

**OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION (OSHRC)
CHIEF FREEDOM OF INFORMATION ACT (FOIA) OFFICER REPORT
JANUARY 21, 2009 – MARCH 1, 2010**

I. Steps Taken to Apply the Presumption of Openness

The guiding principle underlying the President's FOIA Memorandum and the Attorney General's FOIA Guidelines is the presumption of openness.

1. Describe below the steps your agency has taken to ensure that that presumption is being applied to all decisions involving the FOIA. This section should include a discussion of the range of steps taken by your agency to apply this presumption, from publicizing the President's FOIA Memorandum and Attorney General's FOIA Guidelines and providing training on them, to implementing the presumption in response to FOIA requests and administrative appeals, with examples or statistics illustrating your agency's action in making discretionary releases of records or partial releases when full disclosure is not possible.

OSHRC applies the presumption of openness underlying the President's FOIA memorandum and Attorney General's FOIA guidelines when processing its FOIA requests. Both of these documents were circulated to the members of OSHRC's FOIA Requester Service Center, as well as to the heads of OSHRC departments. In addition, members of OSHRC's FOIA team attended the March 26, 2009, training conference conducted by the Office of Information and Policy, Department of Justice. They, in turn, provided training to the agency's FOIA Requester Service Center regarding how to specifically implement the presumption of openness to OSHRC FOIA requests.

As an example of a discretionary disclosure motivated by the presumption of openness, OSHRC recently released as a responsive record an Office of General Counsel legal analysis pertaining to the implementation of the FOIA memoranda with respect to a specific FOIA request. This record could have been withheld based on the attorney-client privilege as incorporated by Exemption 5 of the FOIA.

2. Report whether your agency shows an increase in the number of requests where records have been released in full or where records have been released in part when compared with those numbers in the previous year's Annual FOIA Report.

OSHRC processed 57 FOIA requests in FY09, down from 74 FOIA requests in FY08. Of the 57 FOIA requests processed in FY09, OSHRC granted 30 in full or in part, whereas in FY08, OSHRC granted 35 in full or in part. The 30 releases in FY09 represent an approximate 5% increase in the percentage of full or partial grants in FY09 from the percentage of full or partial grants in FY08.

II. Steps Taken to Ensure that Your Agency has an Effective System for Responding to Requests

As the Attorney General emphasized in his FOIA Guidelines, “[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.” Describe here the steps your agency has taken to ensure that your system for responding to requests is effective and efficient. This section should include a discussion of how your agency has addressed the key roles played by the broad spectrum of agency personnel who work with FOIA professionals in responding to requests, including, in particular, steps taken to ensure that FOIA professionals have sufficient IT support.

The Chairman of OSHRC implemented a management initiative in February 2009 to enhance agency transparency. In keeping with that initiative, as well as the President's FOIA Memorandum and Attorney General's FOIA Guidelines, OSHRC's FOIA professionals have worked diligently to improve the effectiveness and efficiency of processing FOIA requests. For instance, the members of the FOIA Requester Service Center have worked closely with the agency's IT department to assist with the implementation of new software that will support the processing of and reporting on FOIA requests. The FOIA Requester Service Center also stays in close contact with the agency offices that maintain requested records to keep within statutorily required response times. OSHRC also plans to revise its Regulations Implementing the FOIA and FOIA Reference Guide to officially allow electronic FOIA requests, and is considering an online FOIA request form.

III. Steps Taken To Increase Proactive Disclosures

Both the President and Attorney General focused on the need for agencies to work proactively to post information online without waiting for individual requests to be received. Describe here the steps your agency has taken to increase the amount of material that is available on your agency website, including providing examples of proactive disclosures that have been made since issuance of the new FOIA Guidelines.

Since the issuance of the new FOIA Guidelines, OSHRC has increased the amount of material available to the public on its website. In the agency's FOIA electronic reading room, OSHRC now posts records that have been docketed in highly visible cases pending before the agency, proactively disclosing likely sought after records. Additionally, as part of the Chairman's transparency initiative, OSHRC now posts on the agency's website the decisions of its administrative law judges in cases that are pending on appeal before the Commission. In keeping with the Open Government Directive issued by the Office of Management and Budget on December 8, 2009, OSHRC also continually updates its new open government page at www.data.gov with the following three data sets: (1) monthly listing of case dockets, (2) monthly Commission activity reports, and (3) case briefing notices.

IV. Steps Taken To Greater Utilize Technology

A key component of the President's 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. For this section of the Chief FOIA Officer Report, please answer the following questions:

1) Does your agency currently receive requests electronically?

Yes. OSHRC has begun to accept requests by electronic mail even though its Regulations Implementing the FOIA and FOIA Reference Guide do not currently permit electronic requests. OSHRC plans to revise its Regulations Implementing the FOIA and its FOIA Reference Guide accordingly. OSHRC is also presently considering the development of an online FOIA request form. Time and resources are the chief impediments to establishing this mechanism.

2) If not, what are the current impediments to your agency establishing a mechanism to receive requests electronically?

N/A.

3) Does your agency track requests electronically?

Yes. OSHRC uses desktop software (Microsoft Word) to track FOIA requests and plans to transition to a new electronic tracking system for its FOIA requests.

4) If not, what are the current impediments to your agency utilizing a system to track requests electronically?

N/A.

5) Does your agency use technology to process requests?

Yes. OSHRC uses e-mail to communicate within the agency and with requesters, and utilizes desktop software to access and make copies of responsive documents when applicable.

6) If not, what are the current impediments to your agency utilizing technology to process requests?

N/A.

7) Does your agency utilize technology to prepare you agency Annual FOIA Report?

Yes. OSHRC uses desktop software (Microsoft Word and Excel) to prepare its Annual FOIA Report.

8) If not, what are the current impediments to your agency utilizing technology in preparing your Annual FOIA Report?

N/A.

V. Steps Taken to Reduce Backlogs and Improve Timeliness in Responding to Requests

Improvements to timeliness in responding to pending FOIA requests and reductions in backlogs is an ongoing agency effort. Both the President and the Attorney General emphasized the importance of improving timeliness in responding to requests. Section XII of your Annual FOIA Report includes figures that show your agency's backlog of pending requests and administrative appeals for the previous fiscal year and for this current fiscal year. Your Chief FOIA Officer Report should address the following elements.

1. If you have a backlog, report here whether your backlog is decreasing. That reduction should be measured both in terms of the numbers of backlogged requests and administrative appeals that remain pending at the end of the fiscal year, and in terms of the age of those requests and appeals.

OSHRC has no backlog of FOIA requests or administrative appeals. Since January 21, 2009, OSHRC has had no administrative appeals.

2. If there has not been a reduction in the backlog describe why that has occurred and what steps your agency is taking to bring about a reduction.

N/A.

3. Describe the steps your agency is taking to improve timeliness in responding to requests and to administrative appeals.

OSHRC responds to FOIA requests well within the statutory time limits. OSHRC's average response time in FY09 for all processed perfected requests was 9 days, and its response time in FY09 for the one complex FOIA request was 28 days. To further improve timeliness, especially regarding complex requests, OSHRC: (1) is vigilant about identifying situations appropriate for proactive disclosures of records; (2) maintains close communication with FOIA requesters and OSHRC's offices conducting searches for requested records; and (3) seeks ways to streamline the agency's FOIA processing procedures. Since January 21, 2009, OSHRC has had no administrative appeals.