

**OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION (OSHRC)
CHIEF FREEDOM OF INFORMATION ACT (FOIA) OFFICER REPORT
FEBRUARY 1, 2011**

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 the steps your agency has taken to ensure that the presumption of openness is being applied to all decisions involving the FOIA. To do so, you should answer the questions listed below and then include any additional information you would like to describe how your agency is working to apply the presumption of openness.

a. Describe how the President's FOIA Memorandum and the Attorney General's FOIA Guidelines have been publicized throughout your agency.

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. The Chief FOIA Officer also spoke at an all-hands staff meeting about these memoranda and their importance to the agency's FOIA program.

b. What training has been attended and/or conducted on the new FOIA Guidelines?

Members of OSHRC's FOIA Requester Service Center continue to attend training conducted by the Office of Information and Policy, Department of Justice, as well as training provided by vendors, such as the American Bar Association. This training is then shared with other personnel in the agency's FOIA Requester Service Center.

c. How has your agency created or modified your internal guidance to reflect the presumption of openness?

OSHRC revised its FOIA Reference Guide this year to incorporate the underlying principle of the presumption of openness.

d. To what extent has your agency made discretionary releases of otherwise exempt information?

OSHRC has made two discretionary releases of otherwise exempt information. OSHRC provided (1) a legal analysis pertaining to the implementation of the President's and Attorney General's FOIA memoranda and (2) working drafts of the agency's recently revised FOIA Reference Guide.

e. What exemptions would have covered the information that was released as a matter of discretion?

OSHR considered the released documents to be covered by Exemption 5 of the FOIA, but disclosed them as a matter of discretion pursuant to OSHRC's commitment to transparency and open government.

f. How does your agency review records to determine whether discretionary releases are possible?

OSHR's FOIA program is administered by personnel in the agency's Office of the General Counsel ("OGC") and each response to a FOIA request goes through legal review. If a response is a denial or denial in part, an OGC attorney, in consultation with the Chief FOIA Officer, considers the presumption of openness before making that final determination.

g. Describe any other initiatives undertaken by your agency to ensure that the presumption of openness is being applied.

OSHR actively applies the presumption of openness underlying the President's FOIA memorandum and Attorney General's FOIA guidelines when processing its FOIA requests. In determining whether to redact or withhold a requested record, OSHRC always considers the presumption of openness before making the final decision.

2. Report the extent to which the numbers of requests where records have been released in full and the numbers of requests where records have been released in part has changed from those numbers as reported in your previous year's Annual FOIA Report.

OSHR's release rate remained relatively the same between FY10 and FY09. OSHRC processed 66 FOIA requests in FY10, up from 57 FOIA requests in FY09. Of the 66 FOIA requests processed in FY10, OSHRC granted 23 in full and 11 in part. (The remaining 32 requests in FY10 were denied based on reasons other than exemptions. For example, 19 of those requests were withdrawn.) Of the 57 requests processed in FY09, OSHRC granted 21 in full and 9 in part. (Similarly, the remaining 27 requests in FY09 were denied based on reasons other than exemptions. For example, 16 of those requests were withdrawn.)

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. To do so, answer the questions below and then include any additional information that you would like to describe how your agency ensures that your FOIA system is efficient and effective.

a. Do FOIA professionals within your agency have sufficient IT support?

Yes.

b. Describe how your agency's FOIA professionals interact with your Open Government Team.

OSHRC's Chief FOIA Officer has a significant role on OSHRC's Open Government Team and promotes OSHRC's FOIA responsibilities to ensure an effective and efficient system for responding to FOIA requests. Additionally, the agency's small size lends itself to considerable overlap not only in personnel interaction on these issues but also in coordinating the agency's efforts to accomplish the same goals of openness and transparency.

c. Describe the steps your agency has taken to assess whether adequate staffing is being devoted to responding to FOIA requests.

OSHRC periodically assesses whether it is devoting adequate staff for responding to FOIA requests by monitoring its response time. OSHRC's response time is currently well within statutorily prescribed limits.

d. Describe any other steps your agency has undertaken to ensure that your FOIA system operates efficiently and effectively.

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. The FOIA Requester Service Center stays in close contact with the agency offices that maintain requested records to process requests within the statutorily required response times. This year, OSHRC also revised its Regulations Implementing the FOIA and FOIA Reference Guide to officially allow electronic FOIA requests.

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. In doing so, answer the questions listed below and describe any additional steps taken by your agency to make proactive disclosures of information.

a. Has your agency added new material to your agency website since last year?

Yes.

b. What types of records have been posted?

OSHRC has posted various reports, administrative law judge decisions pending on review, as well as documents from highly visible cases on the agency's docket.

c. Give examples of the types of records your agency now posts that used to be available only by making a FOIA request for them.

Examples of the types of records OSHRC posts are monthly listings of case dockets, monthly Commission case activity reports, case briefing notices, and trial briefs.

d. What system do you have in place to routinely identify records that are appropriate for posting?

OSHRC considers posting records associated with particular cases once more than one FOIA request has sought the same record. OSHRC also proactively posts records associated with particular cases of high interest, typically those warranting oral argument or those reported in the news media.

e. How do you utilize social media in disseminating information?

OSHRC does not currently utilize social media in disseminating information, but it is under consideration.

f. Describe any other steps taken to increase proactive disclosures at your agency.

The Chief FOIA Officer works to maintain open lines of communication between the FOIA Requester Service Center and key agency personnel. Additionally, in keeping with the Open Government Directive issued by the Office of Management and Budget on December 8, 2009, OSHRC continually monitors and updates its new open government page at www.data.gov.

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. In 2010 agencies reported widespread use of technology in handling FOIA requests. For this section of your Chief FOIA Officer Report for 2011, please answer the following more targeted questions:

1. Electronic receipt of FOIA requests:

a. What proportion of the components within your agency which receive FOIA requests have the capability to receive such requests electronically?

100%. OSHRC centrally processes its FOIA requests.

b. To what extent have you increased the number of components doing so since the filing of your last Chief FOIA Officer Report?

There has been no change since the filing of the 2010 Chief FOIA Officer Report.

c. What methods does your agency use to receive requests electronically?

Electronic mail.

2. Electronic tracking of FOIA requests:

a. What proportion of components within your agency which receive FOIA requests have the capability to track such requests electronically?

100%. OSHRC centrally processes its FOIA requests.

b. To what extent have you increased the number of components doing so since the filing of your last Chief FOIA Officer Report?

There has been no change since the filing of the 2010 Chief FOIA Officer Report.

c. What methods does your agency use to track requests electronically?

OSHRC tracks its FOIA requests using word processing software.

3. Electronic processing of FOIA requests:

a. What proportion of components within your agency which receive FOIA requests have the capability to process such requests electronically?

100%. OSHRC centrally processes its FOIA requests.

b. To what extent have you increased the number of components doing so since the filing of your last Chief FOIA Officer Report?

There has been no change since the filing of the 2010 Chief FOIA Officer Report.

c. What methods does your agency use to process requests electronically?

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.

4. Electronic preparation of your Annual FOIA Report:

a. What type of technology does your agency use to prepare your agency Annual FOIA Report, i.e., specify whether the technology is FOIA-specific or a generic data-processing system.

OSHRC uses generic word processing and spreadsheet program software to prepare its Annual FOIA Report.

b. If you are not satisfied with your existing system to prepare your Annual FOIA Report, describe the steps you have taken to increase your use of technology for next year.

OSHRC is satisfied with its existing system.

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 are both ongoing agency efforts. The President and the Attorney General have 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 past two fiscal years. You should refer to those numbers when completing this section of your Chief FOIA Officer Report. In this section you should address the following elements.

1. If your agency has a backlog, report here whether that backlog is decreasing. That reduction should be measured in two ways. First, report whether the number of backlogged requests and backlogged administrative appeals that remain pending at the end of the fiscal year decreased or increased, and by how many, when compared with last fiscal year. Second, report whether your agency closed in Fiscal Year 2010 the ten oldest of those pending requests and appeals from Fiscal Year 2009, and if not, report how many of them your agency did close.

OSHRC currently has no backlog of FOIA requests or administrative appeals, and had no backlog of FOIA requests or administrative appeals in FY09 or FY10.

2. If there has not been a reduction in the backlog as measured by either of these metrics, describe why that has occurred. In doing so, answer the following questions and then include any other additional explanation:

a. Is the backlog increase a result of an increase in the number of incoming requests or appeals?

N/A.

b. Is the backlog increase caused by a loss of staff?

N/A.

c. Is the backlog increase caused by an increase in the complexity of the requests received?

N/A.

d. What other causes, if any, contributed to the increase in backlog?

N/A.

3. Describe the steps your agency is taking to reduce any backlogs and to improve timeliness in responding to requests and administrative appeals. In doing so answer the following questions and then also include any other steps being taken to improve timeliness.

a. Does your agency routinely set goals and monitor the progress of your FOIA caseload?

Yes.

b. Has your agency increased its FOIA staffing?

Yes, by approximately half of a full-time employee (FTE).

c. Has your agency made IT improvements to increase timeliness?

Yes. OSHRC is presently evaluating its transition to a new docket management system, which would facilitate the processing of FOIA requests that seek records associated with OSHRC cases. The agency has also updated its IT infrastructure, including desktops, servers, and data circuits.

d. Has your agency Chief FOIA Officer been involved in overseeing your agency's capacity to process requests?

Yes. The Chief FOIA Officer reviews every FOIA response sent from the agency's FOIA Requester Service Center, monitors the weekly FOIA caseload, and promotes active cooperation among the departments within the agency on FOIA matters. As a result, the FOIA Requester Service Center responds to FOIA requests well within the statutory time limits. OSHRC's average response time in FY10 for all processed perfected requests was 10.7 days, and its average response time in FY10 for its complex FOIA requests was 26 days.

To further improve timeliness, especially regarding complex requests, OSHRC's FOIA personnel: (1) are vigilant about identifying situations appropriate for proactive disclosures of records; (2) maintain close communication with FOIA requesters and OSHRC's offices conducting searches for requested records; and (3) seek ways to streamline the agency's FOIA processing procedures. Since March 1, 2010, OSHRC has had no administrative appeals.

Spotlight on Success

Out of all the activities undertaken by your agency in this last year to increase transparency, describe here one success story that you would like to highlight as emblematic of your efforts.

This past year, OSHRC revised its regulations implementing the FOIA, updating them to reflect the amendments to the FOIA from the Openness Promotes Effectiveness in our National Government Act of 2007 (OPEN Government Act). The regulations became effective August 16, 2010. OSHRC also revised its FOIA Reference Guide, incorporating the guiding principle of the presumption of openness underlying the President's FOIA Memorandum and Attorney General's FOIA Guidelines. These records are available on the agency's FOIA webpage at: <http://www.oshrc.gov/foia/foia.html>.