

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 our 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 our 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 our dedicated email address: 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 FOIA request.

As a part of the Review Commission's goal of promoting even greater transparency, we also post 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").

The Review Commission also has an online Freedom of Information Act (FOIA) request form available on the agency's website and provides a dedicated email address (OSHRC.FOIA@oshrc.gov) for submitting FOIA requests. 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 by fax, regular mail, or to our FOIA email address. These resources have facilitated the Review Commission's overall FOIA processing efficiency. Our 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.

After the development of OSHRC's original Open Government Plan, the agency significantly revised its regulations implementing the FOIA, updating them in 2007 and 2016 to reflect, respectively, 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. OSHRC amended its regulations again in 2020 to include minor revisions addressing the tolling of FOIA requests, the fees associated with processing requests, and references to the agency's regulations implementing the Privacy Act.

OSHRC has also frequently revised its FOIA Reference Guide, doing so as recently as 2019, to incorporate the guiding principle of the presumption of openness underlying the President's 2009 FOIA Memorandum and reflect OSHRC's revised FOIA regulations, Office of Information Policy (OIP) guidance, and revisions to the Department of Justice Guide to the FOIA. In accordance with the Attorney General's 2022 FOIA Guidelines promoting agency disclosure and transparency, OSHRC has added language to all of 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 our ongoing effort to proactively disclose information, the Review Commission continues to post information and documents filed with the Commission concerning our 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 our 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 our website: <https://www.oshrc.gov/privacy>.

Enhancing Openness of Decisional Activity at the ALJ Level

In March 2009, before the Open Government initiative was announced in December 2009, OSHRC began posting all ALJ decisions pending Commission review to the agency's website. 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>.

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. Much of the information relevant to our FOIA program, including our 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 is managing both permanent and temporary email records in an electronically accessible format, as required by OMB/NARA Memorandum M-19-21: 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. We also provide 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 required all supervisors and managers to complete OSC's Prohibited Personnel Practice and Whistleblower Training Quiz. Furthermore, we have a link to the OSC's website displayed 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. We actively work with the Department of Treasury Administrative Resource Center, our 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 (202-606-5703)

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

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

Website Issues – Johnathan Whitton, Chief Information Officer, 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. We 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 our dedicated email address: 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 our ability to devote the necessary human and technical resources to implement the goals of transparency and open government.

Last Updated: June 3, 2022