

## **U.S. Occupational Safety and Health Review Commission Open Government Plan**

### **Background**

The U.S. Occupational Safety and Health Review Commission (Review Commission or OSHRC) is an independent adjudicatory agency created by Congress in the Occupational Safety and Health Act of 1970. OSHRC's statutory mandate is to serve as an administrative court providing fair and expeditious resolution of disputes involving the U.S. Department of Labor's Occupational Safety and Health Administration (OSHA), employers charged with violations of Federal safety and health standards, and employees and/or their representatives. The Review Commission is a completely independent agency that is not part of the Department of Labor. This helps ensure that OSHA's enforcement actions are carried out in accordance with the law and that all parties receive due process.

The Review Commission has two levels of adjudication that are governed primarily by the agency's Rules of Procedure. The first level of adjudication provides for a hearing before an OSHRC Administrative Law Judge (ALJ). The second level of adjudication provides for discretionary review of an ALJ's decision by the panel of Commission members (Commissioners) when one of the Commissioners directs review of the decision. Decisions of the Commission may be appealed to an appropriate U.S. Circuit Court of Appeals.

The Review Commission is classified as a "micro-agency" due to its small size (approximately 65 personnel). Because OSHRC's functions are limited as described above, the agency does not maintain many of the types of "high value" datasets that are of particular interest under the Open Government initiative. The agency's information technology (IT) staff consists of two full-time employees located in the National Office, whose primary duties are focused on operations, support, maintenance, and security of the agency's computer and telecommunications infrastructure. The IT staff is also responsible for posting Review Commission website content.

The Review Commission's public affairs functions are performed by a staff member in the Chairman's Office.

Despite its small size and modest resources, the Review Commission is fully committed to the goals of the Open Government Directive, including transparency, participation, and collaboration in its operations and mission, consistent with the need to ensure respect for due process and privacy rights.

### **Transparency**

In accordance with Office of Management and Budget Directives M-10-06, "Open Government," and M-16-16, "2016 Agency Open Government Plans," the Review Commission maintains an Open Government webpage that is accessible from and highlighted on its main webpage. The Open Government webpage for OSHRC may be found at: <https://www.oshrc.gov/open-government>.

The Review Commission's Open Government webpage includes three public disclosure datasets as follows:

1. Commissioners' Monthly Docket Report;
2. Commissioners' Monthly Case Activity Report; and
3. Commission Briefing Notices.

The public may submit feedback and comments regarding OSHRC's Open Government Plan using its dedicated email address: [opengov@oshrc.gov](mailto:opengov@oshrc.gov).

Additionally, the Review Commission's Open Government webpage includes:

1. Significant Orders issued by the Commission; and
2. Significant Orders issued by Administrative Law Judges.

These are non-dispositive orders of public interest that would not otherwise be available to the public absent a Freedom of Information Act (FOIA) request.

As a part of the Review Commission's goal of promoting even greater transparency, it also posts the following information on the Review Commission's website:

1. Select non-merit based (procedural) ALJ decisions (posted under "Final ALJ Decisions");
2. All Commission-level oral arguments, using sound recordings and/or written transcripts (posted under "OSHRC e-FOIA Reading Room"); and
3. A listing on the Open Government page of docketed contests at the ALJ level (posted under "Listing of New Cases Received").

Additionally, OSHRC has been posting all ALJ decisions pending Commission review to the agency's website since March 2009. As a result, the public has greater access to and information about ALJ decisions that are under review by the Commission. These decisions may be found under the "Decisions" tab of the Review Commission's website home page and are available at: <https://www.oshrc.gov/decisions>. In addition, to assist the public in easily locating final agency decisions at both the ALJ and Commission level, OSHRC updated and expanded the website's Decision Search feature in November 2022.

OSHRC revised its dedicated FOIA webpage in April 2022 to highlight useful resources for FOIA requesters and provide additional contact information for the submission of FOIA

requests, among other revisions. OSHRC's FOIA webpage now links directly to its Open Government page.

To submit a FOIA request, individuals can complete the online FOIA Request Form available on the agency's website and submit it to a dedicated email address ([OSHRC FOIA@oshrc.gov](mailto:OSHRCFOIA@oshrc.gov)). The form, including the instructions for how to download it as a PDF file and submit it, is available in both English and Spanish, and may be found at: <https://www.oshrc.gov/foia/submit-foia-request>. Requesters can fill out the form electronically, or in print, and then submit it by fax, regular mail, or email. Use of the online request form is not required, but a FOIA request must be made in writing and submitted using one of the methods listed above. Requesters can also submit FOIA requests to the Review Commission through the National FOIA Portal on FOIA.gov. These resources have facilitated the Review Commission's overall FOIA processing efficiency. Its FOIA Requester Service Center, which may be reached by telephone, email, fax, or regular mail, is also available for requesters seeking assistance with submitting a FOIA request or information concerning the status of a pending request.

OSHRC's FOIA regulations and FOIA Reference Guide reflect current guidance from the Department of Justice and statutory requirements, including the amendments to the FOIA from the Openness Promotes Effectiveness in our National Government Act of 2007 (OPEN Government Act) and the FOIA Improvement Act of 2016. The FOIA Reference Guide was most recently updated in 2019 to incorporate the administration's guiding principle of the presumption of openness and guidance from the Office of Information Policy (OIP). In accordance with the Attorney General's 2022 FOIA Guidelines promoting agency disclosure and transparency, OSHRC includes language in its FOIA response letters acknowledging the agency's commitment to these principles. OSHRC also continues to participate in Chief FOIA Officer Council meetings held by OIP multiple times a year.

In its ongoing effort to proactively disclose information, the Review Commission continues

to post information and documents filed with the Commission concerning its highest interest cases on the agency's website in the FOIA Reading Room. This initiative has reduced the need for the public to file individual FOIA requests on matters of general interest. The released documents may be viewed here: <https://www.oshrc.gov/foia/oshrc-e-foia-reading-room>.

Finally, the Review Commission's FOIA program works in tandem with its Privacy Officer to ensure proper handling of all FOIA requests, including first-party requests seeking access to Privacy Act records. Information on how to request a record covered by the Privacy Act, as well as the agency's Privacy Act regulations, are posted on its website: <https://www.oshrc.gov/privacy>.

### **Responding to FOIA Requests**

The Review Commission's FOIA program is administered by the Office of the General Counsel (OGC). The General Counsel serves as the Chief FOIA Officer and reports directly to the Chairman. The Chief FOIA Officer works with agency personnel, including the OGC team assigned to process FOIA requests, in obtaining and providing requesters with responsive documents in a timely fashion. OSHRC's FOIA program operates with a presumption in favor of disclosure, and FOIA requests are processed promptly and in a spirit of cooperation. As noted, the Review Commission has taken, and continues to take, various steps to make it easier for members of the public to file FOIA requests. Information relevant to its FOIA program, including its annual reports, is available at: <https://www.oshrc.gov/foia/about>.

### **Records Management**

The Review Commission's records management program is managed by the agency's Executive Secretary. The agency does not maintain classified or declassified records or material and thus declassification procedures are unnecessary. Generally, agency records

that are scheduled for periodic transfer to the National Archives and Records Administration relate to cases and case filings concerning contests before the Review Commission. The Review Commission manages both permanent and temporary email records in an electronically accessible format, as required by OMB/NARA Memoranda M-19-21: Transition to Electronic Records and M-23-07: Update to Transition to Electronic Records.

### **Whistleblower Protection**

The Review Commission has received the U.S. Office of Special Counsel's (OSC) Certificate of Compliance with 5 U.S.C. 2302(c), most recently on April 29, 2022. In working to achieve this certification, the Review Commission made, and continues to make, many efforts to ensure that its employees are informed of their rights and remedies available to them under the Civil Service Reform Act, the Whistleblower Protection Act (WPA), and the Whistleblower Protection and Enhancement Act. Posters are displayed centrally throughout the agency regarding Prohibited Personnel Practices and Whistleblower Disclosures. OSHRC also provides annual notification to all current employees about their rights and remedies under the WPA, in addition to providing employees this information as a part of their orientation process. The Review Commission requires all supervisors and managers to complete OSC's Prohibited Personnel Practice and Whistleblower Training Quiz. Furthermore, a link to the OSC's website is included on the Review Commission's website to provide additional information about federal whistleblower rights and protections. See: <https://www.oshrc.gov/about/equal-employment-opportunity-data-posted-pursuant-to-the-no-fear-act/>.

### **Spending Information**

The Review Commission is fully compliant with the Digital Accountability and Transparency Act (DATA) of 2014. It actively works with the Department of Treasury

Administrative Resource Center, its shared service provider, to reconcile and publish timely reports of required spending activity. The Review Commission remains committed to fiscal transparency and compliance in its stewardship of public funds.

**Public Participation and Collaboration**

The following individuals have primary responsibility for the Review Commission's Open Government initiatives:

Principal Senior Official – Katherine A. Tracy, Chief Counsel to the Chairman, [ktracy@oshrc.gov](mailto:ktracy@oshrc.gov) (202-606-5703)

Alternate Senior Official – John X. Cerveny, Executive Secretary, [jcerveny@oshrc.gov](mailto:jcerveny@oshrc.gov) (202-606-5400)

FOIA Issues – Nadine N. Mancini, General Counsel, [nmancini@oshrc.gov](mailto:nmancini@oshrc.gov) (202-606-5410)

Website Issues – Johnathan Whitton, Chief Information Officer, [jwhitton@oshrc.gov](mailto:jwhitton@oshrc.gov) (202-606-5048)

For those who wish to contact the Review Commission by U.S. mail, the mailing address is:

U.S. Occupational Safety and Health Review Commission  
1120 20th Street, N.W., 9th Floor  
Washington, DC 20036-3457

The Review Commission is committed to increasing openness and transparency to the maximum practicable extent. It will examine every reasonable possibility to enhance public transparency, consistent with respect for due process and privacy concerns.

The public may submit feedback and comments regarding OSHRC's Open Government Plan using its dedicated email address: [opengov@oshrc.gov](mailto:opengov@oshrc.gov).

The Review Commission will update and revise this plan as necessary in accordance with suggestions made by the public, agency personnel, and its ability to devote the necessary human and technical resources to implement the goals of transparency and open government.

Last Updated: June 7, 2023