

# U.S. Merit Systems Protection Board Open Government Plan

Susan Tsui Grundmann, Chairman

April 7, 2010

## 1. INTRODUCTION

On January 21, 2009, the White House issued a Presidential Memorandum titled Transparency and Open Government expressing the administration's commitment to creating an unprecedented level of openness in government built upon three principles: (1) Transparency—the government should provide the public with information about its activities; (2) Participation—the government should provide the public with the opportunity to participate in policy-making; and (3) Collaboration—departments and agencies should collaborate with all levels of government, nonprofit entities, businesses, and the public. The Presidential Memorandum ordered the Director of the Office of Management and Budget (OMB) to issue an *Open Government Directive (Directive)* instructing executive departments and agencies to take specific actions to implement the principles outlined in the Presidential Memorandum.

On December 8, 2009, OMB issued the *Open Government Directive*. The *Directive* requires agencies to take four specific actions within set time periods. The four specific actions are: 1) publication of three high-value data sets; 2) designation of a senior agency official to be accountable for all publicly disseminated Federal spending information; 3) creation of an Open Government webpage; and 4) development and publication of an Open Government Plan. The *Directive* also sets general requirements for agencies to follow in implementing open government principles. In addition, the *Directive* sets deadlines for OMB and other entities to provide further guidance on open government issues. The *Directive* (along with current guidance from the General Services Administration (GSA)) makes it clear that agency obligations in this area are ongoing, and that agencies should be proactive in meeting the *Directive's* requirements.

The MSPB has completed the first three actions required by the *Directive*. On January 22, 2010, the MSPB posted three high-value data sets to the Data.gov website. On, January 14, 2010, MSPB Chairman Susan Tsui Grundmann designated the Director of the Office of Financial and Administrative Management to be accountable for all publicly disseminated Federal spending information. On

February 24, 2010, the MSPB created an open government webpage at [www.mspb.gov/open](http://www.mspb.gov/open).

Publication of this Open Government Plan brings the MSPB into compliance with the initial requirements of the *Directive*. The MSPB recognizes that, pursuant to the provisions of the *Directive*, this Open Government Plan is only a “first draft” and additional steps will be necessary to meet the agency’s ongoing obligations under both the Presidential Memorandum and the *Directive*. Accordingly, MSPB stakeholders and other members of the public are invited to comment on the MSPB’s Plan or any aspect of MSPB’s efforts to incorporate the principles of transparency, participation and collaboration into the core mission objectives of the agency. Stakeholders and other members of the public may send an e-mail to the Clerk of the Board at [opengovernment@mspb.gov](mailto:opengovernment@mspb.gov).

## **2. STEPS TAKEN BY THE MSPB IN DEVELOPING THIS PLAN**

This Open Government Plan was drafted by the MSPB’s Open Government Working Group. The Working Group includes representatives from each of the MSPB headquarters offices: Office of Appeals Counsel, Office of the Clerk of the Board, Office of Equal Employment Opportunity, Office of Financial and Administrative Management, Office of the General Counsel, Office of Information Resources Management, Office of Policy and Evaluation, and the Office of Regional Operations. The Working Group met to discuss the MSPB’s Open Government Plan and MSPB compliance with the requirements of the *Directive* on several occasions. The viewpoints of all offices are reflected in this Plan.

The Working Group is planning to ask each Office Director to canvass their respective staff members for suggestions for enhancing agency transparency and fostering participation and collaboration. The Working Group will also provide the MSPB Labor / Management Council with periodic updates on its activities.

In an effort to obtain input from the general public, stakeholders and open government experts, the MSPB’s Open Government webpage includes a statement by Chairman Susan Tsui Grundmann that emphasizes the MSPB’s commitment to be proactive in its approach to transparency, participation, and collaboration and provides users the opportunity to contact the MSPB with comments, complaints, or suggestions by e-mail to [opengovernment@mspb.gov](mailto:opengovernment@mspb.gov). The MSPB also plans to undertake the following actions to maintain a dialogue with the general public, stakeholders, and open government experts:

| <u>Date</u> | <u>Action</u>  |
|-------------|--|
| 4/7/2010    | Post an invitation for comments on the Plan on the MSPB Open Government webpage (see next section.)  |
| 4/21/2010   | Issue a press release seeking public input on the MSPB's open government plan, the information the public would like the MSPB to disclose, and any other concerns or suggestions concerning means by which the MSPB could improve transparency, participation, and collaboration in its core mission objectives.   |
| 4/21/2010   | Publish a Federal Register notice seeking public input on the MSPB's open government plan, the information the public would like the MSPB to disclose, and any other concerns or suggestions concerning means by which the MSPB could improve transparency, participation, and collaboration in its core mission objectives.   |
| 4/21/2010   | Send a communication from Chairman Susan Tsui Grundmann to a variety of outside entities (including Federal agency heads, union leaders, management associations, non-profit groups, and academia) seeking input on the MSPB's open government plan, the information the public would like the MSPB to disclose, and any other concerns or suggestions concerning means by which the MSPB could improve transparency, participation, and collaboration in its core mission objectives. |

### **3. PUBLICATION AND UPDATING OF THE MSPB'S OPEN GOVERNMENT PLAN**

The MSPB's data sets are available on the MSPB's Open Government webpage ([www.mspb.gov/open](http://www.mspb.gov/open)). The data sets are in an open format to enable the public to download and analyze the information. In order to maintain public engagement and facilitate a continuing dialogue concerning the MSPB's Open Government Plan, the MSPB's Open Government webpage features a link that will encourage stakeholders and members of the public to provide feedback on an ongoing basis. The MSPB will incorporate all relevant and useful ideas developed during the course of this dialogue in future revisions to this Open Government

Plan, to the extent that such suggestions are feasible under personnel and other resource constraints.

At minimum, the MSPB will review and, if warranted, update its Open Government Plan biannually, as required by the *Directive*. Significant developments in agency operations or government-wide activities may warrant more frequent updates.

#### **4. IMPROVING TRANSPARENCY AT THE MSPB**

##### **A. The MSPB is currently meeting its legal information dissemination obligations by:**

1. Responding to FOIA requests in a thorough and timely manner, and consistent with the Attorney General's March 19, 2009, Memorandum regarding FOIA;
2. Posting 3-High Value Data Sets on its Open Government webpage;
3. Posting the Freedom of Information Act Annual Report on the MSPB's webpage and the MSPB's Open Government webpage;
4. Posting the Chief FOIA Officer's Report on the MSPB's webpage;
5. Posting the MSPB's Information Quality Guidelines on the MSPB webpage;
6. Posting the MSPB's Performance and Accountability Report on the MSPB's webpage; and,
7. Posting the MSPB's FY Strategic Plan on the MSPB's webpage.

##### **B. The MSPB plans to improve its existing information dissemination practices by:**

1. Developing a strategic action plan for transparency that conforms to the requirements set forth in the *Directive*, including incorporating the strategic plan for transparency into the MSPB's strategic plan;

- Preparing an inventory of all high-value information currently available for download from the MSPB's website.
- Periodically updating its primary public website. The MSPB's primary public website ([www.mspb.gov](http://www.mspb.gov)) was refreshed on February 24, 2010 to provide more information, allow easier navigation, and, in support of President Obama's Open Government Initiative, offer more transparency. The last major change to the MSPB website occurred in 2007. On MSPB's revamped site, one of the first new items visitors encounter is an interactive slideshow. It provides a brief description of the various aspects of MSPB's missions and, by clicking on a particular slide, a visitor sees more detailed information. Visitors also should notice new direct links to frequently requested and viewed items such as press releases, MSPB case reports, and other resources. The MSPB website now provides visitors with the ability to share items using social media such as Facebook and Twitter. Included in the updated website is the MSPB's Open Government webpage ([www.mspb.gov/open](http://www.mspb.gov/open)). This was the first step in an ongoing effort to adapt current best practices and leverage the communication value of social media on the MSPB's website.
- Identifying high value data sets not yet available online and setting a goal of online publication within 30 days after a decision is made to publish.
- Developing a plan for timely publication of the data underlying high value information;

Each member of MSPB's Open Government Working Group serves as a liaison with their respective office to identify high value data that should be considered for publication on [www.mspb.gov/open](http://www.mspb.gov/open). Once an office identifies data for possible publication, that liaison notifies the rest of the Working Group so that each office can consider potential impacts, *e.g.*, Privacy Act considerations. Once a consensus is reached that the information meets the definition of high value data, and should be published, the Clerk of the Board will forward the recommendation, including any potential impacts, to the Executive Director for approval. Generally, MSPB will seek to publish data within 30 days after consensus is reached by the Open Government Working Group. In addition, the

MSPB intends to post online the data currently provided annually in the MSPB Annual Report and the MSPB Performance and Accountability Report. Once posted online, this data will be updated quarterly.

2. Documenting MSPB's compliance with guidance such as Data.Gov, eRulemaking, IT Dashboard, Recovery.gov, and USAspending.gov, and steps the MSPB is taking and the timing to meet the requirements for each of these initiatives;

- [Data.gov](#). - On January 22, 2010, the MSPB posted three high value data sets on Data.gov. The MSPB also anticipates posting additional data sets on Data.Gov in the near future.
- [eRulemaking](#) – The MSPB's Federal Register notices are published on the [regulations.gov](#) website [<http://www.regulations.gov/search/Regs/home.html#home>] and the Government Printing Office's website [<http://www.gpoaccess.gov/cfr/index.html>]. The agency also invites the submission of comments on its rules and regulations via e-mail.
- [USAspending.gov](#) - The MSPB posts its contracts on the USAspending website.
- [Recovery.gov](#) - The MSPB has no information relevant to this website as it is not one of the agencies designated to display information as part of the IT Dashboard initiative.
- The MSPB's regulations are posted on the MSPB website [<http://www.mspb.gov/appeals/uscode.htm>] and are available on the Government Printing Office website [<http://ecfr.gpoaccess.gov>].

3. Developing a plan to inform the public of significant actions and business of the MSPB;

The MSPB will inform the public of significant actions and business using existing channels, e.g., press releases posted on the MSPB's website (described in 4.A.2., above) and sent to listserv subscribers; other announcements and new content posted on the MSPB's website; and Federal Register Notices, where appropriate. The MSPB has already updated its website to allow individuals to

post information from the MSPB website to Facebook and Twitter. The MSPB Chairman is also considering whether creating an MSPB presence on social media outlets like Twitter and Facebook would appropriately serve the MSPB's varied constituencies. As noted elsewhere in this Plan, the MSPB has solicited amicus briefs regarding a case which may have significant impact on numbers Federal employees. The MSPB further plans to hold oral argument (something it has not done since the 1980s) in cases of significance to the federal sector employment community. Finally, the MSPB has scheduled and/or held meetings with many of its stakeholders including representatives from the following groups: federal sector unions, agency attorneys, appellant attorneys, senior executive and federal manager associations.

4. Including on [www.mspb.gov/open](http://www.mspb.gov/open) a description of how the MSPB is meeting its existing records management requirements;

The Clerk of the Board is the primary agency official for ensuring that MSPB is meeting its existing records management requirements. To this end, MSPB currently is conducting a comprehensive review of its records management program. Approved Standard Form (SF) 115s, 'Request for Records Disposition Authority,' for MSPB currently are posted on [www.archives.gov/records-mgmt/rcs/](http://www.archives.gov/records-mgmt/rcs/). These forms and any newly-approved SF-115s also will be posted on [www.mspb.gov/open](http://www.mspb.gov/open).

5. Including on [www.mspb.gov/open](http://www.mspb.gov/open) a description of the MSPB's staffing, organizational structure, and process for analyzing and responding to FOIA requests, and an assessment of the MSPB's capacity to analyze, coordinate, and respond to such requests in a timely manner, together with proposed changes, technological resources, or reforms that MSPB determines are needed to strengthen the agency's response processes; and

Freedom of Information Requests are processed by the Clerk of the Board. The MSPB has two FOIA Public Liaisons in the Clerk's office at headquarters and one FOIA Public Liaison in each of the agency's regional and field offices. The MSPB has publicized the President's FOIA Memorandum and the Attorney General's FOIA Guidelines internally. Employees responsible for responding to FOIA requests also attend training sponsored by the Department of Justice and other organizations regarding the presumption of

openness. Further, the MSPB applies the presumption of openness to FOIA requests.

MSPB records show that compared to FY 2008, MSPB had a 6% increase in the percentage of FOIA requests that were granted in full in FY 2009. Moreover, in the first five months of FY 2010 (October 2009 through February 2010), the MSPB received five FOIA appeals. Of those, three were granted in part and two are pending. In contrast, in all of FY 2009, a total of five FOIA appeals were received, and all five were denied. Clearly, whether at the initial request or appeal levels, MSPB has applied, and will apply, the presumption of openness.

Inasmuch as the MSPB processes FOIA requests in under 20 days on average, the MSPB believes that it has an effective system for responding to such requests. Nonetheless, MSPB made several upgrades to its FOIA Tracking System in FY 2009. First, the MSPB made its FOIA Tracking System the mandatory repository for all users to ensure that MSPB FOIA requests and response records are available via a single agency-wide log. Second, MSPB now captures incoming FOIA requests and subsequent agency responses in the MSPB's document management system. In prior years, MSPB maintained its FOIA records in a separate network directory that was not readily accessible to all relevant staff. This update provides MSPB's FOIA personnel with direct access to the records they need when they need them, rather than relying on other staff to provide access. Third, the MSPB added a report creating function to the MSPB Document Management System (DMS). In prior years, MSPB asked each of its regional and field offices for data to compile the agency's Annual FOIA Report. With all users now providing FOIA data in real time through a single tracking system, the annual request for data by office no longer is necessary. Thus, the upgraded FOIA Tracking System allows faster responses to status requests, provides better monitoring information, and aids MSPB staff in assembling background material for administrative appeals.

Further, in order to ensure MSPB's FOIA personnel have sufficient IT support, the Clerk of the Board meets with MSPB's Chief Information Officer (CIO) prior to the beginning of each fiscal year to discuss IT support requirements and mutually agree on projects for the upcoming year. Frequently, MSPB's project list includes support and new initiatives related to MSPB's FOIA program. Through this collaborative process, MSPB achieved the

upgrades to its FOIA Tracking System described above. Since the overwhelming majority of MSPB's FOIA requests are requests for records readily available, the MSPB responds to most requests in a timely manner, and the MSPB does not have backlog. The MSPB is taking the following steps to maintain and improve the MSPB FOIA program:

- To update and maintain employees' skill sets, the MSPB continually seeks to identify appropriate FOIA training;
- The MSPB provides basic FOIA training annually to all MSPB staff;
- To improve processing, monitoring, and timeliness, the MSPB continues to evaluate FOIA-related software, including redaction and tracking applications;
- The MSPB is exploring ways to allow requesters to check the status of their requests online; and,
- The MSPB monitors requests received to identify documents for posting on the MSPB's public website.

6. Including on [www.mspb.gov/opm](http://www.mspb.gov/opm) a description of the MSPB's staffing, organizational structure, and process for analyzing and responding to Congressional requests for information.

Generally, the Legislative Counsel is the primary liaison between MSPB and Congress. However, the Clerk of the Board and the regional offices respond to congressional inquiries on matters related to the adjudication of specific cases before the MSPB. Historically, these inquiries request the status of the adjudication of appeals, request the expedited processing of such appeals, and/or express support for an appellant. Responses that are drafted by the staff of the Clerk of the Board are reviewed by the Legislative Counsel. The Legislative Counsel receives copies of responses that are drafted by the Regional Directors or Chief Administrative Judges.

The Legislative Counsel is responsible for responding to all non-case related inquiries. The process for responding to such request varies depending on the nature of the request. For example, if the request calls for the compilation of case processing data, the

Legislative Counsel will submit a request for assistance in compiling that data from the Office of Information Resources Management. All draft responses are approved by the General Counsel prior to issuance.

7. Declassification programs

The MSPB has no original declassification authority. While MSPB cases do on occasion contain classified information, the MSPB provides any classified information to the originating agency for declassification.

## **5. PROMOTING PUBLIC PARTICIPATION IN THE MSPB'S ACTIVITIES AND INCREASING PUBLIC FEEDBACK.**

The MSPB has taken numerous steps to increase public participation in its activities. The agency plans to build upon these efforts. As discussed in section 2 of this Open Government Plan, the MSPB has provided a means for the public to offer suggestions and feedback on the MSPB's Open Government Page. In addition, the MSPB is using press releases, Federal Register notices and other forms of outreach to foster greater public participation in the agency's ongoing efforts to increase transparency, participation and collaboration in all aspects of its operations. For example, as discussed earlier in this report, Board members have held and/or scheduled meetings with various stakeholders. These types of meetings have not typically occurred in the past. The Board members intend to offer to meet with stakeholders semi-annually. The public may learn more about the MSPB's efforts to increase public participation by going to the MSPB's website ([www.mspb.gov](http://www.mspb.gov)) and its Open Government website ([www.mspb.gov/open](http://www.mspb.gov/open)). Feedback may be sent to the MSPB by e-mail ([opengovernment@mspb.gov](mailto:opengovernment@mspb.gov)). The MSPB is also considering whether creating an MSPB presence on social media outlets such as Twitter and Facebook would appropriately serve MSPB's varied constituencies.

In addition to these general efforts to promote increased participation in the MSPB's activities, the MSPB is also developing a plan to increase public participation in its two core mission activities, the adjudication of cases and the preparation of special reviews and studies of the merit systems.

### **A. Promoting greater public participation in the MSPB's adjudicatory activities.**

While public participation in the MSPB's adjudication function is inherently difficult to expand, the MSPB has begun to implement a plan to

increase such participation. First, the MSPB has begun the process of scheduling oral argument in the adjudication of selected petitions for review. While the MSPB lacks the resources required to grant oral argument in a significant number of cases, periodic oral arguments will nonetheless promote greater participation by the parties in the MSPB's adjudication of cases. The MSPB also plans to increase public participation in its adjudicatory function by inviting amicus briefs in selected petitions for review. For example, on January 25, 2010, the MSPB invited interested parties to submit amicus briefs in a case that presented a significant issue concerning the MSPB's jurisdiction. *See*, 75 FR 3939. While no set goal or timeline can be applied to the MSPB's practice of promoting public participation through the use of oral argument or the solicitation of amicus briefs, the MSPB intends to use these procedures in cases that present issues of special significance.

Hearings held by MSPB administrative judge are already open to the public. While an administrative judge may determine that it is necessary to close a hearing under appropriate circumstances, it is rare that this occurs. In addition, an administrative judge may allow permissive intervention and may accept amicus briefs if such participation is requested.

#### **B. Promoting greater public participation in the MSPB's studies and reports function.**

MSPB encourages substantial public participation in the studies and reports function through soliciting input into the development of MSPB's research agenda and soliciting customer feedback on MSPB's products. MSPB is currently in the process of canvassing the agency's stakeholders to obtain input regarding the issues they view as priorities for the agency to study. MSPB officials will then identify the topics that garnered broad interest and determine if the agency can add value by researching these topics. Similarly, to ensure that MSPB is meeting customers' needs, agency officials also obtain feedback regarding MSPB's reports and quarterly newsletter, *Issues of Merit*, by periodically conducting customer satisfaction surveys. The availability of the MSPB Studies website to host surveys has further expedited the feedback loop and enabled MSPB to be even more responsive to customer feedback.

## **6. IMPROVING COLLABORATION BY INCREASING COOPERATION WITH FEDERAL AND NON-FEDERAL GOVERNMENTAL AGENCIES, THE PUBLIC, AND NON-PROFIT AND PRIVATE ENTITIES.**

**A. Using technology platforms to improve collaboration.**

1. The MSPB is considering whether creating an MSPB presence on social media outlets like Twitter and Facebook would appropriately serve the MSPB’s varied constituencies.
2. When the MSPB refreshed its public website on February 24, 2010, a feedback mechanism was added to allow interested parties to e-mail MSPB at [opengovernment@mspb.gov](mailto:opengovernment@mspb.gov).

**B. Links to website where the public can learn about the MSPB’s efforts to improve collaboration.**

1. MSPB website ([www.mspb.gov](http://www.mspb.gov)); and,
2. MSPB open government website ([www.mspb.gov/open](http://www.mspb.gov/open)).

**C. Innovative methods to increase collaboration with those in the private sector, non-profit, and academic communities.**

1. The MSPB will attempt to expand the scope of MSPB outreach activities. As of the date this plan was published, scheduled appearances by Board Members and senior MSPB staff include the following:

| <b>DATE</b> | <b>EVENT</b>   |
|-------------|--|
| 4/11/2010   | ABA Section on Labor and Employment Law  |
| 5/5/2010    | Federal Employment Law Training Group (FELTG)                                    |
| 5/20/2010   | Court of Appeals for the Federal Circuit Judicial Conference                     |
| 6/10/2010   | Asian American Government Executives Network (AAGEN) Leadership Conference       |
| 6/15/2010   | FPMI Labor and Employee Relations (LER) Conference                               |
| 6/24/2010   | Federal Circuit Bar Association Bench & Bar Conference                           |
| 8/11/2010   | Federal Dispute Resolution Conference  |
| 9/23/2010   | Federal Sector Labor Relations & Labor Law Program<br>Chicago-Kent School of Law |

2. When the MSPB refreshed its public website on February 24, 2010, a feedback mechanism was added to allow all entities to e-mail MSPB at [opengovernment@mspb.gov](mailto:opengovernment@mspb.gov); and,
3. Host events to discuss OPE studies with those in the private sector, non-profit, and academic communities.

## **7. FLAGSHIP INITIATIVE**

Over the course of the next two years, the MSPB intends to focus on its outreach to stakeholders groups including appellants, their attorneys or other representatives, agency representatives, academicians and human resources professionals. This initiative will improve the public's knowledge of the agency and its operations and enable the agency to respond to need and demand as identified through public consultation.

The cornerstone of the initiative is the appointment of an Outreach Coordinator who will serve as the repository and clearinghouse for all outreach efforts that are now implemented independently by several program offices. Assigning an oversight and role to one person will enable MSPB to track the extent to which the agency's outreach programs foster agency transparency and facilitate participation and/or collaboration by staff, stakeholders and other members of the public.

## **8. PLANS FOR CONTINUING PUBLIC ENGAGEMENT**

Public engagement will continue to be a key part of the MSPB's plan to periodically review and modify this Open Government Plan at least every two years. The MSPB's Open Government webpage will solicit additional feedback concerning this Open Government Plan on an ongoing basis and the MSPB will incorporate in future revisions of this Open Government Plan all relevant and useful ideas developed in this dialogue, to the extent that such suggestions are feasible under personnel and other resource constraints.

## **9. MEASURING THE SUCCESS OF THE MSPB's OPEN GOVERNMENT INITIATIVES**

The MSPB will measure the success of its Open Government initiatives in various ways, including:

- A. The number of comments on Open Government issues received via e-mail at [opengovernment@mspb.gov](mailto:opengovernment@mspb.gov).

- B. The percentage of e-mails to [opengovernment@mspb.gov](mailto:opengovernment@mspb.gov) that result in the publication of data sets and other information on [www.mspb.gov/open](http://www.mspb.gov/open).
- C. The number of data sets and other information approved for publication identified by MSPB offices.
- D. The extent to which the MSPB publishes data within 30 days after the information is approved for release.
- E. The number of times those data sets are downloaded by visitors to Data.gov or [www.mpsb.gov/open](http://www.mpsb.gov/open).
- F. The number of proactive disclosures made under FOIA.