcement purposes, to the extent that the production of those records (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions, or (F) could reasonably be expected to endanger the life or physical safety of any individual
 - h. **Exemption 8:** information relating to the supervision of financial institutions
 - i. **Exemption 9:** geological information on wells

IV. EXEMPTION 3 STATUTES

A. Exemption 3 Statutes Relied upon to Withhold Information

Statute	Type of Information Withheld	Case Citation	Component	Number of Times Relied upon per Component	Total Number of Times Relied upon per Agency
N/A					

V. FOIA REQUESTS

A. Received, Processed and Pending FOIA Requests.

	Number of Requests Pending as of Start of Fiscal Year	Number of Requests Received in Fiscal Year	Number of Requests Processed in Fiscal Year	Number of Requests Pending as of End of Fiscal Year
MSPB	12	225	237	0

B.2 Disposition of FOIA Requests - "Other" Reasons for "Full Denials Based on Reasons Other than Exemptions"

Component	Description of "Other" Reasons for Denials from Chart B (1) & Number of Times Those Reasons Were Relied upon.	TOTAL
N/A		

B.3 Disposition of FOIA Requests - Number of Times Exemptions Applied

	Ex. 1	Ex. 2	Ex. 3.	Ex. 4	Ex. 5	Ex. 6	Ex. 7(A)	Ex. 7(B)	Ex. 7(C)	Ex. 7(D)	Ex. 7(E)	Ex. 7(F)	Ex. 8	Ex. 9
MSPB	N/A	N/A	N/A	N/A	10	36	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
	0	0	0	0	0	0	0	0	0	0	0	0	0	0

VI. ADMINISTRATIVE APPEALS OF INITIAL DETERMINATIONS OF FOIA REQUESTS

A. Received, Processed & Pending Administrative Appeals

	Number of Appeals Pending as of Start of Fiscal Year	Number of Appeals Received in Fiscal Year	Number of Appeals Processed in Fiscal Year	Number of Appeals Pending as of End of Fiscal Year
MSPB	0	23	22	1

B. Disposition of Administrative Appeals - All Processed Appeals

	Number Affirmed on Appeal	Number Partially Affirmed & Partially Reversed/Remanded on Appeal	Number Completely Reversed/Remanded on Appeal	Number Closed for Other Reasons	Total
MSPB	12	4	5	1	22

C.3 Reasons for Denial on Appeal -
 "Other" Reasons from Section
 VI.C(2)Chart

	Description of "Other" Reasons for Denials from Chart B (1) & Number of Times Those Reasons Were Relied Upon.	TOTAL
	0	0

C. 4 Response Time For Administrative Appeals

	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days
MSPB	20	17	14	25

C.(5) Ten Oldest Pending Administrative Appeals

		10th Oldest Appeal	9th	8th	7th	6th	5th	4th	3rd	2nd	Oldest Appeal
MSPB	Date of Receipt of Ten Oldest Appeals	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	4/16/2012
	Number of Days Pending	0	0	0	0	0	0	0	0	0	74

**VII. FOIA
REQUESTS:
RESPONSE
TIME FOR
PROCESSED
AND
PENDING
REQUESTS**

**A. Processed Requests – Response Time
for All Perfected Requests**

	Simple				Complex				Expedited Processing			
	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days
MSPB	18	10	0	38	0	0	0	0	8	8	8	8

B. Processed Requests - Response Time for Perfected Requests Where Information was Granted

	Simple				Complex				Expedited Processing			
	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days
MSPB	18	10	0	38	0	0	0	0	8	8	8	8

VIII. REQUESTS FOR EXPEDITED PROCESSING AND REQUESTS FOR FEE WAIVER

A. Requests for Expedited Processing

	Number Granted	Number Denied	Median Number of Days to Adjudicate	Average Number of Days to Adjudicate	Number Adjudicated Within Ten Calendar Days
MSPB	3	0	8	8	3

B. Requests for Fee Waiver

	Number Granted	Number Denied	Median Number of Days to Adjudicate	Average Number of Days to Adjudicate
MSPB	0	0	0	0

IX. FOIA PERSONNEL AND COSTS

	PERSONNEL			COSTS		
	Number of "Full-Time FOIA Employees"	Number of "Equivalent Full-Time FOIA Employees"	Total Number of "Full-Time FOIA Staff"	Processing Costs	Litigation-Related Costs	Total Costs
MSPB	4.5	0	4.5	\$443,110	N/A	\$443,110
Agency Overall	4.5	0	4.5	\$443,110	N/A	\$443,110

X. FEES COLLECTED FOR PROCESSING REQUESTS

	Total Amount of Fees Collected	Percentage of Total Costs
MSPB	\$907.00	0.20%

XI. FOIA REGULATIONS

Agencies must provide an electronic link to their FOIA regulations, including their fee schedule.

<http://www.mspb.gov/netsearch/viewdocs.aspx?docnumber=278732&version=279052&application=HTML>

XII. BACKLOGS, CONSULTATIONS, AND COMPARISONS

A. Backlogs of FOIA Requests and Administrative Appeals

	Number of Backlogged Requests as of End of Fiscal Year	Number of Backlogged Appeals as of End of Fiscal Year
MSPB	0	1

B. Consultations on FOIA Requests - Received, Processed, and Pending Consultations

	Number of Consultations Received from Other Agencies that Were <u>Pending</u> at Your Agency as of <u>Start</u> of the Fiscal Year	Number of Consultations <u>Received</u> from Other Agencies During the Fiscal Year	Number of Consultations Received from Other Agencies that Were <u>Processed</u> by Your Agency During the Fiscal Year	Number of Consultations Received from Other Agencies that Were <u>Pending</u> at Your Agency as of <u>End</u> of the Fiscal Year
MSPB	0	0	0	0

D.1 Comparison of Numbers of Requests Received and Processed (Previous Annual Report vs. Current Annual Report)

	Number Received During Fiscal Year from Last Year's Annual Report	Number Received During Fiscal Year from Current Annual Report	Number Processed During Fiscal Year from Last Year's Annual Report	Number Processed During Fiscal Year from Current Annual Report
MSPB	121	225	113	237

D.2 Comparison of Numbers of Requests Backlogged (Previous Annual Report vs. Current Annual Report)

Agency	Number of Backlogged Requests as of End of the Fiscal Year from Previous Annual Report	Number of Backlogged Requests as of End of the Fiscal Year from Current Annual Report
	4	0

E.1 Comparison of Numbers of Administrative Appeals Received and Processed (Previous Annual Report vs. Current Annual Report)

	NUMBER OF APPEALS <u>RECEIVED</u>		NUMBER OF APPEALS <u>PROCESSED</u>	
	Number Received During Fiscal Year from Last Year's Annual Report	Number Received During Fiscal Year from Current Annual Report	Number Processed During Fiscal Year from Last Year's Annual Report	Number Processed During Fiscal Year from Current Annual Report
Agency	8	23	8	22

E.2 Comparison of Numbers of Administrative Appeals Backlogged (Previous Annual Report vs. Current Annual Report)

	Number of Backlogged Appeals as of End of the Fiscal Year from Previous Annual Report	Number of Backlogged Appeals as of End of the Fiscal Year from Current Annual Report
Agency	0	1

