

**2016 Chief FOIA Officer Report
for the Merit Systems Protection Board (MSPB)**
by
William D. Spencer
Clerk of the Board and
Chief FOIA Officer

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.

Section I: Steps Taken to Apply the Presumption of Openness

FOIA 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. The MSPB's FOIA professionals conscientiously monitor training opportunities for both themselves and other MSPB staff with FOIA responsibilities. We also send attorneys in the Office of the Clerk of the Board without direct FOIA responsibilities to substantive FOIA training for cross-training. Staff participated in training provided by the Office of Information Policy at the Department of Justice and the American Society of Access Professionals.

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: 100%

3. OIP has **directed agencies** to "take steps to ensure that all of their FOIA professionals attend substantive FOIA training at least once throughout the year."

If your response to the previous question is that less than 80% of your FOIA professionals attended training, please explain your agency's plan to ensure that all FOIA professionals receive or attend substantive FOIA training during the next reporting year.

Answer: Not applicable.

Discretionary Releases:

4. Does your agency have a distinct process or system in place to review records for discretionary release?

Answer: Yes. The 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 information?

Answer: No.

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: The MSPB was not able to make discretionary releases of information in response to some requests due to Exemptions 6 (primarily) and 7C, which do not lend themselves to discretionary release. In response to a few requests, MSPB also applied Exemption 5 (deliberative process). Releasing the records exempted under (b)(5) would undermine the Board's ability to fully carry out its adjudicatory mission.

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.

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

Processing Procedures:

1. For Fiscal Year 2015, what was the average number of days your agency reported for adjudicating requests for expedited processing?

Answer: 15 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: The MSPB's inability to adjudicate requests for expedited processing in less than 10 calendar days is directly related to our staffing limitations this year. Following the retirement of our only FOIA specialist in December 2014, we utilized contractor support beginning in January 2015. However, in addition to the time necessary to orient them to our agency's operations, there was turnover in that position in June 2015, and that individual's supervisor left MSPB in August 2015. We expect that our processing of expedited requests will improve substantially in FY 2016 once we fill the vacancy for our single FOIA position. Of note, we converted that position to the Government Information Specialist job series.

3. On July 2, 2015, OIP issued **new guidance** to agencies on the proper procedures to be used in the event an agency has a reason to inquire whether a requester is still interested in the processing of his or her request. Please confirm here that to the extent your agency may have had occasion to send a "still interested" inquiry, it has done so in accordance with the new guidelines for doing so, including affording requesters thirty working days to respond.

Answer: The MSPB complied with the new guidance.

Requester Services:

4. Agency FOIA Requester Service Centers and FOIA Public Liaisons serve as the face and voice of an agency. In this capacity they provide a very important service for requesters, informing them about how the FOIA process works and providing specific details on the handling of their individual requests. The FOIA also calls on agency FOIA Requester Service Centers and FOIA Public Liaisons to assist requesters in resolving disputes. Please explain here any steps your agency has taken to strengthen these services to better inform requesters about their requests and to prevent or resolve FOIA disputes.

Answer: The MSPB expanded access to a dedicated FOIA mailbox (foiahq@mspb.gov) which is actively monitored to improve our responsiveness to inquiries and to allow our staff to better track information exchanged between the agency and requestors. Additionally, we immediately withdrew an initial response to a FOIA request upon realizing our error in a “no records” response, thus mooted an appeal and allowing for a “full grant” response.

Other Initiatives:

5. 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 utilized technology to help us more quickly respond to a routine request for records we have received on a monthly basis for years. We also worked with the requestor to produce the records in their preferred format. This has significantly reduced the time required on a monthly basis to respond to this particular request. We also expanded our usage of the [FOIAonline](#) system to utilize its recordkeeping functionality. This has improved our ability to review our responses to closed requests, thus eliminating redundancy and improving our ability to search more effectively.

Section III: Steps Taken to Increase Proactive Disclosures

Posting Material:

1. Describe your agency's process or system for identifying "frequently requested" records required to be posted online under Subsection (a)(2) of the FOIA. For

example, does your agency monitor its FOIA logs or is there some other system in place to identify these records for posting.

Answer: We have begun to conduct queries in the [FOIAonline](#) system to identify frequently requested records. For example, as noted below, we posted our “[Organization Functions & Delegations of Authority](#)” on our website. In FY 2016, we plan to expand these efforts to post appropriate records on the MSPB website.

2. Does your agency have a distinct process or system in place to identify other 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 disclosure on our website.

3. When making proactive disclosures of records, are your agency's FOIA professionals involved in coding the records for Section 508 compliance or otherwise preparing them for posting? If so, provide an estimate of how much time is involved for each of your FOIA professionals and your agency overall.

Answer: In FY 2015, MSPB’s website began utilizing [AudioEye](#) technology to allow for on-the-fly conversion of posted documents into Section 508-compliant versions. This does not require the involvement of our FOIA professionals; however, the Chief FOIA Officer is a member of our internal Section 508 Working Group which identified the AudioEye solution.

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

Answer: Yes.

5. If so, please briefly explain those challenges.

Answer: Given our staffing challenges this year, our resources have been too limited to make proactive disclosures beyond the types we have made in the past.

6. Provide examples of material that your agency has proactively disclosed during the past reporting year, including links to the posted material.
- 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 request for amicus briefs in the matter of *Abernathy v. Department of the Army* (<http://www.mspb.gov/SignificantCases/abernathy.htm>).
 - We posted documents related to the Board’s revisions to its regulations governing discovery in compliance proceedings (www.mspb.gov/regulatoryreview).
 - We posted our “**Organization Functions & Delegations of Authority**,” a “frequently requested” document.
7. Did your agency use any means to publicize or highlight important proactive disclosures for public awareness? If yes, please describe those efforts.

Answer: We used Twitter (@USMSPB) to raise public awareness of these postings.

Other Initiatives:

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

Answer: Not applicable.

Section IV: Steps Taken to Greater Utilize Technology

Making Material Posted Online More Usable:

1. Beyond posting new material, is your agency taking steps to make the posted information more useable 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 made substantial revisions to our [FOIA Requestor Service Center](#) webpage, which includes better identification of the information available on our website and links to that information.

Other Initiatives:

3. Did your agency successfully post all four quarterly reports for Fiscal Year 2015?

Answer: Yes.

4. 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 2016.

Answer: Not applicable.

5. 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. We also improved our email communications by setting up a dedicated mailbox (foiahq@mspb.gov) to centralize communications between FOIA requestors and MSPB staff.

6. 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.

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

Simple Track:

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

Answer: Yes.

2. If so, for your agency overall in Fiscal Year 2015, was the average number of days to process simple requests twenty working days or fewer?

Answer: No.

3. Please provide the percentage of requests processed by your agency in Fiscal Year 2015 that were placed in your simple track.

Answer: 91%.

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.

Backlogs:

BACKLOGGED REQUESTS

5. If your agency had a backlog of requests at the close of Fiscal Year 2015, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2014?

Answer: No, it increased as compared to the backlog reported at the end of FY 2014.

6. If not, explain why and describe the causes that contributed to your agency not being able reduce its backlog.

Answer: As noted above, during FY 2015, MSPB lost both our lone full-time FOIA specialist and their supervisor. Although we had some temporary contractor support to provide basic coverage of our FOIA program, we were unable to process requests at the rate they were received. Additionally, many of the complex requests we receive are for copies of MSPB appeal files, which are extensive and typically contain information which must be redacted under Exemption 6.

7. 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 2015.

Answer: 33%.

BACKLOGGED APPEALS

8. If your agency had a backlog of appeals at the close of Fiscal Year 2015, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2014?

Answer: We did not have a backlog of appeals at the end of FY 2015. The number of backlogged appeals decreased from one at the end of FY 2014 to zero at the end of FY 2015.

9. If not, explain why and describe the causes that contributed to your agency not being able reduce backlog.

Answer: Not applicable.

10. 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 2015.

Answer: Not applicable.

Status of Ten Oldest Requests, Appeals, and Consultations:

TEN OLDEST REQUESTS

11. In Fiscal Year 2015, did your agency close the ten oldest requests that were reported pending in your Fiscal Year 2014 Annual FOIA Report?

Answer: No.

12. If no, please provide the number of these requests your agency was able to close by the end of the fiscal year, as listed in Section VII.E of your Fiscal Year 2014 Annual FOIA Report.

Answer: We closed 9 of the 10 oldest requests that were reported pending in our FY 2014 Annual FOIA Report.

13. 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: Not applicable. None of these requests were closed as withdrawn.

TEN OLDEST APPEALS

14. In Fiscal Year 2015, did your agency close the ten oldest appeals that were reported pending in your Fiscal Year 2014 Annual FOIA Report?

Answer: Yes. We only reported one pending appeal in our FY 2014 Annual FOIA Report.

15. If no, please provide the number of these appeals your agency was able to close by the end of the fiscal year, as listed in Section VII.C.(5) of your Fiscal Year 2014 Annual FOIA Report.

Answer: Not applicable.

TEN OLDEST CONSULTATIONS

16. In Fiscal Year 2015, did your agency close the ten oldest consultations that were reported pending in your Fiscal Year 2014 Annual FOIA Report?

Answer: Not applicable. We did not report any pending consultations in our FY 2014 Annual FOIA Report.

17. If no, please provide the number of these consultations your agency was able to close by the end of the fiscal year, as listed in Section XII.C. of your Fiscal Year 2014 Annual FOIA Report.

Answer: Not applicable.

Additional Information on Ten Oldest Requests, Appeals, and Consultations & Plans:

18. Briefly explain any obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2014.

Answer: As noted above, given our staffing challenges in FY 2015, we were unable to close one of our ten oldest pending request reported in our FY 2014 Annual FOIA Report.

19. 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.

20. 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 2016.

Answer: We expect to close the one remaining request from our ten oldest requests reported in our FY 2014 Annual FOIA Report in FY 2016 once we fill the vacancy for our FOIA position.

Interim Responses (not required):

23. Does your agency have a system in place to provide interim responses to requesters when appropriate?

Answer: Yes, we provide interim responses to requesters when appropriate, and we increased our use of interim responses in FY 2015.

Use of the FOIA's Law Enforcement Exclusions

1. Did your agency invoke a statutory exclusion, 5 U.S.C. § 552(c)(1), (2), (3), during Fiscal Year 2015?

Answer: No.

2. If so, please provide the total number of times exclusions were invoked.

Answer: Not applicable.