

**FISCAL YEAR 2025  
CHIEF FOIA OFFICER REPORT**



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

**February 2025**

**2025 Chief FOIA Officer Report  
for the Merit Systems Protection Board (MSPB)**

by  
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Executive Director and  
Chief FOIA Officer

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 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 seven Regional and Field Offices.

**Section I: FOIA Leadership and Applying the Presumption of Openness**

The guiding principle underlying the Attorney General’s 2022 [FOIA Guidelines](#) is the presumption of openness. The Guidelines also highlight the importance of agency leadership in ensuring effective FOIA administration. Please answer the following questions about FOIA leadership at your agency and describe the steps your agency has taken to ensure that the presumption of openness is being applied to all decisions involving the FOIA.

***A. Leadership Support for FOIA***

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 or above this level?

**Answer:** Yes.

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

**Answer:** William D. Spencer, Executive Director.

3. What steps has your agency taken to incorporate FOIA into its core mission? For example, has your agency incorporated FOIA milestones into its strategic plan?

**Answer:** MSPB’s Strategic Plan identifies “transparency” as an MSPB organizational value and states that the agency “will make our decisions, merit systems studies, and other materials easy to understand and widely available and accessible on our website.” Additionally, and as described throughout this report,

MSPB incorporates FOIA into its core mission through mandatory FOIA training of new employees and senior leaders, ongoing efforts between FOIA staff and program staff to identify opportunities for proactive disclosures and/or additional transparency into agency operations, and the designation of the agency's Executive Director as Chief FOIA Officer. In addition, MSPB has upgraded our FOIA tracking system to have a more cohesive document management platform to aid requesters in making requests and receiving responsive records.

### ***B. Presumption of Openness***

4. The Attorney General's 2022 FOIA Guidelines provides that "agencies should confirm in response letters to FOIA requesters that they have considered the foreseeable harm standard when reviewing records and applying FOIA exemptions." Does your agency provide such confirmation in its response letters?

**Answer:** Yes. All final response letters for requests that contain withholdings include an explanation of the foreseeable harm standard.

5. In some circumstances, agencies may respond to a requester that it can neither confirm nor deny the existence of requested records if acknowledging the existence of records would harm an interested protected by a FOIA exemption. This is commonly referred to as a *Glomar* response. If your agency tracks *Glomar* responses, please provide:

- the number of times your agency issued a full or partial *Glomar* response during Fiscal Year (FY) 2024 (separate full and partial if possible);
- the number of times a *Glomar* response was issued by exemption during FY 2024 (e.g., Exemption 7(C) – 20 times, Exemption 1-5 times).

**Answer:** While MPSB does not specifically track the issuance of *Glomar* responses, we are able to report that no *Glomar* responses were issued during FY 2024.

6. 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:** MSPB staff are committed to applying the presumption of openness by keeping abreast of agency operations and proactively posting records that we believe would be the most beneficial to the requester community or of high public interest.

## Section II: Ensuring Fair and Effective FOIA Administration

The Attorney General's 2022 [FOIA Guidelines](#) provide that "[e]nsuring fair and effective FOIA administration requires...proper training, and a full understanding of FOIA obligations by the entire agency workforce." The Guidelines reinforce longstanding guidance to "work with FOIA requesters in a spirit of cooperation." The Attorney General also "urge[s] agency Chief FOIA Officers to undertake comprehensive review of all aspects of their agency's FOIA administration" as part of ensuring fair and effective FOIA administration.

### A. FOIA Training

1. 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:** MSPB requires employees to complete mandatory FOIA training annually. In FY 2024, all employees completed mandatory MSPB-developed training that included a brief overview of the FOIA, an explanation of how the FOIA is administered at MSPB, and the role each employee plays with respect to FOIA.

Additionally, depending on the timing of the mandatory annual training and their position, MSPB endeavors to ensure that all new employees complete MSPB-developed FOIA training during their onboarding activities and/or receive an individual or small group training briefing with the agency's Director of Information Services, who oversees the FOIA program at MSPB. FOIA training for new employees includes senior leaders. For example, in FY 2024, the Director of Information Services provided FOIA training for MSPB's newest presidentially appointed, Senate-confirmed Board Member and his Chief Counsel upon their swearing in. MSPB is committed to ensuring that its employees are aware of the FOIA and their obligations as non-FOIA personnel.

2. 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. In addition to the MSPB-developed training, MSPB FOIA professionals attended all relevant training courses and best practices workshops offered by the Department of Justice, Office of Information Policy (OIP). MSPB FOIA professionals are aware of the updated training planned for the year and attend the courses pertinent to MSPB.

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

**Answer:** Personnel with collateral FOIA duties attended OIP's Introduction to the Freedom of Information Act and Best Practices Workshop on Backlog Reduction Plans. The FOIA Analyst attended all training pertinent to MSPB, including OIP's Advanced FOIA Training, Continuing FOIA Education, courses focused on specific exemptions (i.e., Exemption 1, Exemption 4, Exemption 5, and Exemption 7 Trainings), and Privacy Considerations Training, as well as the Best Practices Workshop on Backlog Reduction Plans.

4. Please provide an estimate of the percentage of your FOIA professionals and staff with FOIA responsibilities who attend substantive FOIA training during this reporting period.

**Answer:** 100%

5. 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.

6. 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; and if senior leaders at your agency received a briefing on your agency's FOIA resources, obligations and expectations during the FOIA process?

**Answer:** As noted above, non-FOIA professionals and senior leaders complete mandatory annual FOIA training that includes a section dedicated to the employees' obligations under the FOIA. The training also includes contact information for the FOIA Analyst and the Director of Information Services, and employees are encouraged to reach out with any questions. Additionally, depending on the timing of the mandatory annual training, MSPB endeavors to ensure that all new employees complete MSPB-developed FOIA training during their onboarding activities and/or receive an individual or small group training briefing with the agency's Director of Information Services, who oversees the FOIA program at MSPB. For example, in FY 2024, the Director of Information Services provided FOIA training for MSPB's newest presidentially appointed, Senate-confirmed Board Member and his Chief Counsel upon their swearing in. MSPB is committed to ensuring that its employees are aware of the FOIA and their obligations as non-FOIA personnel. Further, senior leaders receive regular updates

on the status of the FOIA program through monthly reports and during monthly meetings.

## ***B. Outreach***

7. As part of the standard request process, do your FOIA professionals proactively contact requesters concerning complex or voluminous requests in an effort to clarify or narrow the scope of the request so requesters can receive responses more quickly? Please describe any such outreach or dialogue and, if applicable, any specific examples.

**Answer:** Yes. FOIA professionals routinely proactively reach out to requesters concerning complex or voluminous requests in an effort to narrow the scope of their requests so that requesters can receive their responses more quickly. The FOIA Analyst typically educates the requester about MSPB's FOIA program in terms of the types of records maintained by the agency and the challenges that we may face in processing voluminous records.

Upon receipt of a request for MSPB appeal case files, the FOIA Analyst will typically prepare an interim release that includes agency final decisions and an index of the case files. The released records provide an overview of the breadth of the requested records, and the requester also receives the projected timeline for receiving a final determination should they choose to continue to seek the entire record. Based upon the information provided, the requester is invited to narrow their request, which many requesters do.

8. Outside of the standard request process or routine FOIA Liaison or FOIA Requester Service Center interactions, did your FOIA professionals engage in any outreach or dialogue, with the requester community or open government groups regarding your administration of the FOIA? For example, did you proactively contact frequent requesters, host FOIA-related conference calls with open government groups, or provide FOIA training to members of the public? 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:** No. Due to limited personnel resources and the size of our FOIA workload, MSPB's FOIA professionals were unable to engage in any formal outreach or dialogue with the requester community.

9. 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 2024 (please provide a total number or an estimate of the number for the agency overall).

**Answer:** MSPB complies with the FOIA Improvement Act of 2016 requirement to provide additional notification to requesters about the services provided by our FOIA Public Liaison. However, requesters rarely seek the services of the FOIA Public Liaison. In addition to the notifications to the requesters, the FOIA Public Liaison will occasionally reach out to requesters proactively to discuss their request or to ensure that requests are proper.

### ***C. Other Initiatives***

10. Has your agency evaluated the allocation of agency personnel resources needed to respond to current and anticipated FOIA demands? If so, please describe what changes your agency has or will implement.

**Answer:** Yes. The MSPB has evaluated the allocation of our personnel resources needed to respond to current and anticipated demands, and it continues to do on an ongoing basis. MSPB's backlog of FOIA requests increased as a result of the time required to implement our new FOIA management system ([FOIAXpress](#)) in FY 2024. As a result, senior leadership authorized the use of temporary contract support (a FOIA Analyst) to assist the permanent FOIA Analyst's efforts to reduce the backlog. This contractor has also allowed the permanent FOIA Analyst to concentrate on other program priorities while still serving the requester community through the timely processing of requests.

11. How does your agency use data or processing metrics to ensure efficient management of your FOIA workload? For example, case management reports, staff processing statistics, etc. In addition, please specifically highlight any data analysis methods or technologies used.

**Answer:** The permanent FOIA Analyst, who is responsible for the day-to-day management of the FOIA program, routinely reviews workload and processing reports from our FOIA management system to ensure effective and efficient management of the FOIA workload. She reports processing statistics to senior management on at least a weekly basis and to senior leadership on a monthly basis. As noted above, MSPB transitioned to a new FOIA management system in FY 2024. We will continue to explore the system's robust data processing metrics in FY 2025 to better support the development of high-quality data about our FOIA program.

12. The federal [FOIA Advisory Committee](#), comprised of agency representatives and members of the public, was created to foster dialogue between agencies and the requester community, solicit public comments, and develop recommendations for improving FOIA administration. Since 2020, the FOIA Advisory Committee has issued a number of [recommendations](#). Please answer the below questions:

- Is your agency familiar with the FOIA Advisory Committee and its recommendations?
- Has your agency implemented any of its recommendations or found them to be helpful? If so, which ones?

**Answer:** Yes, MSPB is familiar with the FOIA Advisory Committee and its recommendations.

MSPB has worked diligently to incorporate the FOIA Advisory Committee's recommendations into our processes. MSPB has undertaken or implemented the following:

- Participated in the NexGen Showcase highlighted in recommendation 2018-01;
- Ensures that processed records are Section 508 compliant utilizing features in FOIAXpress and that records posted to our website are reviewed for Section 508 compliance before posting in accordance with recommendation 2018-04;
- Follows the best practices as outlined by the Office of Government Information Services for posting records correctly to our reading room in accordance with recommendation 2018-05;
- Provides training to all agency employees and new hires in accordance with recommendation 2020-05;
- Posted records in machine-readable format whenever possible in accordance with recommendation 2020-12;
- Approved the use of a temporary contract resource dedicated to FOIA review in accordance with recommendation 2020-13;
- Encouraged first-party requesters to access our electronic case docketing system ([e-Appeal](#)) to obtain their own records, and handled these requests in a separate track from FOIA requests, consistent with recommendations 2020-14, 2022-12, 2022-13.

13. Optional – If there are any other initiatives undertaken by your agency to ensure fair and effective FOIA administration, please describe them here.

**Answer:** MSPB has taken every opportunity to ensure fair and effective FOIA administration while working within the limitations of our resources. We will continue to identify areas to improve and ways to leverage the resources available to us in the coming Fiscal Year.



### Section III: Proactive Disclosures

The Attorney General’s 2022 [FOIA Guidelines](#) emphasize that “proactive disclosures of information is ... fundamental to the faithful application of the FOIA.” The Guidelines direct agencies to post “records online quickly and systematically in advance of any public request” and reiterate that agencies should post records “in the most useful, searchable, and open formats possible.”

1. Please describe what steps your agency takes to identify, track, and post (a)(2) proactive disclosures.

**Answer:** MSPB’s non-FOIA program staff are aware of their obligations to post (a)(2) disclosures, and they regularly coordinate with MSPB’s webmaster to ensure that these disclosures are posted on MSPB’s website. MSPB’s management and FOIA staff work closely to identify and proactively disclose records that are likely to garner public interest. In addition, MSPB monitors new and processed FOIA requests to identify trends or similarities in requests that require posting under (a)(2)(D). MSPB’s FOIA personnel work closely with MSPB’s webmaster to track the number of (a)(2) postings to MSPB’s website.

2. Does your agency post logs of its FOIA requests?
  - If so, what information is contained in the logs?
  - Are they posted in CSV format? If not, what format are they posted in?
  - Please provide a link to the page where any FOIA logs are posted. If applicable, please provide component links.

**Answer:** While MSPB has historically posted its FOIA logs, due to recent workload increases and resource limitations, MSPB was not able to post the most recent logs. In FY 2025, MSPB is committed to ensuring that past and present logs are posted in a timely fashion. The FOIA logs are posted in Portable Document Format (PDF) and contain information such as the request tracking number, the requester’s organization, the date received, the date closed, the final disposition, and a brief description of the records sought. MSPB’s past FOIA logs are available on the [e-FOIA Reading Room](#) page of the agency’s website.

3. Provide examples of any material (with links) 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).

**Answer:**

We posted precedential and nonprecedential Board decisions:

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

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

We posted Case Reports that provide descriptions of court and precedential Board decisions:

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

We posted Federal Register Notices and any responsive comments:

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

We posted Press Releases:

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

We posted items under Plans, Budget & Performance:

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

We posted information from our Office of Equal Employment Opportunity:

[https://www.mspb.gov/about/eeo/Affirmative\\_Action\\_Plan\\_FY23.pdf](https://www.mspb.gov/about/eeo/Affirmative_Action_Plan_FY23.pdf)

[https://www.mspb.gov/about/eeo/EEO\\_Policy\\_Statement\\_FY25.pdf](https://www.mspb.gov/about/eeo/EEO_Policy_Statement_FY25.pdf)

<https://www.mspb.gov/about/eeo.htm>

We posted an FAQ on the Lack of Quorum and Restoration of the Full Board:

[https://www.mspb.gov/FAQs\\_Absence\\_of\\_Board\\_Quorum\\_6032024.pdf](https://www.mspb.gov/FAQs_Absence_of_Board_Quorum_6032024.pdf)

We posted information regarding the e-Appeal system:

[https://www.mspb.gov/Notice\\_about\\_contact\\_information\\_eappeal\\_registration\\_1\\_30\\_24.pdf](https://www.mspb.gov/Notice_about_contact_information_eappeal_registration_1_30_24.pdf)

Among the records available in our [e-FOIA Reading Room](#), we posted the following records:

Policy on Prohibited Conduct:

[https://www.mspb.gov/appeals/files/Policy\\_on\\_Prohibited\\_Conduct\\_5\\_2\\_2024.pdf](https://www.mspb.gov/appeals/files/Policy_on_Prohibited_Conduct_5_2_2024.pdf)

Case Processing Data:

[https://www.mspb.gov/foia/files/HQ\\_Case\\_Processing\\_Data.pdf](https://www.mspb.gov/foia/files/HQ_Case_Processing_Data.pdf)

FY 2023 Freedom of Information Act Annual Report:

[https://www.mspb.gov/foia/reports/MSPB\\_FY23\\_FOIA\\_Annual\\_Report.pdf](https://www.mspb.gov/foia/reports/MSPB_FY23_FOIA_Annual_Report.pdf)

FY 2024 Chief FOIA Officer Report

[https://www.mspb.gov/foia/reports/MSPB\\_FY\\_2024\\_Chief\\_FOIA\\_Officer\\_Report.pdf](https://www.mspb.gov/foia/reports/MSPB_FY_2024_Chief_FOIA_Officer_Report.pdf)

4. Please provide a link (or component links, if applicable) where your agency routinely posts its frequently requested records.

**Answer:** MSPB posts frequently requested records on our website in our [e-FOIA Reading Room](#).

5. 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? If yes, please provide examples of such improvements, such as steps taken to post information in open and machine-readable formats. If not taking steps to make posted information more useful, please explain why.

**Answer:** MSPB makes every effort to post records to our website in the most useful format for the public. In addition to using plain language whenever possible, MSPB relies on our Accessibility Program Manager to ensure that the records we post are Section 508-compliant and in the format most accessible for the public.

6. Does your proactive disclosure process or system involve any collaboration with agency staff outside the FOIA office, such as IT or data personnel? If so, describe this interaction.

**Answer:** FOIA staff routinely work closely with IT staff who are responsible for the overall administration of the agency's website to proactively post records, including making Section 508-compliant. FOIA staff reach out to IT staff and work collaboratively to ensure that we post records timely and in the format most beneficial to the public.

7. Optional – Please describe the best practices used to improve proactive disclosures and any challenges your agency faces in this area.

**Answer:** FOIA staff keep abreast of the topics most important to the agency and to the public, and they make every effort to post relevant information. Agency staff also reach out to FOIA staff to alert them to records they believe are appropriate for proactive posting.

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

A key component of FOIA administration is using technology to make information available to the public and to gain efficiency in FOIA processing. The Attorney General's 2022 [FOIA Guidelines](#) emphasize the importance of making FOIA websites easily navigable and complying with the [FOIA.gov](#) interoperability requirements. Please answer the following questions to describe how your agency is using technology to improve its FOIA administration and this public's access to information.

1. Has your agency reviewed its FOIA-related technological capabilities to identify resources need to respond to current and anticipated FOIA demands?

**Answer:** Yes.

2. Please briefly describe any new types of technology your agency uses to support your FOIA program.

**Answer:** At the end of FY 2023, MSPB procured a new FOIA request management system (FOIAXpress) that we implemented throughout FY 2024. In FY 2025, we intend to continue exploring the features of FOIAXpress to utilize the software to its fullest extent.

3. Does your agency currently use any technology to automate record processing? For example, does your agency use machine learning, predictive coding, technology assisted review or similar tools to conduct searches or make redactions? If so, please describe and, if possible, estimate how much time and financial resources are saved since implementing the technology.

**Answer:** FOIAXpress offers enhanced technology to allow us to better automate our request processing. MSPB does not currently use machine learning, predictive coding, or similar tools to conduct searches, but, as the program matures, we intend to learn more about the benefits of each and whether any of these tools may be beneficial to MSPB's FOIA program.

4. 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:** Yes. MSPB routinely reviews the FOIA website to ensure that it contains essential resources and is informative and user-friendly. During the reporting period, MSPB regularly updated our public-facing website to inform the public as to how they could submit a request and how they could get updates on the status of submitted requests.

5. Did all four of your agency's [quarterly reports](#) for Fiscal Year 2024 appear on FOIA.gov?

**Answer:** Yes. All four of MSPB's FY 2024 quarterly reports appear on FOIA.gov.

6. If your agency did not successfully post all quarterly reports on FOIA.gov, please explain why and provide your agency's plan for ensuring that such reporting is successful in FY 2025.

**Answer:** Not applicable.

7. 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 2023 Annual FOIA Report and, if available, for your agency’s Fiscal Year 2024 Annual FOIA Report.

**Answer:** MSPB posted raw data from our FY 2023 Annual FOIA Report in both a human-readable CSV format and a machine-readable XML format. Both formats are available in our [e-FOIA Reading Room](#):

- FY 2023 Report ([CSV](#))
- FY 2023 Report ([XML](#))
- FY 2024 Report ([CSV](#))
- FY 2024 Report ([XML](#))

8. In February 2019, DOJ and OMB issued joint [Guidance](#) establishing interoperability standards to receive requests from the National FOIA Portal on FOIA.gov. Are all components of your agency in compliance with the guidance?

**Answer:** Yes. MSPB is able to receive requests submitted from the National FOIA Portal through FOIAXpress.

9. Optional – Please describe the best practices used in greater utilizing technology and any challenges your agency faces in this area.

**Answer:** MSPB continues to utilize the enhanced technological capabilities of FOIAXpress and endeavors to keep abreast of and leverage new enhancements and capabilities.

## **Section V: Steps Taken to Remove Barriers to Access, Improve Timeliness in Responding to Requests, and Reduce Backlogs**

The Attorney General’s 2022 [FOIA Guidelines](#) instruct agencies “to remove barriers to requesting and accessing government records and to reduce FOIA processing backlogs.” Please answer the following questions to describe how your agency is removing barriers to access, improving timeliness in responding to requests, and reducing FOIA backlogs.

### ***A. Remove Barriers to Access***

1. Has your agency established alternative means of access to first-party requested records outside of the typical FOIA or Privacy Act process?

**Answer:** Yes.

2. If yes, please provide examples. If no, please indicate why not. Please also indicate if you do not know.

**Answer:** First-party requesters seek almost exclusively their MSPB appeal case file(s). Many requestors can access their current or recent appeal files through MSPB's e-Appeal system, a web-based system that restricts access to the parties to a particular case. MSPB launched a new, modernized version of e-Appeal (previously e-Appeal Online) at the beginning of FY 2024. Requestors are encouraged to use e-Appeal to access and download electronic copies of their appeal files whenever possible. 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.

3. Please describe any other steps your agency has taken to remove barriers to accessing government information.

**Answer:** Not applicable.

## ***B. Timeliness***

4. For Fiscal Year 2024, 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 2024 Annual FOIA Report.

**Answer:** 3.3 days.

5. 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 2024 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.

6. 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.

7. If your agency uses a separate track for simple requests, according to Annual FOIA Report section VII.A, was the agency overall average number of days to process simple requests twenty working days or fewer in Fiscal Year 2024?

**Answer:** Yes. The average number of days to process simple requests in FY 2024 was 13 days.

8. If not, did the simple track average processing time decrease compared to the previous Fiscal Year?

**Answer:** Not applicable.

9. Please provide the percentage of requests processed by your agency in Fiscal Year 2024 that were placed in your simple track. Please use the following calculation based on the 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:** 44%

10. 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.

### ***C. Backlogs***

#### **Backlogged Requests**

11. If your agency had a backlog of requests at the close of Fiscal Year 2024, according to Annual FOIA Report Section XII.D.2, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2023?

**Answer:** No. MSPB's backlog of requests increased by 31 requests at the close of FY 2024 compared with the backlog reported at the end of FY 2023.

12. If not, according to Annual FOIA Report Section XII.D.1, did your agency process more requests during Fiscal Year 2024 than it did during Fiscal Year 2023?

**Answer:** Yes. MSPB processed 17 more requests during FY 2024 than it did during FY 2023.

13. If your agency's request backlog increased during Fiscal Year 2024, 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)
- Litigation
- Any other reasons – please briefly describe or provide examples when possible.

**Answer:** MSPB experienced a slight decrease in the number of FOIA requests received from 221 requests received in FY 2023 to 219 requests received in FY 2024. However, the increase in the backlog is mainly due to several factors. The ongoing implementation of FOIAXpress resulted in the processing time per request slowing considerably at the beginning of FY 2024.

MSPB also implemented the new e-Appeal system during this time. This had a significant impact on the processing time of FOIA requests as agency personnel adjusted to the new system and established new procedures. MSPB implemented other new enterprise business applications during FY 2024.

The submission of new requests continued to grow, and the number of requests seeking records that require more complex and time-consuming searches has increased. Like FOIA programs across the Government, MSPB has experienced an onslaught of multiple requests being submitted simultaneously by certain requesters. The constant submission of multiple requests has the potential to quickly overwhelm our very small program. As of the beginning of FY 2025, these requests represent 31% of our current request docket.

14. 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 2024. Please use the following calculation based on data from your Annual FOIA Report: (backlogged requests from Section XII.A) divided by (requests received from Section V.A) x 100. This number can be greater than 100%. If your agency has no request backlog, please answer with “N/A.”

**Answer:** 57.99%

### **Backlogged Appeals**

15. If your agency had a backlog of appeals at the close of Fiscal Year 2024, according to Section XII.E.2 of the Annual FOIA Report, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2023?



**Answer:** MSPB did not have a backlog of appeals at the end of FY 2024. Along with the 26 FOIA appeals received during FY 2024, MSPB also processed three additional appeals, including the two backlogged appeals that were pending at the end of FY 2023.

16. If not, according to section XII.E.1 of the Annual FOIA Report, did your agency process more appeals during Fiscal Year 2024 than it did during Fiscal Year 2023?

**Answer:** MSPB processed 27 appeals during FY 2024, compared to 18 appeals in FY 2023.

17. If your agency's appeal backlog increased during Fiscal Year 2024, 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)
- Litigation
- Any other reasons – please briefly describe or provide examples when possible

**Answer:** Not applicable.

18. 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 2024. 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. This number can be greater than 100%. If your agency did not receive any appeals in Fiscal Year 2024 and/or has no appeal backlog, please answer with "N/A."

**Answer:** Not applicable.

#### ***D. Backlog Reduction Plans***

19. In the 2024 guidelines for Chief FOIA Officer Reports, any agency with a backlog of over 1000 requests in Fiscal Year 2023 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 2024?

**Answer:** MSPB did not have a backlog of over 1,000 requests in FY 2024.

20. If your agency had a backlog of more than 1,000 requests in Fiscal Year 2024, please explain your agency's plan to reduce this backlog during Fiscal Year 2025.

**Answer:** Not applicable.

### ***E. Reducing the Age of Requests, Appeals, and Consultations***

#### **Ten Oldest Requests**

21. In Fiscal Year 2024, did your agency close the ten oldest pending perfected requests that were reported in Section VII.E. of your Fiscal Year 2023 Annual FOIA Report?

**Answer:** No.

22. 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 2023 Annual FOIA Report. If you had less than ten total oldest requests to close, please indicate that.

**Answer:** MSPB closed 5 of the 10 oldest requests by the end of FY 2024.

23. 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 through the use of temporary contractor support and by continuing to set goals and implement strategies to reduce the processing time for simple requests. With the help of temporary contractor support since the end of FY 2024, we already have been able to close one of our 10 oldest requests in the first quarter of FY 2025. By processing simple requests more efficiently and quickly, and by striving to keep pace with newly received simple requests, we aim to reduce the number of new requests that are left pending at the end of the Fiscal Year.

#### **Ten Oldest Appeals**

24. In Fiscal Year 2024, did your agency close the ten oldest appeals that were reported pending in Section VI.C.5 of your Fiscal Year 2023 Annual FOIA Report?

**Answer:** Yes.

25. 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 2023 Annual FOIA Report. If you had less than ten total oldest appeals to close, please indicate that.

**Answer:** In FY 2024, MSPB closed the three appeals that were pending at the end of FY 2023.

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

**Answer:** MSPB FOIA appeal staff work diligently to process appeals as they are filed and, as a result, MSPB was able to end the year with no backlogged appeals.

### **Ten Oldest Consultations**

27. In Fiscal Year 2024, did your agency close the ten oldest consultations that were reported pending in Section XII.C. of your Fiscal Year 2023 Annual FOIA Report?

**Answer:** MSPB did not have any pending consultations at the end of FY 2023.

28. 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 2023 Annual FOIA Report. If you had less than ten total oldest consultations to close, please indicate that.

**Answer:** Not applicable.

### **Additional Information Regarding Ten Oldest**

29. If your agency did not close its ten oldest pending requests, appeals, or consultations, please explain why and provide a plan describing how your agency intends to close those “ten oldest” requests, appeals, and consultations during Fiscal Year 2025.

**Answer:** As noted above, with the help of temporary contractor support since the end of FY 2024, we already have been able to close one of our 10 oldest requests in the first quarter of FY 2025. The contractor has focused on – and will continue to focus on – the review and processing of requests seeking full MSPB appeal case files, which are usually hundreds of pages long and very time and labor intensive.

In addition, as the implementation phase of FOIAXpress comes to a close, we plan to continue to diligently work through our pending requests to focus on quickly closing simple requests and being able to devote time and resources to more complex requests.

***F. Additional Information about FOIA Processing***

30. Were any requests at your agency the subject of FOIA litigation during the reporting period? If so, please describe the impact on your agency's overall FOIA request processing and backlog. If possible, please indicate:

- The number and nature of requests subject to litigation
- Common causes leading to litigation
- Any other information to illustrate the impact of litigation on your overall FOIA administration

**Answer:** No. MSPB did not have any requests that were the subject of FOIA litigation during the reporting period.