

# CHIEF FOIA OFFICER REPORT QUESTIONS: MEDIUM-VOLUME AGENCIES

## Agencies Receiving 50-1,000 Requests in FY2015

### Content of 2017 Chief FOIA Officer Reports

**Name and Title of your Agency's Chief FOIA Officer: Nadine N. Mancini, General Counsel**

#### ***Section 1: Steps Taken to Apply the Presumption of Openness***

The guiding principle underlying the President's **FOIA Memorandum** and the DOJ's **2009 FOIA Guidelines** is the presumption of openness.

Please answer the following questions in order to describe the steps your agency has taken to ensure that the presumption of openness is being applied to all decisions involving the FOIA. You may also include any additional information that illustrates how your agency is working to apply the presumption of openness.

#### ***A. FOIA Training***

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

**Answer: Yes**

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

**Answer: Our FOIA professionals attended the following training offered by the Office of Information Policy (OIP): FOIA Amendments/FOIA Improvement Act of 2016, Annual FOIA Report Refresher, and FOIA for Attorneys and Access Professionals (2-day course). The Chief FOIA Officer also participated in both of the Chief FOIA Officer Council meetings held by OIP.**

3. 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: 80% of our FOIA professionals attended substantive FOIA training during this reporting period. The information obtained at these trainings was disseminated to all of our FOIA professionals.**

4. 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: N/A.**

### ***B. Outreach***

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

**Answer: In December 2016, OSHRC revised its FOIA regulations to account for the statutory amendments included in the FOIA Improvement Act of 2016; the agency also added procedures pertaining to confidential commercial information and preservation of records, clarified existing procedures, and updated contact information. Before finalizing, OSHRC published its proposed revisions in the Federal Register for public comment to ensure that the requester community, as well as the general public, had an opportunity to review the changes and provide feedback to OSHRC. OSHRC also revised its Open Government Plan in December 2016, which is available on the Open Government page of the agency’s website. OSHRC’s Open Government Plan outlines OSHRC’s approach to maintaining transparency and openness, as well as its FOIA procedures.**

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

6. Describe any efforts your agency has undertaken to inform non-FOIA professionals of their obligations under the FOIA?

**Answer: OSHRC’s handbook for new employees continues to include OIP’s 2015 infographic to immediately apprise employees of the role they play in the FOIA process. Additionally, in accordance with OIP’s guidance, the Chief FOIA Officer notified all OSHRC personnel of their responsibility under the Federal Records Act to provide any records in a non-official email account that have not been copied into an OSHRC email account if such records are responsive to a FOIA request. In conjunction with this notification, OSHRC revised the search requests that its FOIA professionals provide non-FOIA personnel to assist in processing FOIA requests so that the requests now include information regarding records contained in non-official email accounts.**

7. 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 determining whether to redact or withhold a requested record, OSHRC always considers the presumption of openness before making a final decision about the release.**

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

The DOJ's **2009 FOIA Guidelines** emphasized 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 that describes your agency's efforts in this area.

***A. Processing Procedures***

1. For Fiscal Year 2016, 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 2016 Annual FOIA Report.

**Answer: 3.**

2. If your agency's average number of days to adjudicate requests for expedited processing was above ten calendar days, please describe the steps your agency will take to ensure that requests for expedited processing are adjudicated within ten calendar days or less.

**Answer: N/A.**

3. *OPTIONAL*: 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.

**Answer: During the process of revising its FOIA regulations, OSHRC reviewed all FOIA program procedures to ensure that the agency continues to efficiently and effectively process all FOIA requests. OSHRC also reviewed and revised its response letter templates to conform with the FOIA Improvement Act of 2016. In addition, OSHRC revised all search**

**requests to remind OSHRC employees of their obligations regarding records contained in non-official email accounts.**

4. Please provide an estimate of how many requests your agency processed in Fiscal Year 2016 that were from commercial use requesters. If your agency is decentralized, please identify any components within your agency that received a majority of their requests from use requesters.

**Answer: 13.**

### ***B. Requester Services***

5. *OPTIONAL*: Does your agency provide a mechanism for requesters to provide feedback about their experience with the FOIA process at your agency? If so, please describe the methods used, such as making the FOIA Public Liaison available to receive feedback, using surveys posted on the agency's website, etc.

**Answer: Because of the small number of FOIA requests received per year at OSHRC, our FOIA team of professionals continues to be able to provide personalized service to each requester. OSHRC's FOIA professionals are available to assist and communicate with requesters throughout the entire FOIA process. Once a request has been fully processed, the requester is informed that our FOIA Public Liaison and FOIA Disclosure Officer remain available to discuss the request or assist with additional questions. Through this mechanism, OSHRC's FOIA Disclosure Officer has received some feedback from requesters.**

6. 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 how often requesters sought assistance from your agency's FOIA Public Liaison.

**Answer: Our FOIA Public Disclosure Officer is the initial point of contact for FOIA requests, so requesters frequently seek, and are promptly provided with, assistance from the Public Disclosure Officer. During this reporting period, there were no instances when requesters sought assistance from our FOIA Public Liaison.**

7. The FOIA Improvement Act of 2016 requires agencies to make their reference material or guide for requesting records or information from the agency electronically available to the public. Please provide a link to your agency's FOIA reference guide.

**Answer: <http://www.oshrc.gov/foia/foiaguide.html> [updated version in progress]**

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

8. If there are any other steps your agency has undertaken to ensure that your FOIA system operates efficiently and effectively, such as improving search processes, eliminating redundancy, etc., please describe them here.

**Answer: OSHRC added a senior attorney to its existing team of FOIA professionals to assist with revising and adapting the agency's FOIA program to the recent FOIA amendments and new policy initiatives, as well as provide overall program support. Our team works diligently to continue improving the efficiency of processing FOIA requests. Examples of such efforts include: (1) staying in close contact with the agency offices that maintain requested records to process requests within the statutorily required response times; (2) learning and utilizing OSHRC's new electronic filing system to improve record search capabilities when processing FOIA requests that seek records associated with OSHRC cases; and (3) providing a Spanish language version of OSHRC's online FOIA request form on the agency's FOIA webpage. This fiscal year, more than half of our FOIA requesters submitted their requests using OSHRC's online FOIA request form, which helps to streamline processing.**

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

Both the **President's** and **DOJ's** FOIA memoranda 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.

#### ***A. Posting Material***

1. Describe your agency's process or system for identifying "frequently requested" records that should be posted online.

**Answer: Consistent with the recent FOIA amendments, any record requested (or anticipated to be requested) three or more times is flagged by our FOIA professionals and posted online in our e-FOIA Reading Room.**

2. Does your agency have a distinct process or system in place to identify other records for proactive disclosure? If so, please describe your agency's process or system.

**Answer: Yes. Because of the small number of FOIA requests processed per year at OSHRC, our FOIA professionals are able to flag records that may be of public interest and**

**immediately consider whether such materials should be proactively disclosed on our website.**

3. Has your agency encountered challenges that make it difficult to post records you otherwise would like to post?

**Answer: No.**

4. If so, briefly explain those challenges and how your agency is working to overcome them.

**Answer: N/A.**

5. Provide examples of material that your agency has proactively disclosed during the past reporting year, including links to the posted material.

**Answer: OSHRC maintains a comprehensive e-FOIA Reading Room where the records flagged by our FOIA professionals for proactive disclosure are posted.**

**[http://www.oshrc.gov/foia/foia\\_reading\\_room.html](http://www.oshrc.gov/foia/foia_reading_room.html). Additionally, this year OSHRC continued to proactively disclose records, such as reports concerning monthly dockets, case activity, and new cases received; decisions, both final and pending, issued by administrative law judges, as well as interlocutory orders that they deemed significant; briefing notices for cases that the Commission has exercised its discretionary authority to review; and final decisions issued by the Commission.**

**<http://www.oshrc.gov/decisions/index.html> and <http://www.oshrc.gov/open.html>.**

6. Did your agency use any means to publicize or highlight important proactive disclosures for public awareness? If yes, please describe these efforts.

**Answer: Yes. The homepage of OSHRC's website notifies those accessing it of the "Latest News & Information," which often includes hyperlinks to recently issued decisions by the Commission and administrative law judges. Additionally, in the event a requester is unaware of a pertinent proactive disclosure, OSHRC's FOIA professionals maintain a policy of notifying requesters when records related to their request are already available for download from the agency's website.**

#### ***B. Other Initiatives***

7. If there are any other steps your agency has taken to improve proactive disclosures, please describe them here. For example, has your agency engaged requesters in determining how and what to post? Has your agency used web analytics to inform your proactive disclosures?

**Answer: The Chief FOIA Officer works to maintain open lines of communication between the FOIA Requester Service Center and key agency personnel. The inclusion of OIP's FOIA infographic in the agency's handbook for new employees reminds them of their role in identifying records suitable for proactive disclosure.**

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

A key component of the President's **FOIA Memorandum** was the direction to "use modern technology to inform citizens about what is known and done by their Government." 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.

##### ***A. Making Material Posted Online More Useful***

1. 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: No. However, decisions issued by both levels of adjudication at OSHRC, which are of particular interest to the regulated community, are easily accessed on the agency's website via a dropdown menu that organizes the decisions by year. The website's search function allows any individual to research a topic of interest using natural word searches. Also, records that OSHRC posts on its dedicated FOIA webpage and in its comprehensive e-FOIA Reading Room are posted in the most useful format (both PDF and/or HTML file types). Records are also posted in the same format on the website's Open Government page. Additionally, FOIA professionals are trained to provide any voluntary feedback received from requesters to the Chief FOIA Officer for review and evaluation.**

2. If yes, please provide examples of such improvements.

**Answer: N/A.**

##### ***B. Other Initiatives***

3. Did your agency successfully post all four quarterly reports for Fiscal Year 2016?

**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 2017.

**Answer: N/A.**

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

The President's **FOIA Memorandum** and the DOJ's **2009 FOIA Guidelines** have 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 2016 Annual FOIA Report and, when applicable, your agency's 2015 Annual FOIA Report.*

**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**

2. If so, for your agency overall in Fiscal Year 2016, was the average number of days to process simple requests twenty working days or fewer?

**Answer: Yes.**

3. Please provide the percentage of requests processed by your agency in Fiscal Year 2016 that were placed in your simple track.

**Answer: 94% of all requests (63/67), 97% of perfected requests (63/65)**



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: N/A.**

### ***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 2015 and Fiscal Year 2016 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 2016, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2015? If not, explain why and describe the causes that contributed to your agency not being able reduce its backlog.

**Answer: N/A.**

6. If not, 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: N/A.**

7. 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 2016.

**Answer: N/A.**

### **BACKLOGGED APPEALS**

8. If your agency had a backlog of appeals at the close of Fiscal Year 2016, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2015? If not, explain why and describe the causes that contributed to your agency not being able reduce backlog.

**Answer: N/A.**

9. If not, 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: N/A.**

10. 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 2016. If your agency did not receive any appeals in Fiscal Year 2016 and/or has no appeal backlog, please answer with "N/A."

**Answer: N/A.**

### ***C. Status of Ten 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 2015 and Fiscal Year 2016 when completing this section of your Chief FOIA Officer Report.

#### **TEN OLDEST REQUESTS**

11. In Fiscal Year 2016, did your agency close the ten oldest requests that were reported pending in your Fiscal Year 2015 Annual FOIA Report?

**Answer: No pending requests at the end of Fiscal Year 2015.**

12. 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 2015 Annual FOIA Report. If you had less than ten total oldest requests to close, please indicate that.

**Answer: N/A.**

13. Of the requests your agency was able to close from your ten oldest, please indicate how many of these were closed because the request was withdrawn by the requester. If any were closed because the request was withdrawn, did you provide any interim responses prior to the withdrawal?

**Answer: N/A.**

#### **TEN OLDEST APPEALS**

14. In Fiscal Year 2016, did your agency close the ten oldest appeals that were reported pending in your Fiscal Year 2015 Annual FOIA Report?

**Answer: N/A.**

15. 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 2015 Annual FOIA Report. If you had less than ten total oldest appeals to close, please indicate that.

**Answer: N/A.**

#### **TEN OLDEST CONSULTATIONS**

16. In Fiscal Year 2016, did your agency close the ten oldest consultations that were reported pending in your Fiscal Year 2015 Annual FOIA Report?

**Answer: N/A.**

17. 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 2015 Annual FOIA Report. If you had less than ten total oldest consultations to close, please indicate that.

**Answer: N/A.**

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

18. Briefly explain any obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2015.

**Answer: N/A.**

19. 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: N/A.**

20. 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 2017.

**Answer: N/A**

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

*OPTIONAL:* Out of all the activities undertaken by your agency since March 2016 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, these agency **success stories** will be highlighted during Sunshine Week by OIP. 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: Since its introduction in 2014, OSHRC has seen increased utilization of our online FOIA request form. In Fiscal Year 2016, more than half (52%) of our FOIA requests were submitted using the form. Additionally, since OSHRC established a dedicated FOIA email address, requesters frequently use the address to communicate with our FOIA professionals by email to clarify requests and obtain other information, such as processing status. Increased use of the online FOIA request form and dedicated email address has enhanced OSHRC’s FOIA processing efficiency. These efforts, along with OSHRC’s Spanish language version of its online request form and related instructions, both of which can be accessed from its dedicated FOIA page on the agency’s website, demonstrate OSHRC’s ongoing commitment to improve the efficacy of its FOIA program.**