High-Volume Agencies Receiving More Than 50 Requests in FY17

Content of 2019 Chief FOIA Officer Reports

Section 1: Steps Taken to Apply the Presumption of Openness

The guiding principle underlying DOJ's 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 Leadership

1. The FOIA requires each agency to designate a Chief FOIA Officer who is a senior official at least at the Assistant Secretary or equivalent level. Is your agency's Chief FOIA Officer at or above this level?

Answer: Yes

2. Please provide the name and title of your agency's Chief FOIA Officer.

Answer: Nadine N. Mancini, General Counsel

B. FOIA Training

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

Answer: Yes

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

Answer: During the reporting period, our FOIA professionals attended the FOIA Litigation Seminar and Annual FOIA Report Training offered by the Office of Information Policy (OIP), as well as the Dispute Resolution Skills Training offered by the Office of Government Information Services. The Chief FOIA Officer and FOIA Public Liaison participated in the Chief FOIA Officer Council meetings held by OIP.

5. 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: 100% of our FOIA professionals received substantive FOIA training during this reporting period.

6. 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

C. Outreach

7. Did your FOIA professionals engage in any outreach or dialogue with the requester community or open government groups regarding your administration of the FOIA? Please describe any such outreach or dialogue, and, if applicable, any specific examples of how this dialogue has led to improvements in your agency's FOIA administration.

Answer: OSHRC's e-FOIA Reading Room informs the public that we welcome feedback and that the FOIA Service Center can be contacted with any suggestions for improvement. Additionally, because of the relatively small number of FOIA requests received per year at OSHRC, our FOIA team of professionals maintains a dialogue with most requesters and most certainly, with our frequent requesters. OSHRC's FOIA professionals are available to assist and communicate with requesters throughout the entire FOIA process.

D. Other Initiatives

8. Describe any efforts your agency has undertaken to inform non-FOIA professionals of their obligations under the FOIA. In 2016, the Department publicized FOIA-related performance standards for employees that have any role in administering the FOIA, including non-FOIA professionals. Please also indicate whether your agency has considered including FOIA-related performance standards in employee work plans for employees who have any role in administering the FOIA.

Answer: OSHRC's handbook for new employees includes OIP's FOIA Infographic to immediately apprise employees of the role they play in the agency's FOIA process. OSHRC is currently updating its Privacy Act training for all agency employees to include information on the administration of FOIA. OSHRC also provides search requests and

detailed instructions relevant to each request to its non-FOIA personnel to assist in the processing of FOIA requests. Additionally, the elements of OSHRC's employee performance ratings and evaluations include categories (such as interpersonal skills/team participation and communication) that allow for evaluation of the implementation of FOIA-related duties for OSHRC's FOIA professionals.

9. 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: N/A

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

DOJ's FOIA Guidelines emphasize 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.

1. For Fiscal Year 2018, 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 2018 Annual FOIA Report.

Answer: 5 days.

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. 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.

- Note: In September 2017, OIP released a FOIA Self-Assessment Toolkit as a resource for agencies conducting a self-assessment of their FOIA program. The Toolkit is available on OIP's website for all agencies to use.

Answer: Whenever our FOIA professionals attend training or review guidance released by OIP, our FOIA program is evaluated in light of the information provided. For example, during this reporting period, OSHRC established a method of tracking the number of requests received through the National FOIA Portal. OSHRC is currently using OIP's FOIA Self-Assessment Toolkit in reviewing and revising our FOIA Directive and FOIA Reference Guide.

4. 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 the number of times requesters sought assistance from your agency's FOIA Public Liaison during FY 2018 (please provide a total number or an estimate of the number).

Answer: During this reporting period, there were no instances when requesters sought assistance from our FOIA Public Liaison, though such assistance was provided proactively in various instances.

5. Please describe the best practices used to ensure that your FOIA system operates efficiently and effectively and any challenges your agency faces in this area.

Answer: 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) utilizing OSHRC's e-filing system to improve 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.   Additionally, OSHRC is in the process of reviewing and considering revisions to its Rules of Procedure, which include provisions that address how the public submits records containing private information to the agency. Changes to such rules that reduce or eliminate the presence of such information in agency records could reduce the processing and response time associated with requests for such records.

<u>**Section III: Steps Taken to Increase Proactive Disclosures**</u>

The Department of Justice has long 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.

1. 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. This year, OSHRC held oral arguments in three matters. The recordings of those oral arguments, as well as all relevant briefs filed in those matters, were proactively posted in OSHRC's e-FOIA Reading Room.

https://www.oshrc.gov/foia/oshrc-e-foia-reading-room/

Additionally, OSHRC continues to proactively disclose other 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 significant interlocutory orders; briefing notices for cases that the Commission has exercised its discretionary authority to review; and final decisions issued by the Commission.

https://www.oshrc.gov/decisions/index.html
https://www.oshrc.gov/documentlisting/?CategoryId=4

2. Please describe how your agency identifies records that have been requested and released three or more times (and are therefore required to be proactively disclosed pursuant to 5 U.S.C. § 552(a)(2)(D)).

Answer: Because of the relatively small number of FOIA requests processed per year at OSHRC, 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.

3. 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: Yes.

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

Answer: Our website currently provides access to decisions issued by both levels of adjudication at OSHRC. Decisions are made available on OSHRC's webpage, which now contains a streamlined dropdown menu that reflects our two-tier system of adjudication. This menu allows for decisions to be located based on level of adjudication and then refined 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.

5. Please describe the best practices used to improve proactive disclosures and any challenges your agency faces in this area.

Answer: OSHRC has an email alert system that allows the public to sign-up for and receive emails notifying them when new information is posted on our website, including links to final administrative law judge decisions and final commission decisions, as well as open government information. The homepage of OSHRC's website also notifies anyone accessing it of the "Latest News & Information," which primarily includes hyperlinks to recently issued decisions. 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. Further, the Chief FOIA Officer works to maintain open lines of communication between the FOIA Requester Service Center and key agency personnel.

<u>Section IV: Steps Taken to Greater Utilize Technology</u>

A key component of FOIA administration is using technology to make information more accessible. 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.

1. Is your agency leveraging technology to facilitate efficiency in conducting searches, including searches for emails? If so, please describe the type of technology used. If not, please explain why and please describe the typical search process used instead.

Answer: OSHRC's e-filing system has increased efficiency by improving record search capability for FOIA professionals. Likewise, our FOIA team's coordinated efforts with OSHRC's IT department to improve the information provided by our e-filing system has facilitated more efficient clarification from requesters. Additionally, OSHRC's search requests include instructions for searching records contained in non-official email accounts.

2. OIP issued guidance in 2017 encouraging agencies to regularly review their FOIA websites to ensure that they contain essential resources and are informative and user-friendly. Has your agency reviewed its FOIA website(s) during the reporting period to ensure it addresses the elements noted in the guidance?

Answer: Yes.

3. Did your agency successfully post all four quarterly reports for Fiscal Year 2018?

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 2019.

Answer: N/A.

5. The FOIA Improvement Act of 2016 requires all agencies to post the raw statistical data used to compile their Annual FOIA Reports. Please provide the link to this posting for your agency's Fiscal Year 2017 Annual FOIA Report and, if available, for your agency's Fiscal Year 2018 Annual FOIA Report.

Answer: https://www.oshrc.gov/foia/oshrc-annual-foia-reports/

6. Please describe the best practices used in greater utilizing technology and any challenges your agency faces in this area.

Answer: OSHRC's online FOIA request form, used by over half of this year's requesters, has facilitated overall FOIA efficiency. When requesters complete and submit this form, our FOIA professionals are often able to begin processing requests immediately without needing further clarification from requesters. Additionally, OSHRC's dedicated FOIA email address has enabled our FOIA professionals to more efficiently clarify requests and thus, begin processing requests without additional delay.

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

The Department of Justice has 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 2018 Annual FOIA Report and, when applicable, your agency's 2017 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? If your agency uses a multi-track system beyond simple, complex, and expedited to process requests, please describe the tracks you use and how they promote efficiency.

Answer: OSHRC utilizes a multi-track system where requests are categorized as simple, complex or expedited.

2. If your agency uses a separate track for simple requests, was the agency overall average number of days to process simple requests twenty working days or fewer in Fiscal Year 2018?

Answer: Yes.

3. Please provide the percentage of requests processed by your agency in Fiscal Year 2018 that were placed in your simple track.

Answer: 92.75%.

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 2016 and Fiscal Year 2017 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 2018, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2017?

Answer: N/A.

6. If not, did your agency process more requests during Fiscal Year 2018 than it did during Fiscal Year 2017?

Answer: N/A.

7. If your agency's request backlog increased during Fiscal Year 2018, please 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.

8. 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 2018. If your agency has no request backlog, please answer with "N/A."

Answer: N/A.

BACKLOGGED APPEALS

9. If your agency had a backlog of appeals at the close of Fiscal Year 2018, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2017?

Answer: N/A.

10. If not, did your agency process more appeals during Fiscal Year 2018 than it did during Fiscal Year 2017?

Answer: N/A.

11. If your agency's appeal backlog increased during Fiscal Year 2018, please 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.

12. 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 2018. If your agency did not receive any appeals in Fiscal Year 2018 and/or has no appeal backlog, please answer with "N/A."

Answer: N/A.

C. Backlog Reduction Plans

13. In the 2018 guidelines for Chief FOIA Officer Reports, any agency with a backlog of over 1000 requests in Fiscal Year 2017 was asked to provide a plan for achieving backlog reduction in the year ahead. Did you agency implement a backlog reduction plan last year? If so, describe

your agency's efforts in implementing this plan and note if your agency was able to achieve backlog reduction in Fiscal Year 2018?

Answer: N/A.

14. If your agency had a backlog of more than 1,000 requests in Fiscal Year 2018, what is your agency's plan to reduce this backlog during Fiscal Year 2019?

Answer: N/A.

D. Status of 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 2016 and Fiscal Year 2017 when completing this section of your Chief FOIA Officer Report.

OLDEST REQUESTS

15. In Fiscal Year 2018, did your agency close the ten oldest requests that were reported pending in your Fiscal Year 2017 Annual FOIA Report?

Answer: Yes. OSHRC closed the one request pending at the end of Fiscal Year 2017 at the beginning of the first quarter of Fiscal Year 2018.

16. 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 2016 Annual FOIA Report. If you had fewer than ten total oldest requests to close, please indicate that.

Answer: N/A.

17. 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: None.

18. Beyond work on the ten oldest requests, please describe any steps your agency took to reduce the overall age of your pending requests.

Answer: OSHRC only had one pending request at the end of Fiscal Year 2017, which it closed shortly after the beginning of Fiscal Year 2018. OSHRC's FOIA professionals begin to process requests almost immediately after receipt and promptly reach out to requesters when clarification is necessary. This resulted in a decrease in average number of days to complete processing of simple track requests from 6.2 days in 2017 to 5.6 days in 2018, despite an increase in the number of requests received by OSHRC in 2018.

TEN OLDEST APPEALS

19. In Fiscal Year 2018, did your agency close the ten oldest appeals that were reported pending in your Fiscal Year 2017 Annual FOIA Report?

Answer: N/A.

20. 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 2017 Annual FOIA Report. If you had fewer than ten total oldest appeals to close, please indicate that.

Answer: N/A.

21. Beyond work on the ten oldest appeals, please describe any steps your agency took to reduce the overall age of your pending appeals.

Answer: OSHRC had no pending appeals at the end of Fiscal Year 2017. OSHRC closed the one appeal it received in 2018 in 14 days.

TEN OLDEST CONSULTATIONS

22. In Fiscal Year 2018, did your agency close the ten oldest consultations that were reported pending in your Fiscal Year 2017 Annual FOIA Report?

Answer: N/A.

23. 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 2017 Annual FOIA Report. If you had fewer than ten total oldest consultations to close, please indicate that.

Answer: N/A.

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

24. Briefly explain any obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2018.

Answer: N/A.

25. 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.

26. 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 2018.

Answer: N/A.

F. Success Stories

Out of all the activities undertaken by your agency since March 2018 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, OIP will highlight these agency success stories during Sunshine Week. 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 launch last year, OSHRC's email alert system has successfully provided immediate notification to the public whenever agency records are posted on the website. Additionally, the agency has established a social media presence on Twitter which allows OSHRC's Chairman to post information in real time regarding the content and availability of issued OSHRC decisions, as well as upcoming agency events (such as the three oral arguments held at OSHRC in 2018, which were open to the public).**

- Since its introduction in 2014, OSHRC has seen increased utilization of our online FOIA request form. In Fiscal Year 2018, more than half (55%) of our FOIA requests were submitted using the form. Increased use of the online FOIA request form has enhanced OSHRC's FOIA processing efficiency.

- Since 2014 when OSHRC established a dedicated FOIA email address, requesters increasingly use this address to regularly communicate with our FOIA professionals when clarifying requests and obtaining other information, such as processing status. Increased use of this dedicated email address has enhanced OSHRC's FOIA processing efficiency. Despite an almost 10% increase in requests received by OSHRC from 2017 to 2018, the average number of days to process simple requests decreased by almost 10%.