Project On Government Oversight
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June 24, 2010

Merit Systems Protection Board
Attn: William D. Spencer
Clerk of the Board
1615 M Street, NW
Washington, DC 20419

Subject: Updated Comments on MSPB Open Government Plan

Dear Mr. Spencer:

The Project On Government Oversight (POGO) provides the following public comment to the Merit Systems Protection Board's (MSPB) Open Government Plan (75 Fed. Reg. 22165, April 27, 2010). POGO is an independent nonprofit organization that investigates and exposes corruption and other misconduct in order to achieve a more effective, accountable, open, and ethical federal government. As a group that works frequently with whistleblowers and insiders in its investigations, POGO has great interest in increasing public access to information about the federal government, and specifically about the activities of the MSPB.

First, POGO applauds the MSPB's move towards openness by voluntarily creating an Open Government Plan. The MSPB has taken strong first steps with the initiatives outlined in the first draft of its Plan. But to ensure success, POGO recommends bolstering the Plan by addressing all of the components for Open Government Plans set forth in the Open Government Directive (OGD), by providing more concrete commitments and by ensuring more quality control. Furthermore, POGO urges the MSPB to release detailed case processing statistics and to post its annual reports online in a timely fashion.

The MSPB Should Address All Necessary Components of Open Government Plans Prescribed in Open Government Directive

The MSPB's Plan did not address some of the basic requirements for Open Government Plans outlined in the OGD. For example, in the section outlining the MSPB's flagship initiative to appoint an Outreach Coordinator to increase outreach efforts, the plan did not offer "An explanation of the steps [MSPB] is

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taking to make the initiative sustainable and allow for continued improvement."[1]

The Plan also deferred key decisions—such as identifying additional high-value data sets and describing efforts to improve collaboration—to an unspecified future date.

Bold New Initiatives Would Be Strengthened by More Details and Commitments

The Plan outlines several worthwhile ideas, such as soliciting amicus briefs for cases of special significance and scheduling oral arguments in the adjudication of selected petitions. POGO understands that efforts to incorporate these aspects of the Plan into the MSPB's operations are already underway; however, these initiatives could be strengthened if they were accompanied by specific commitments, parameters, and goals. By not incorporating this kind of detail into the Plan, the MSPB puts the success of these initiatives at risk. For future versions of its Open Government Plan, the MSPB should clarify how it intends to solicit amicus briefs, and should strongly consider soliciting amicus briefs publicly online. These amicus briefs also should be made publicly available online. Furthermore, MSPB should define more precisely what constitutes "cases that present issues of special significance." MSPB should also offer clarification for how it will decide to hear oral arguments, and should post information about these oral arguments online.

Likewise, the MSPB's plans to expand the scope of outreach activities included upcoming events, but only through September 2010. These events should be updated regularly and made available to the public online.

The MSPB Should Ensure More Quality Control in Executing Its Plans

First, MSPB should regularly publish detailed case processing statistics online in a clear, readable, and accessible format. These statistics should include information about each case, such as the docket number and the name and decision of each judge. Currently, the MSPB has on its Open Government Webpage a file called "Case Processing Data - HQ" that is available for download, but this file is difficult to interpret and does not contain information about individual judges' decisions. The precedent for releasing more detailed information has already been set—MSPB recently released this information for fiscal years 2007 and 2008 as part of a Freedom of Information Act request (FOIA tracking number CB-1080). Proactively releasing this information will ultimately enhance the integrity of the MSPB by increasing accountability for each decision, and will demonstrate that MSPB shares the values put forth in the OGD.

Second, MSPB needs to post its annual reports online in a timely fashion. As of this writing, the most recent annual report available on the MSPB website is from 2008. Taxpayers have a right to access up-to-date reports on what the MSPB is doing.

Third, MSPB should ensure that there are no broken links on its Open Government Webpage. As of this writing, when clicking on the link for "FOIA Annual Reports," a document under the "Records and Reports" section on mspb.gov/open, the user is met with a "runtime error."

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[1]Memorandum from Peter R. Orszag, Director of Office of Management and Budget to the Heads of Executive Departments and Agencies, regarding Open Government Directive, December 8, 2009, p. 10, http://www.whitehouse.gov/omb/assets/memoranda_2010/m10-06.pdf (Downloaded June 23, 2010).

Other Opportunities for the MSPB to Advance Values in Open Government Directive

In addition to those mentioned above, there are other substantive advances the MSPB could make towards greater transparency.

For instance, the MSPB should regularly publish FOIA requests, responses, and status of requests publicly online. The upgrade to the FOIA Tracking System in 2009 seems to have yielded results in processing. Perhaps this system could be made publicly available online for the benefit of requesters, potential requesters, and the public.

The MSPB should regularly publish the MSPB Inspector General reports online. Current law requires these reports to be posted on IG websites three days after they are made public, but also making these reports available to the public on MSPB's Open Government Webpage is an easy way to increase accountability, one of the principle aims of the OGD.

In addition, the MSPB should also consider implementing an online public forum to discuss MSPB open government initiatives, such as the IdeaScale platform which has been implemented by most agencies in the executive branch. Currently, the only method to provide direct feedback to the MSPB on its open government initiatives is by sending an email to the address listed on MSPB's Open Government Webpage. By neglecting to implement a public forum for expressing ideas, the MSPB has missed a chance to increase public participation and collaboration—two of the key pillars of openness outlined in the OGD.

Achieving public participation and collaboration in the Plan also would be enhanced if the MSPB were to host more public meetings, press conferences, and periodic national town hall meetings, as suggested in the guidelines for the OGD.

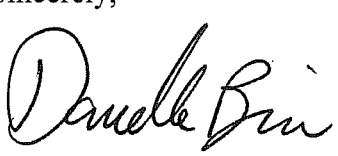
POGO also recommends that the MSPB consider making it a policy to update its Open Government Plan more often than the biannual update prescribed by the OGD.

Continue the Outreach

As a final note, it is an encouraging sign that the Board reached out to POGO and other good-government groups directly, issued a press release soliciting feedback, and issued a request for public comment in the *Federal Register*. POGO urges MSPB to continue its efforts to reach out to stakeholders for feedback on its open government initiatives.

POGO looks forward to continuing to work with MSPB as this process moves forward. If you have any questions, please contact Angela Canterbury at (202) 347-1122.

Sincerely,



Danielle Brian
Executive Director