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2011 Chief FOIA Officer Report for the Merit Systems Protection Board (MSPB)

by
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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 Federal merit systems and the rights of individuals within those systems. 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. We currently have one FOIA Public Liaison at headquarters (where we used to have two) and one FOIA Public Liaison (as a collateral duty) in each of our Regional and Field Offices. In FY 2010, one of our FOIA Public Liaisons at headquarters retired, and for budgetary reasons we have not yet been able to backfill his position.

I. Steps Taken to Apply the Presumption of Openness

1. Description

The MSPB publicized the President's FOIA Memorandum and the Attorney General's FOIA Guidelines internally by sharing these documents with our FOIA Public Liaisons and by providing training presented by the Department of Justice (DOJ) on May 5, 2010 for our agency's political and career leadership team. In addition, my staff and I attended DOJ sponsored training (in June and October 2010 and in January 2011) and American Society of Access Professionals sponsored training (in March, June, and December 2010). At each event, the training covered the President's FOIA Memorandum and the Attorney General's FOIA Guidelines, including the "presumption of openness," in addition to other FOIA topics.

Although we have implemented the presumption of openness in response to FOIA requests and administrative appeals by applying it in the normal course of review, we have not modified our internal guidance to reflect the presumption. We plan to modify our internal guidance to reflect the presumption of openness by the end of FY 2011.

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. In those instances where an exemption does apply, we consider the presumption of openness in reviewing the request to determine whether a discretionary release is possible.

2. Disclosure Comparisons[1]

Compared to FY 2009, in FY 2010, MSPB showed a 1% decrease in the percentage of full and partial grants of FOIA requests.

	FY 2009	**FY 2010**
Total Number of Requests Processed	335	401
Full Grants	309	348
Partial Grants	10	27
Subtotal of Full and Partial Grants	319	375
Percentage of Full and Partial Grants	95%	94%
Full Denials	8	22
Percentage of Full Denials	2%	5%

While our overall percentage for full and partial grants remained essentially the same between FY 2009 (95%) and FY 2010 (94%), the outcomes of our administrative appeals changed significantly. In FY 2009, a total of five FOIA appeals were received and all five were fully denied. In FY 2010, a total of seven FOIA appeals were received and only three were fully denied. Whether at the initial request or appeal levels, MSPB applies the presumption of openness. We will continue to ensure its application in all appropriate circumstances.

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

Since the average number of processing days for FOIA requests remained under 20 days again this year, I believe that MSPB has an effective system for responding to requests. Nonetheless, we conducted an evaluation of our internally created electronic FOIA Tracking System in FY 2010 and identified a number of deficiencies, including the inability to adequately generate our Annual FOIA Report. We also determined that we must do more to make FOIA requests and their status more accessible to the public. This includes allowing FOIA requests to be submitted online through our public website or another web portal and for requesters to be able to check the status of their request through the same interface. We began meeting with vendors and other agencies to determine our requirements and to determine what commercial FOIA tracking and redaction products are available. It is our intent to replace our existing internally created FOIA Tracking System with a more robust, web-based commercial application. However, given current budget realities, we do not know when we will be able to move forward on this upgrade.

In order to ensure that MSPB's FOIA personnel have sufficient IT support, my staff and I meet with our agency's Chief Information Officer prior to the beginning of the fiscal year to discuss

[1] Numbers and percentages do not equal Total Number of Requests Processed or 100%, respectively, because they do not include requests denied for reasons other than exemptions, e.g., no records, referrals to other agencies, etc. Administrative appeals are not included in the table but are described in the narrative below it.

IT support requirements and mutually agree on projects for the upcoming year. We then meet on a quarterly basis to assess our progress. Frequently, our project list includes improvements and new initiatives related to our FOIA program. For FY 2011, we included the evaluation of commercial FOIA tracking systems as one of our top three joint projects.

In response to the President's Open Government Initiative and the Office of Management and Budget's Open Government Directive, MSPB formed an internal working group composed of representatives from each of our offices. I serve as a member of the working group and as its liaison to our senior staff. FOIA and Open Government are interrelated, and we look for opportunities in each area to further their mutual goals.

In terms of FOIA staffing, I mentioned the retirement in 2010 of one of the two FOIA Public Liaisons at MSPB headquarters. For budgetary reasons, we have not yet been able to backfill his position. In order to ensure that adequate staffing is being devoted to responding to FOIA requests until we can backfill that position, FOIA processing now is a collateral duty of other staff at headquarters.

III. Steps Taken to Increase Proactive Disclosures

We re-launched our website in 2010 to provide more transparency, allow more participation, include more information, and utilize more outlets for distributing our information. Specific upgrades made to MSPB's website since February 2010 include:

- A scrolling content window to allow us to feature special content in addition to the most relevant links. The special content has included the latest merit systems studies, MSPB reports, and the "Merit System Principle of the Month."
- Streamlined and simplified organization to the site, and we standardized the look of each page.
- Links to radio and video interviews with MSPB staff.
- An Open Government page, including MSPB's Open Government Plan, comment letters received, and data sets.
- Elevating the profile of our agency plans and reports, e.g., the Annual Report, Strategic Plan, and Performance & Accountability Report.
- The ability for visitors to share some documents using their personal Twitter and Facebook accounts.
- The MSPB Twitter feed so visitors can follow us (@USMSPB). We now have about 200 followers. We use Twitter to disseminate our press releases, new studies and reports, respond to requests for information, and solicit feedback.

Going forward, we plan to:

- Launch a Facebook page for studies and a YouTube page for videos of mock hearings, etc.
- Improve the search functionality of MSPB's website.
- Refine and reposition some of the content to make it easier to find.
- Add more data sets.
- Add sample documents and other tools, especially for *pro se* appellants. For example, we recently added links to our three principal forms for filing appeals.

An example of the types of records MSPB now posts on our website that used to be available only by making a FOIA request for them is our Judges Handbook. More recent examples are described in our "Spotlight on Success," below. We also utilize our internal Open Government working group to help identify records that are appropriate for posting, in addition to reviewing FOIA requests, and ideas from MSPB staff, stakeholders, and the public.

IV. Steps Taken to Improve Use of Technology

1. Electronic *receipt* of FOIA requests:

   a. What proportion of the components within MSPB which receive FOIA requests have the capability to *receive* such requests electronically?

      100%

   b. To what extent have you increased the number of components doing so since the filing of your last Chief FOIA Officer Report?

      Not applicable.

   c. What methods does MSPB use to *receive* requests electronically?

      Email.

2. Electronic *tracking* of FOIA requests:

   a. What proportion of components within MSPB which receive FOIA requests have the capability to *track* such requests electronically?

      100%

   b. To what extent have you increased the number of components doing so since the filing of your last Chief FOIA Officer Report?

      Not applicable.

   c. What methods does your agency use to *track* requests electronically?

      We use our internally created FOIA Tracking System which is web-based in conjunction with our Document Management System which stores documents pertaining to each request.

3. Electronic *processing* of FOIA requests:

   a. What proportion of components within MSPB which receive FOIA requests have the capability to *process* such requests electronically?

      100%

b. To what extent have you increased the number of components doing so since the filing of your last Chief FOIA Officer Report?

Not applicable.

c. What methods does your agency use to *process* requests electronically?

We use our internally created FOIA Tracking System which is web-based in conjunction with our Document Management System which stores documents pertaining to each request.

4. Electronic preparation of MSPB's Annual FOIA Report:

a. What type of technology does your agency use to prepare your agency Annual FOIA Report, i.e., specify whether the technology is FOIA-specific or a generic data-processing system?

We use our FOIA Tracking System which was created by MSPB to be FOIA-specific but uses a generic data-processing system. It has basic reporting capabilities.

b. If you are not satisfied with your existing system to prepare your Annual FOIA Report, describe the steps you have taken to increase your use of technology for next year.

Please see my response to Section II, above.

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

1. If you have a backlog, report whether your backlog is decreasing, in two ways:

a. numbers of cases, i.e., whether the number of backlogged requests and backlogged administrative appeals that remain pending at the end of the fiscal year decreased or increased, and by how many, when compared with last fiscal year.

Our very small backlog has decreased by 3 FOIA requests as of the end of FY 2010. At the end of FY 2009, MSPB had a total of 5 backlogged FOIA requests and no backlogged FOIA appeals. At the end of FY 2010, we had a total of 2 backlogged FOIA requests, and no backlogged FOIA appeals.

b. age of the oldest cases, i.e., whether you closed in Fiscal Year 2010 the ten oldest of those pending requests and appeals from Fiscal Year 2009, and if not, report how many of them did you close.

In FY 2010, we closed the 5 FOIA requests pending at the end of FY 2009.

2. If there has not been a reduction in the backlog as measured by either of these metrics, describe why that has occurred.

   Not applicable.

3. Describe steps being taken to reduce any backlogs and to improve timeliness in responding to requests and administrative appeals.

   Since the overwhelming majority of MSPB's FOIA requests are requests for records readily available, we respond to most requests in a very timely manner, usually well before the statutory deadline. Therefore, we do not have a significant backlog. Although we do not set specific goals or increasingly monitor the progress of our FOIA caseload, we always seek to improve our responsiveness. This is in spite of the fact that one of our FOIA Public Liaisons at headquarters retired in 2010, and for budgetary reasons we have not yet been able to backfill his position. I am actively involved in overseeing MSPB's capacity to process requests and constantly seek to improve our FOIA program. For example, to update and maintain our skill sets, I continually seek to identify appropriate FOIA training for me and the FOIA staff. I expect we will make significant strides in 2011 in the areas of FOIA training for more MSPB employees and electronic receipt, tracking, and processing of FOIA requests, while continuing to make proactive and discretionary disclosures whenever appropriate.

Spotlight on Success

Out of all the activities undertaken by MSPB in this last year to increase transparency, one success story that I would like to highlight as emblematic of our efforts is the use of our website in support of the two oral arguments in September and October 2010 and the Sunshine in the Government Act meeting in December. The three-Member Board held oral arguments in two groups of cases with the potential to impact a broad number of Federal employees. It was the first time in 24 years that an oral argument was heard. The Board also conducted its first Government in the Sunshine Act meeting in 9 years to consider MSPB's proposed research agenda for FY 2011-2013. We used these opportunities to create unique web pages with links to relevant legal authorities, press releases, Federal Register Notices, pleadings, agendas, transcripts, decisions, and audio recordings of the events. Taken together, over 50 documents were proactively disclosed. Having adopted a "mindset" of disclosure, we habitually ask whether proactive disclosure or discretionary release is appropriate in response to requests.