

March 14, 2013

2013 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. In June 2012, we hired a new Legal Advisor to the Clerk of the Board to provide legal advice and counsel on complex FOIA issues.

Section 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:** Yes. On September 11, 2013, the MSPB co-sponsored with the Environmental Protection Agency (EPA), the Department of Commerce (DOC), and the National Archives and Records Administration (NARA) a one-day FOIA training program. The agenda included discussions on the following: recent FOIA decisions; processing FOIA requests for databases/datasets; E-Discovery tools for FOIA processing and fee categories and waivers. The training was for Government employees and it was free. We also provided FOIA training to the new FOIA Liaison at our Dallas Regional Office.

Did your FOIA professionals attend any FOIA training, such as that provided by the Department of Justice? **Answer:** Yes.

- Attended the Sunshine Week event at the Department of Justice (DOJ), featuring remarks by Attorney General Eric Holder.
- Attended a DOJ-sponsored course entitled “Introduction to the Freedom of the Information Act.”
- Attended a DOJ-sponsored course entitled “Advanced Freedom of Information Act Seminar.”
- Attended a DOJ-sponsored course entitled “FOIA for Attorneys and Access Professionals.”
- Attended the Annual American Society of Access Professionals Training Conference in New Orleans.
- Attended a one-day FOIA training program at DOC.
- Attended a two-day course sponsored by the USDA Graduate School entitled “Freedom of Information and Privacy Acts.”

2. Did your agency make any discretionary releases of otherwise exempt information? **Answer:** No.

3. What exemptions would have covered the information that was released as a matter of discretion? **Answer:** Not applicable.

4. Provide a narrative description, or some examples of, the types of information that your agency released as a matter of discretion. **Answer:** Not applicable.

5. Describe any other initiatives undertaken by your agency to ensure that the presumption of openness is being applied. **Answer:** The MSPB entered into a partnership with EPA, NARA and DOC for the creation and implementation of a state-of-the-art FOIA tracking system called “FOIAonline.” The system allows FOIA requesters to submit requests and appeals, check their names, and search their requests, appeals and records for multiple agencies stored in a central repository, thus negating the FOIA requester seeking the status of their FOIA requests in multiple agencies’ FOIA tracking systems. Full text searching allows for discovery of relevant information within electronic records.

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

1. Do FOIA professionals within your agency have sufficient IT support? **Answer:** Yes. The MSPB partnered with EPA, DOC and NARA to implement the new “FOIAonline” tracking system, which is web-based.

2. Do your FOIA professionals work with your agency's Open Government Team? **Answer:** Yes.

3. Has your agency assessed whether adequate staffing is being devoted to FOIA administration? **Answer:** Yes. We experienced an 86% increase in the number of FOIA requests submitted to MSPB in FY 2012 compared to FY 2011 (121 to 225). The majority of the FOIA requests received by MSPB are reviewed and processed at headquarters by one FOIA Analyst. A small number of requests (about 16% of all MSPB FOIA requests) are processed at MSPB's regional and field offices. We are cross-training other staff in the Office of the Clerk of the Board to review and process FOIA requests. This effort should ensure a backlog never occurs and responses are sent to FOIA requesters within the statutory timeframe.

4. Describe 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, streamlining consultations, eliminating redundancy, etc. **Answer:** The MSPB's partnership with other Federal agencies on the "FOIAonline" tracking system has been a tremendous help in streamlining MSPB's FOIA process.

Section III: Steps Taken to Increase Proactive Disclosures

1. Provide examples of material that your agency has posted this past year. **Answer:** The MSPB completed a substantial revision to its adjudicatory regulations with the publication of a Final Rule in the Federal Register in October 2012. The regulations modify 5 C.F.R. Parts 1200, 1201, 1203, 1208, and 1209. The revisions follow an unprecedented review and the first significant reconsideration of MSPB's regulations since the agency's establishment in 1979. The MSPB proactively posted over 30 documents related to the regulation review on our website, including comments received, a meeting transcript, and other relevant documents. See <http://www.mspb.gov/regulatoryreview/>.

2. Beyond posting new material, is your agency taking steps to make the posted 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 on the site, creating mobile applications, providing explanatory material, etc.? **Answer:** Yes.

3. If so, provide examples of such improvements. **Answer:** We created a universal mobile application for Apple's iTouch, iPhone and iPad in 2012 to go along with our universal Android application. We also received the results

of a usability review of our website by GSA in January 2013. We also used Twitter (@USMSPB) to publicize and solicit feedback on our posted material.

4. Describe any other steps taken to increase proactive disclosures at your agency. **Answer:** We are planning to meet with our requester community in 2013, and identifying frequently or routinely requested material to post on our website. We also are considering posting initial decisions on our website for the first time.

Section IV: Steps Taken to Greater Utilize Technology

Electronic receipt of FOIA requests:

1. Can FOIA requests be made electronically to your agency? **Answer:** Yes.
2. If your agency is decentralized, can FOIA requests be made electronically to *all* components of your agency? **Answer:** Yes.

Online tracking of FOIA requests:

3. Can a FOIA requester track the status of his/her request electronically? **Answer:** Yes.
4. If so, describe the information that is provided to the requester through the tracking system. For example, some tracking systems might tell the requester whether the request is "open" or "closed," while others will provide further details to the requester throughout the course of the processing, such as "search commenced" or "documents currently in review." List the specific types of information that are available through your agency's tracking system. **Answer:** The MSPB's new "FOIAonline" tracking system enables a requester to do the following: track the progress of each request, e.g., whether the request is open or closed, submit FOIA requests to multiple agencies, and automatically receive notification an agency has received a request.
5. In particular, does your agency tracking system provide the requester with an estimated date of completion for his or her request? **Answer:** Yes.
6. If your agency does not provide online tracking of requests, is your agency taking steps to establish this capability? **Answer:** Not applicable.

Use of technology to facilitate processing of requests:

7. 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.

8. If so, describe the technological improvements being made.

Answer: We have procured Stamp PDF software as a plug-in to our REDAX redaction software. Stamp PDF is a tremendous help with page numbering all documents released in response to FOIA requests. It enables us to assemble pages from multiple sources and create unified page numbering for a single PDF document containing documents responsive to a FOIA request.

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

1. *Response time for processed requests.*

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

Answer: Yes.

b. If so, for your agency overall, for Fiscal Year 2012, was the average number of days to process simple requests twenty working days or fewer? **Answer:** 10.

c. 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:** Not Applicable.

2. *Backlog of pending requests or pending appeals from Fiscal Year 2012 as compared to Fiscal Year 2011.*

a. If your agency had a backlog of requests at the close of Fiscal Year 2012, did that backlog decrease as compared with Fiscal Year 2011? **Answer:** We did not have a backlog.

b. If your agency had a backlog of administrative appeals in Fiscal Year 2012, did that backlog decrease as compared to Fiscal Year 2011? **Answer:** We did not have a backlog.

c. In Fiscal Year 2012, did your agency close the ten oldest requests that were pending as of the end of Fiscal Year 2011? **Answer:** Yes.

d. In Fiscal Year 2012, did your agency close the ten oldest administrative appeals that were pending as of the end of Fiscal Year 2011? **Answer:** We did not have any appeals pending at the end of Fiscal Year 2012.

3. If you answered “no” to any of the above questions, describe why that has occurred. In doing so, answer the following questions then include any additional explanation: **Answer:** Not applicable.

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:** Not applicable.

b. Was the lack of a reduction in the request backlog caused by a loss of staff? **Answer:** Not applicable.

c. Was the lack of a reduction in the request backlog caused by an increase in the complexity of the requests received? **Answer:** Not applicable.

d. What other causes, if any, contributed to the lack of a decrease in the request backlog? **Answer:** Not applicable.

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? **Answer:** Not applicable.

b. Was the lack of a reduction in the appeal backlog caused by a loss of staff? **Answer:** Not applicable.

c. Was the lack of a reduction in the appeal backlog caused by an increase in the complexity of the appeals received? **Answer:** Not applicable.

d. What other causes, if any, contributed to the lack of a decrease in the appeal backlog? **Answer:** Not applicable.

4. OIP has issued **guidance** encouraging agencies to make interim releases whenever they are working on requests that involve a voluminous amount of material or require searches in multiple locations. By providing rolling releases to requesters agencies facilitate access to the requested information. If your agency had a backlog in Fiscal Year 2012, please provide an estimate of the number of cases in the backlog where a substantive, interim response was provided during the fiscal year, even though the request was not finally closed. **Answer:** Not applicable.

Use of FOIA's Law Enforcement "Exclusions"

1. Did your agency invoke a statutory exclusion during Fiscal Year 2012?

Answer: No.

Spotlight on Success

The MSPB partnered with several other Federal agencies in using "FOIAonline" to track FOIA requests. This endeavor has been a tremendous success for MSPB and our FOIA requesters. The new system allows requesters to submit FOIA requests, modify requests, communicate with MSPB about the status of a request, search previously submitted requests, eventually view responsive documents that are cleared for release, access a dashboard with information about the status of a request, and file an appeal. Also, "FOIAonline" enables MSPB to be more efficient and effective in providing our requesters timely and accurate responses to their FOIA requests.