

**FISCAL YEAR 2021  
CHIEF FOIA OFFICER REPORT**



**U.S. Merit Systems Protection Board**

**March 2021**

**2021 Chief FOIA Officer Report  
for the Merit Systems Protection Board (MSPB)**

by  
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The MSPB ([www.mspb.gov](http://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**

***A. FOIA Leadership***

1. The FOIA requires each agency to designate a Chief FOIA Officer who is a senior official at least at the Assistant Secretary or equivalent level. *See 5 U.S.C. § 552(j)(1)(2018)*. Is your agency's Chief FOIA Officer at this level?

**Answer:** Yes.

2. Please provide the name and title of your agency's Chief FOIA Officer.

**Answer:** William D. Spencer, Clerk of the Board (currently serving as Acting Executive Director).

***B. FOIA Training***

3. The FOIA directs agency Chief FOIA Officers to ensure that FOIA training is offered to agency personnel. *See 5 U.S.C. § 552(a)(j)(2)(F)*. Please describe the efforts your agency has undertaken to ensure proper FOIA training is made available and used by agency personnel.

**Answer:** Training is provided by the Director of Information Services to every new agency employee, and to any current employee who requests refresher FOIA training. The substantive training provides a brief overview of the FOIA, current and precedential

court decisions, and explains how MSPB administers the FOIA by providing agency-specific examples.

Currently, the training sessions are conducted virtually via Zoom for Government with all participants and the presenter visible. Participants have the opportunity to engage the presenter and ask questions. PowerPoint slides of the training session are also posted on the FOIA page of our agency's intranet.

4. Did your FOIA professionals or the personnel at your agency who have FOIA responsibilities attend substantive FOIA training during the reporting period such as that provided by the Department of Justice?

**Answer:** Yes. MSPB's FOIA professionals conscientiously monitor training opportunities and attend the trainings that are pertinent to MSPB.

5. If yes, please provide a brief description of the type of training attended or conducted and the topics covered.

**Answer:** MSPB staff attended trainings offered by the Office of Information Policy (OIP) at the Department of Justice, including: Advanced FOIA Seminar; Continuing FOIA Education; Best Practices Workshop regarding Technology in FOIA; Virtual Privacy Considerations mini-session; Virtual Exemption 5 Workshop.

The topics covered by the trainings include an in-depth discussion of the intersection of FOIA and privacy considerations and the role and continuing evolution of technology and how it impacts the processing of FOIA requests.

6. Please 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%.

7. 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.

### ***C. Outreach***

8. Did your FOIA professionals engage in any outreach or dialogue with the requester community or open government groups regarding your administration of the FOIA?

Please describe any such outreach or dialogue, and, if applicable, any specific examples of how this dialogue has led to improvements in your agency's FOIA administration.

**Answer:** Due to limited resources and workload in our FOIA program, we were unable to engage in any formal outreach or dialogue with the requester community.

#### ***D. Other Initiatives***

9. Describe any efforts your agency has undertaken to inform non-FOIA professionals of their obligations under the FOIA. In particular, please describe how often and in what formats your agency provides FOIA training or briefings to non-FOIA staff.

**Answer:** As explained above, all new agency employees receive required FOIA training, and refresher training is given to any employee or office upon request. The Chief FOIA Officer also provides non-FOIA professionals with relevant information about FOIA obligations or implications when situations arise – for example, upon shifting to maximum telework during the novel coronavirus (COVID-19) pandemic and National Emergency. We also continue to maintain a FOIA page on our agency's intranet that contains general information about FOIA processing at MSPB.

10. Optional – 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:** In an effort to raise awareness about FOIA and the presumption of openness, MSPB's FOIA staff use opportunities during staff meetings and inter-office meetings to share trends in FOIA requests and processing and how those trends may relate to agency programs or initiatives. Additionally, non-FOIA staff at MSPB strives to identify records that could be proactively released.

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

DOJ's FOIA Guidelines emphasize that “[a]pplication of the proper disclosure standard is only one part of ensuring transparency. Open government requires not just a presumption of disclosure, but also an effective system for responding to FOIA requests.” It is essential that agencies effectively manage their FOIA program.

Please answer the following questions to describe the steps your agency has taken to ensure that the management of your FOIA program is effective and efficient. You should also include any additional information that describes your agency's efforts in this area.

1. For Fiscal Year 2020, what was the average number of days your agency reported for adjudicating requests for expedited processing? Please see Section VIII.A. of your agency's Fiscal Year 2020 Annual FOIA Report.

**Answer:** 2.44 days.

2. If your agency's average number of days to adjudicate requests for expedited processing was above ten calendar days, according to Section VIII.A. of your agency's Fiscal Year 2020 Annual FOIA Report, please describe the steps your agency will take to ensure that requests for expedited processing are adjudicated within ten calendar days or less.

**Answer:** Not applicable. MSPB continues to prioritize the adjudication of expedited requests and to grant such requests, when appropriate.

3. During the reporting period, did your agency conduct a self-assessment of its FOIA program? If so, please describe the methods used, such as reviewing Annual Report data, using active workflows and track management, reviewing and updating processing procedures, etc.

- Note: In September 2017, OIP released a FOIA Self-Assessment Toolkit as a resource for agencies conducting a self-assessment of their FOIA program. The Toolkit is available on OIP's website for all agencies to use.

**Answer:** Yes. At the outset of Fiscal Year 2020, MSPB used the accomplishments and lessons learned from its Fiscal Year 2019 FOIA program to set goals, including quarterly and annual goals for backlog reduction, specific targets to close the ten-oldest requests, and goals to maintain our processing times. Beginning in March 2020, as MSPB shifted to mandatory and then maximum telework due to the pandemic, we reassessed priorities and options to determine the best way forward for processing FOIA requests while minimizing disruptions for requestors.

4. Standard Operating Procedures (SOPs): Having SOPs can improve the consistency and quality of an agency's FOIA process. In addition, describing an agency's standard practices for handling FOIA requests on agency FOIA websites can help requestors better understand how their request will be handled.

- a) Does your agency have SOPs that outline general processes for handling FOIA requests and appeals?
- b) If not, does your agency have plans to create FOIA SOPs?
- c) If yes, how often are they reviewed/updated to account for changes in law, best practices, and technology?
- d) In addition to having SOPs, does your agency post or otherwise describe your standard processes for handling requests on your website?

**Answer:** MSPB does not currently have documented SOPs for the FOIA program. As MSPB's FOIA program has matured in recent years, with a consistent FOIA Government Information Specialist (GIS) responsible for the program, standard processes have been developed and are followed when other staff members assist with the program. We are committed to documenting MSPB's FOIA SOPs as one of our Fiscal Year 2021 program goals.

MSPB currently provides general information about its FOIA processes on its website at <https://www.mspb.gov/foia/request.htm>, and will review and update this website content following the creation of our written SOPs.

5. The FOIA Improvement Act of 2016 requires additional notification to requesters about the services provided by the agency's FOIA Public Liaison. Please provide an estimate of the number of times requesters sought assistance from your agency's FOIA Public Liaison during Fiscal Year 2020 (please provide a total number or an estimate of the number).

**Answer:** While MSPB regularly informs requesters of the services of the FOIA Public Liaison, only one or two requesters sought out the Liaison's services during Fiscal Year 2020. However, given MSPB's limited FOIA staff, and in an effort to process requests as efficiently as possible, MSPB's FOIA Public Liaison frequently engages with requesters at the outset of processing to discuss the request and determine the best ways to meet their needs.

6. Does your agency frequently receive common categories of first-party requests? If so, please describe the types of request and if your agency has explored establishing alternative means of access to these records outside of the FOIA process?

**Answer:** First-party requesters almost exclusively seek their MSPB appeal case file. Many requestors are able to access their current or recent appeal files through MSPB's e-Appeal Online system, a web-based system with access restricted to case parties only. Requestors are encouraged to use e-Appeal to access and download electronic copies of their appeal file whenever circumstances allow. However, a significant portion of first-party requesters seek their older records, the majority of which are in paper format and are maintained offsite at Federal Records Centers throughout the United States. In other circumstances, requestors seek a paper copy of their first-party record even when the record is available electronically. In these circumstances, the FOIA GIS processes the first-party request. MSPB continues to review these processes and look for efficiencies in first-party request processing.

7. The FOIA Improvement Act of 2016 required all agencies to update their FOIA regulations within 180 days. Has your agency updated its FOIA regulations in

accordance with the FOIA Improvement Act of 2016? If not, what is your agency's plan to update your regulations?

**Answer:** No. MSPB was not able to complete the updates to its FOIA regulations within the 180-day period following the FOIA Improvement Act of 2016. Since January 7, 2017, [MSPB has lacked a quorum](#) of Senate-confirmed Board members, and since March 1, 2019, MSPB has had no Senate-confirmed Board members. Because of the lack of quorum, Board members were not able to approve the substantive regulation updates. Despite the lack of substantive regulation updates, MSPB FOIA staff follows the mandates as provided by the statute, and draft regulation updates have been prepared in anticipation of new Board members and the restoration of a quorum.

8. Please explain how your agency worked to mitigate the impact of the COVID-19 pandemic on FOIA processing. Examples could include, but are not limited to: altering workflows, implementing new technology, providing notices and instructions or otherwise communicating directly with requesters.

**Answer:** To mitigate the impact of the COVID-19 pandemic on FOIA processing, information was added to our FOIA website to encourage requesters to utilize our online FOIA tracking system instead of mailing or faxing requests to MSPB's offices. Additionally, all written communications to requesters included a paragraph that relayed MSPB's mandatory and maximum telework statuses and possible delays in processing requests. We have been transparent with requesters about any delays or logistical challenges due to the pandemic, e.g., searching in-office for paper records, retrieving paper copies of records currently stored at Federal Records Centers, or reproducing records in hard or electronic copies.

(Optional) Please describe:

- Best practices used to ensure that your FOIA system operates effectively
- Any challenges your agency faces in this area.

**Answer:** As explained above, MSPB's approach includes setting quarterly and annual goals to manage the FOIA program at the outset of each fiscal year. The FOIA GIS and managers meet throughout the year to continuously review and discuss pending FOIA requests. The FOIA GIS and the FOIA Public Liaison maintain almost daily contact to ensure efficiency and to maximize resources. MSPB has one full-time FOIA GIS, and these meetings help identify when other staff can provide triage support to the program, such as for a voluminous request or to assist in the interpretation or scope of a request. We also have cross-trained the FOIA management team to ensure FOIA processing continues even when the full-time FOIA GIS is unavailable or on leave. This approach assists in maintaining processing times for simple requests and ensures new requests are timely docketed, acknowledged, and triaged. MSPB continues to increase efforts to

reach out to requesters when a request is received to ensure we understand the requester's needs and to allow the requester to narrow the request to allow for faster processing. Finally, we continue to benefit from efforts initiated in Fiscal Year 2018 to streamline our electronic searches for certain types of records, thereby making the search and review process more efficient.

### **Section III: Steps Taken to Increase Proactive Disclosures**

The Department of Justice has long focused on the need for agencies to work proactively to post information online without waiting for individual requests to be received.

Please answer the following questions to describe the steps your agency has taken to increase the amount of material that is available on your agency websites. In addition to the questions below, you should also describe any additional steps taken by your agency to make and improve proactive disclosures of information.

1. Provide examples of material that your agency has proactively disclosed during the past reporting year, including records that have been requested and released three or more times in accordance with 5 U.S.C. § 552(a)(2)(D). Please include links to these as well.

#### **Answer:**

We posted Case Reports that provide descriptions of court decisions:

<https://www.mspb.gov/decisions/casereports.htm>

We posted Rules of Behavior for External Zoom users and MSPB's Privacy Act Statement for Zoom for Government:

[https://www.mspb.gov/appeals/files/Zoom\\_for\\_Government\\_Rules\\_of\\_Behavior\\_for\\_External\\_Users\\_April\\_30\\_2020.pdf](https://www.mspb.gov/appeals/files/Zoom_for_Government_Rules_of_Behavior_for_External_Users_April_30_2020.pdf)

[https://www.mspb.gov/privacy/MSPB\\_Privacy\\_Act\\_Statement\\_for\\_Zoom\\_for\\_Government\\_Apr\\_2020.pdf](https://www.mspb.gov/privacy/MSPB_Privacy_Act_Statement_for_Zoom_for_Government_Apr_2020.pdf)

We posted information specific to MSPB operations during the COVID-19 pandemic and National Emergency:

<https://www.mspb.gov/coronavirus/>

We posted electronic versions of print publications for the *Issues of Merit* newsletters:

- <https://www.mspb.gov/MSPBSEARCH/viewdocs.aspx?docnumber=1768161&version=1774368&application=ACROBAT>
- <https://www.mspb.gov/MSPBSEARCH/viewdocs.aspx?docnumber=1728220&version=1734239&application=ACROBAT>



- <https://www.mspb.gov/MSPBSEARCH/viewdocs.aspx?docnumber=1692810&version=1698743&application=ACROBAT>

We posted electronic versions of research briefs issued by MSPB's Office of Policy and Evaluation:

- <https://www.mspb.gov/MSPBSEARCH/viewdocs.aspx?docnumber=1724758&version=1730756&application=ACROBAT>
- <https://www.mspb.gov/MSPBSEARCH/viewdocs.aspx?docnumber=1666398&version=1672301&application=ACROBAT>

We posted fact sheets regarding the 2021 Merit Principles Survey:

<https://www.mspb.gov/studies/surveys.htm>

We posted agency annual and budget reports:

<https://www.mspb.gov/publicaffairs/annual.htm>

Among the records available in our e-FOIA reading room (<https://www.mspb.gov/foia/e-foiareadingroom.htm>), we posted or cross-posted the following records:

Judges' Handbook:

<https://www.mspb.gov/mspbsearch/viewdocs.aspx?docnumber=241913&version=242182&application=ACROBAT>

Pending Petition for Review Data (January 2017-December 31, 2020):

[https://www.mspb.gov/foia/files/December\\_2020\\_PFRs\\_Received\\_and\\_Pending\\_Counts-508.pdf](https://www.mspb.gov/foia/files/December_2020_PFRs_Received_and_Pending_Counts-508.pdf)

FOIA Logs for Quarters 1-3 of Fiscal Year 2020:

[https://www.mspb.gov/foia/files/MSPB\\_FY20\\_FOIA\\_Log\\_Quarter\\_1.pdf](https://www.mspb.gov/foia/files/MSPB_FY20_FOIA_Log_Quarter_1.pdf)

[https://www.mspb.gov/foia/files/MSPB\\_FY20\\_FOIA\\_Log\\_Quarter\\_2.pdf](https://www.mspb.gov/foia/files/MSPB_FY20_FOIA_Log_Quarter_2.pdf)

[https://www.mspb.gov/foia/files/MSPB\\_FY20\\_FOIA\\_Log\\_Quarter\\_3.pdf](https://www.mspb.gov/foia/files/MSPB_FY20_FOIA_Log_Quarter_3.pdf)

FY 2020 Annual Freedom of Information Act Report

<http://www.mspb.gov/MSPBSEARCH/viewdocs.aspx?docnumber=1807498&version=1813774&application=ACROBAT>

<https://www.mspb.gov/xml/MSPBFY20.xml>

[https://www.mspb.gov/xml/FY\\_20%20MSPB\\_RawDataExport%20Final.csv](https://www.mspb.gov/xml/FY_20%20MSPB_RawDataExport%20Final.csv)

MSPB's Policy on Prohibited Conduct:

<https://www.mspb.gov/foia/files/PolicyonProhibitedConduct.pdf>

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?

**Answer:** Yes.

3. If yes, please provide examples of such improvements. In particular, please describe steps your agency is taking to post information in open, machine-readable, and machine-actional formats, to the extent feasible. If not posting in open formats, please explain why and note any challenges.

**Answer:** We have taken steps to ensure that the information proactively posted on our website is the most up to date and accurate information available. The information can be accessed via links posted at various places on our website to ensure multiple points of access. Links to records are grouped by relevant category, which also provides a brief description of the nature of the records.

Additionally, MSPB's new Accessibility Program Manager is working with the FOIA program to ensure compliance with Section 508 of the Rehabilitation Act of 1973 (29 U.S.C. § 794d).

4. (Optional) Please describe:

- The best practices used to improve proactive disclosures
- Any challenges your agency faces in this area.

**Answer:** MSPB's FOIA staff monitors incoming requests to spot trends and topics of public interest, and vigilantly monitors agency initiatives and current events concerning the agency. Additionally, offices within MSPB communicate with the FOIA staff to bring matters of public concern or interest to their attention.

MSPB's challenge in this area is balancing limited resources among multiple objectives: timely processing of requests, backlog reduction, and maximizing opportunities to identify and make proactive disclosures.

#### **Section IV: Steps Taken to Greater Utilize Technology**

A key component of FOIA administration is using technology to make information more accessible. In addition to using the internet to make proactive disclosures, agencies should also be exploring ways to utilize technology in responding to requests.

Please answer the following questions to describe how your agency is utilizing technology to improve its FOIA administration and the public's access to information. You should also include any additional information that that describes your agency's efforts in this area.

1. Please briefly describe the types of technology your agency uses to support your FOIA program. In addition, please highlight if your agency is leveraging or exploring any new technology that you have not previously reported. If so, please describe the type of technology.

**Answer:** In addition to utilizing the technology available with FOIAonline, we also explored other document sharing programs to more easily release records to requesters. MSPB continued efforts to better leverage other current technology, e.g., the Microsoft Office 365 suite, to conduct both enterprise-level and targeted searches for records.

2. OIP issued guidance in 2017 encouraging agencies to regularly review their FOIA websites to ensure that they contain essential resources and are informative and user-friendly. Has your agency reviewed its FOIA website(s) during the reporting period to ensure it addresses the elements noted in the guidance?

**Answer:** MSPB continually reviews the FOIA website to ensure that it contains essential resources and is informative and user-friendly. As noted above, MSPB incorporated specific information on its FOIA website about the agency's operating status and its effect on FOIA processing as a result of the pandemic. MSPB's FOIA team has also discussed possible improvements to the FOIA website.

3. Did your agency successfully post all four quarterly reports for Fiscal Year 2020?

**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 2021.

**Answer:** Not applicable.

5. The FOIA Improvement Act of 2016 requires all agencies to post the raw statistical data used to compile their Annual FOIA Reports. Please provide the link to this posting for your agency's Fiscal Year 2019 Annual FOIA Report and, if available, for your agency's Fiscal Year 2020 Annual FOIA Report.

**Answer:** MSPB posted raw data from our Fiscal Year 2019 Annual FOIA Report in both a human-readable CSV form and a machine-readable XML form. Both forms of raw data are available in our e-FOIA Reading Room:

- Fiscal Year 2019 Report (CSV)  
<https://www.mspb.gov/xml/MSPB%20FY19%20Raw%20Data%20Export%20Final.csv>
- Fiscal Year 2019 Report (XML)  
<https://www.mspb.gov/xml/MSPB%20FY19%20Final.xml>
- Fiscal Year 2020 Report (CSV)  
[https://www.mspb.gov/xml/FY\\_20%20MSPB\\_RawDataExport%20Final.csv](https://www.mspb.gov/xml/FY_20%20MSPB_RawDataExport%20Final.csv)
- Fiscal Year 2020 Report (XML)  
<https://www.mspb.gov/xml/MSPBFY20.xml>

6. (Optional) Please describe:

- Best practices used in greater utilizing technology
- Any challenges your agency faces in this area.

**Answer:** MSPB's challenge in utilizing new technology is allocating the resources and time to research available technologies and understand how they would improve the FOIA program at MSPB.

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

The Department of Justice has emphasized the importance of improving timeliness in responding to requests. This section of your Chief FOIA Officer Report addresses both time limits and backlog reduction. Backlog reduction is measured both in terms of numbers of backlogged requests or appeals and by looking at whether agencies closed their ten oldest requests, appeals, and consultations.

For the figures required in this Section, please use the numbers contained in the specified sections of your agency's 2019 and 2020 Annual FOIA Reports.

### ***A. Simple Track***

Section VII.A of your agency's Annual FOIA Report, entitled "FOIA Requests – Response Time for All Processed Requests," includes figures that show your agency's average response times for processed requests. For agencies utilizing a multi-track system to process requests, there is a category for "simple" requests, which are those requests that are placed in the agency's fastest (non-expedited) track, based on the low volume and/or simplicity of the records requested.

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

**Answer:** Yes. MSPB utilizes the traditional three-track system for FOIA requests: simple, complex, and expedited requests.

2. If your agency uses a separate track for simple requests, was the agency overall average number of days to process simple requests twenty working days or fewer in Fiscal Year 2020?

**Answer:** Yes. MSPB's overall average response time for all processed perfected simple requests was 5.65 days in Fiscal Year 2020.

3. Please provide the percentage of requests processed by your agency in Fiscal Year 2020 that were placed in your simple track. Please use the following calculation based on data from your Annual FOIA Report (processed simple requests from Section VII.C.1) *divided by* (requests processed from Section V.A.) x 100.

**Answer:** 58%.

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.

### ***B. Backlogs***

Section XII.A of your agency's Annual FOIA Report, entitled "Backlogs of FOIA Requests and Administrative Appeals" shows the numbers of any backlogged requests or appeals from the fiscal year. You should refer to these numbers from your Annual FOIA Reports for both Fiscal Year 2019 and Fiscal Year 2020 when completing this section of your Chief FOIA Officer Report.

### **BACKLOGGED REQUESTS**

5. If your agency had a backlog of requests at the close of Fiscal Year 2020, according to Annual Report Section XII.A., did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2019?

**Answer:** No. There was a slight increase (four) in the number of backlogged requests at the end of Fiscal Year 2020 as compared to Fiscal Year 2019.

6. If not, according to Annual FOIA Report Section V.A., did your agency process more requests during Fiscal Year 2020 than it did during Fiscal Year 2019?

**Answer:** Yes. MSPB processed more requests during Fiscal Year 2020 than it did during Fiscal Year 2019.

7. If your agency's request backlog increased during Fiscal Year 2020, please explain why and describe the causes that contributed to your agency not being able to reduce its backlog. When doing so, please also indicate if any of the following were contributing factors:

- An increase in the number of incoming requests.
- A loss of staff.
- An increase in the complexity of the requests received. If possible, please provide examples or briefly describe the types of complex requests contributing to your backlog increase.
- Any other reasons – please briefly describe or provide examples when possible.

**Answer:** MSPB received 10 more requests in Fiscal Year 2020 – a 9% increase in requests over Fiscal Year 2019. MSPB processed more requests overall in Fiscal Year 2020, including more of the ten oldest requests, some of which were in excess of 3,000 pages and contained sensitive information. Finally, the shift to maximum telework as a result of the pandemic also affected the FOIA program and some FOIA processes were modified and processing was delayed.

8. 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 2020. Please use the following calculations based on data from your Annual FOIA Report: (backlogged requests from Section XII.A) *divided by* (requests received from Section V.A) x 100. If your agency has no request backlog, please answer with “N/A.”

**Answer:** 39%.

## **BACKLOGGED APPEALS**

9. If your agency had a backlog of appeals at the close of Fiscal Year 2020, according to Section XII.A of the Annual FOIA Report, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2019?

**Answer:** No. The number of backlogged appeals was the same as reported in Fiscal Year 2019.

10. If not, according to section VI.A of the Annual FOIA Report, did your agency process more appeals during Fiscal Year 2020 than it did during Fiscal Year 2019?

**Answer:** Yes. The number of appeals processed in Fiscal Year 2020 more than doubled from the number processed in Fiscal Year 2019.

11. If your agency's appeal backlog increased during Fiscal Year 2020, please explain why and describe the causes that contributed to your agency not being able to reduce its backlog. When doing so, please also indicate if any of the following were contributing factors:

- An increase in the number of incoming appeals.
- A loss of staff.
- An increase in the complexity of the requests received. If possible, please provide examples or briefly describe the types of complex requests contributing to your backlog increase.
- Any other reasons – please briefly describe or provide examples when possible.

**Answer:** Not applicable.

12. 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 2020. Please use the following calculation based on data from your Annual FOIA Report: (backlogged appeals from Section XII.A) *divided by* (appeals received from Section VI.A) x 100. If your agency did not receive any appeals in Fiscal Year 2020 and/or has no appeal backlog, please answer with "N/A."

**Answer:** 8%.

### ***C. Backlog Reduction Plans***

13. In the 2020 guidelines for Chief FOIA Officer Reports, any agency with a backlog of over 1,000 requests in Fiscal Year 2019 was asked to provide a plan for achieving backlog reduction in the year ahead. Did your agency implement a backlog reduction plan last year? If so, describe your agency's efforts in implementing this plan and note if your agency was able to achieve backlog reduction in Fiscal Year 2020?

**Answer:** MSPB did not have a backlog of over 1,000 requests in Fiscal Year 2019.

14. If your agency had a backlog of more than 1,000 requests in Fiscal Year 2020, what is your agency's plan to reduce this backlog during Fiscal Year 2021?

**Answer:** Not applicable.

### ***D. Status of Oldest Requests, Appeals, and Consultations***

Section VII.E., entitled "Pending Requests – Ten Oldest Pending Requests," Section VI.C.(5), entitled "Ten Oldest Pending Administrative Appeals," and Section XII.C., entitled "Consultations on FOIA Requests – Ten Oldest Consultations Received from Other Agencies

and Pending at Your Agency," show the ten oldest pending requests, appeals, and consultations. You should refer to these numbers from your Annual FOIA Reports for both Fiscal Year 2019 and Fiscal Year 2020 when completing this section of your Chief FOIA Officer Report.

### **OLDEST REQUESTS**

15. In Fiscal Year 2020, did your agency close the ten oldest pending perfected requests that were reported in Section VII.E. of your Fiscal Year 2019 Annual FOIA Report?

**Answer:** No.

16. 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 2019 Annual FOIA Report. If you had fewer than ten total oldest requests to close, please indicate that.

**Answer:** In Fiscal Year 2020, we closed seven of our ten oldest requests reported pending in our Fiscal Year 2019 Annual FOIA Report.

17. Beyond work on the ten oldest requests, please describe any steps your agency took to reduce the overall age of your pending requests.

**Answer:** MSPB continues to concentrate on backlog reduction. We strive to close our ten oldest requests each year, thereby reducing the overall age of our pending requests. By closing more of the oldest requests in Fiscal Year 2020, we demonstrated our commitment to meet this objective.

In addition, we inventoried our entire backlog and prioritized those requests that could be most efficiently closed, especially given the operational challenges presented by the pandemic.

We continue to set goals of reducing the processing time for simple requests. By processing simple requests more efficiently and quickly, we reduced the amount of new requests that were left pending at the end of the fiscal year. Each year, as we work through our backlog and clear the oldest of the pending requests, the overall age of pending requests will drop.

### **TEN OLDEST APPEALS**

18. In Fiscal Year 2020, did your agency close the ten oldest appeals that were reported pending in Section VII.C.5. of your Fiscal Year 2019 Annual FOIA Report?

**Answer:** No.



19. 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 2019 Annual FOIA Report. If you had fewer than ten total oldest appeals to close, please indicate that.

**Answer:** MSPB had three pending appeals at the end of Fiscal Year 2019. We were able to close one of the three.

20. Beyond work on the ten oldest appeals, please describe any steps your agency took to reduce the overall age of your pending appeals.

**Answer:** We experienced a significant increase in the number of appeals in Fiscal Year 2020. MSPB received 24 appeals in Fiscal Year 2020, compared to 8 appeals received in Fiscal Year 2019. MSPB staff worked diligently to successfully close all 24 appeals received in Fiscal Year 2020.

## **TEN OLDEST CONSULTATIONS**

21. In Fiscal Year 2020, did your agency close the ten oldest consultations that were reported pending in your Fiscal Year 2019 Annual FOIA Report?

**Answer:** MSPB did not have any pending consults in Fiscal Year 2019.

22. 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 2019 Annual FOIA Report. If you had fewer than ten total oldest consultations to close, please indicate that.

**Answer:** Not applicable.

## ***E. Additional Information on Ten Oldest Requests, Appeals, and Consultations & Plans***

23. Briefly explain any obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2019.

**Answer:** MSPB remains committed to closing its ten oldest requests each year. The ten oldest requests in Fiscal Year 2020 were voluminous requests for MSPB case files and presented challenging privacy considerations that make them difficult and time-consuming to process. Processing such requests is complex as we constantly strive to balance our duty and commitment to promoting an open and transparent Government with our duty to protect individuals' privacy. Also, as noted above, the pandemic affected agency operations in Fiscal Year 2020, including the FOIA program.

24. 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.

25. 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 2021.

**Answer:** We have identified the ten oldest requests for Fiscal Year 2021, and we have set quarterly goals in an effort to close these ten requests by September 30, 2021.

### ***F. Success Stories***

Out of all the activities undertaken by your agency since March 2020 to increase transparency and improve FOIA administration, please briefly describe here at least one success story that you would like to highlight as emblematic of your agency’s efforts. The success story can come from any one of the five key areas. As noted above, OIP will highlight these agency success stories during Sunshine Week. To facilitate this process, all agencies should use bullets to describe their success story and limit their text to a half page. The success story is designed to be a quick summary of key achievements. A complete description of all your efforts will be contained in the body of your Chief FOIA Officer Report.

**Answer:** The FOIA program at MSPB continues to improve and mature. We continue to focus on setting and accomplishing goals to maximize the productivity of MSPB’s FOIA program. The goal-oriented approach by our small FOIA team resulted in the following notable accomplishments:

- Provided live (virtual) FOIA training to 100% of employees on-boarded since March 2020.
- Closure of seven of the ten oldest requests.
- Closure of all appeals received in Fiscal Year 2020.
- Reduced simple track request processing time.