

FEDERAL MEDIATION AND CONCILIATION SERVICE
2019 CHIEF FOIA OFFICER REPORT
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Section 1: Steps Taken to Apply the Presumption of Openness

A. FOIA Leadership

FOIA requires that the agency designate a Chief FOIA Officer who is a senior at least at the Assistant Secretary or equivalent level.

1. FMCS's Chief FOIA Officer is not at or above the Assistant Secretary or equivalent level.
2. FMCS's Chief FOIA Officer is Michael Bartlett, Deputy General Counsel.

B. FOIA Training (3-6)

The Federal Mediation and Conciliation Service (FMCS or Agency) administers its FOIA program through the Office of General Counsel. The FOIA program is serviced by a staff consisting of one attorney, who devotes approximately 20% of his time to performing the Chief FOIA Officer (CFO) functions, and a Paralegal Specialist, who also spends about 20% of her time on FOIA matters.

Both the CFO and the Paralegal Specialist (100% of the FOIA staff) received FOIA training last year. On July 24-25, 2018, they attended a training course entitled, "Freedom of Information Act for Attorneys and Access Professionals," presented by the Office of Information Policy (OIP), Department of Justice (DOJ). This was a comprehensive offering that included the following topics, inter alia:

- Procedural Requirements
- Exemptions
- Litigation Considerations
- Proactive Disclosure
- Fees and Waivers
- Privacy Act Interface
- Appeals and Mediation Services

Also, the Paralegal Specialist attended a FOIA and Privacy Act training with the USDA Graduate School, from November 5-7, 2018.

FMCS intends to have its FOIA staff attend the DOJ training again in the summer of 2019.

C. Outreach (7)

The FMCS FOIA staff did not engage in any outreach during this reporting year.

D. Other Initiatives (8-9)

While not engaged in any formal initiatives, the CFO has initiated numerous informal conversations with non-FOIA professionals of the Agency – principally, IT personnel, mediators and mediator supervisors, and Regional Directors with geographical field responsibility – to educate them as to their responsibilities under the FOIA.

The employees who administer FOIA have FOIA-related performance standards.

The Agency does not have any additional initiatives to ensure that the presumption of openness is applied.

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

1. Agency processing time adjudicating expedited requests

The FMCS did not receive any expedited requests in FY 2018, and for that reason this question is not applicable.

2. Steps taken to address delay in adjudicating expedited requests

The FMCS did not receive any expedited requests in FY 2018, and for that reason this question is not applicable.

3. Self-Assessment

The FMCS did not conduct a self-assessment of its program in FY 2018.

4. Notification to Requesters about FMCS's FOIA Public Liaison Services

The Agency's Public Liaison received three requests for assistance during FY 2018.

5. Best Practices to ensure that our FOIA system operates efficiently and effectively

The FMCS maintains a form, which can be accessed by selecting the "Feedback" tab in the upper right corner of the Homepage, which the Agency uses to receive comments and other information pertaining to the FOIA, as well as other operations.

The FMCS maintains a comprehensive electronic FOIA reference guide that can be utilized to make requested records electronically available to the public. The guide can be found at:

<https://www.fmcs.gov/wp-content/uploads/2015/07/YourRightToFederalRecords.pdf>

The FMCS does not have any challenges in this area.

Section III: Steps Taken to Increase Proactive Disclosures

The Chief FOIA Officer periodically reviews the FOIA log to determine whether any “frequently requested” records can be identified for the purpose of creating a proactive disclosure. No more formal system is required in view of the relatively few (58) requests received this fiscal year.

1. The Agency proactively discloses the following information:

(a.) Work Stoppage Data (strikes and lockouts) recorded annually, and by month, from 1984 through December 2018, which are available at:

<https://www.fmcs.gov/resources/documents-and-data/>

(b) a document containing extensive questions and answers on the Freedom of Information Act and the Privacy Act, entitled “Your Right to Federal Records”, which can be found at

<https://www.fmcs.gov/wp-content/uploads/2015/07/YourRightToFederalRecords.pdf>

(c) Agency FOIA log from 2010 – 2017, which can be found under Reports at:

<https://www.fmcs.gov/resources/documents-and-data/>

2. Describe how the agency identifies records that have been requested and released three or more times and required to be proactively disclosed

The Chief FOIA Officer periodically reviews the FOIA log to determine whether any “frequently requested” records can be identified for the purpose of creating a proactive disclosure. No more formal system is required in view of the relatively few (58) requests received this fiscal year.

3. Additional Steps to make the posted information more useful

We are making sure that the main document that is requested by the members of the public, the work stoppages and strikes, is posted monthly. The posting of this information was less frequent in the past.

4. Provide example of additional improvements

We do not have examples of additional improvements, other than the more frequent posting of the main document requested by the parties as mentioned in #3.

5. Describe the best practices used to improve proactive disclosure and any challenges your agency faces in this area.

The FMCS does not face any challenges in this area, and posts the most frequent document requested by the members of the public.

Section IV: Steps Taken to Greater Utilize Technology

In addition to steadily increasing the use of email to correspond with requesters during the processing of requests, FMCS has greatly expanded the use of email to provide a final response with the documents sought as attachments. This has cut some three (3) days from the average

response time utilizing the U.S. mail. In addition, the FMCS successfully posted all four (4) quarterly reports during FY 2018 and provided DOJ the information to post it on FOIA.gov.

1. Is the agency leveraging technology to facilitate efficiency in conducting searches, including searches for emails? If so, describe the technology.

Emails searches are routinely done by the Office of Information Technology (IT) which uses Exchange Server, and Barracuda Messages Archiver to do the searches.

2. Has your agency reviewed its FOIA website(s) during the reporting period to ensure it addresses the elements noted in the guidance?

Yes.

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

Yes. The FMCS successfully posted all four (4) quarterly reports during FY 2018, and provided OIP with the information to post the reports on FOIA.gov.

4. If your agency did not post all the four quarter, please explain why.

N/A

5. Provide link to raw statistical data.

<https://www.fmcs.gov/wp-content/uploads/2019/02/2018-FOIA-Log.xlsx>

6. Describe best practices and any challenges.

We do not have any best practices to report.

In terms of challenges, the FMCS IT team provides the information for quarterly reports to OIP; however, OIP is not able to capture the information for some of the reports. This has been a very challenging and recurrent problem, and provides the appearance that the agency is not in compliance.

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

A. Simple Track

The FMCS utilizes a separate track for simple requests. The average number of days for the Agency to process simple requests in FY 2018 was 78. Simple requests represent (56/57) 98 percent of total requests.

B. Backlogs Requests and Appeals; and Backlog Reduction Plan

The Agency had (22) backlogged requests as of the close of FY 2017. The backlog decreased at the close of FY 2018 to fourteen (14). At the end of FY 2018, the Agency had 14 backlogged request out of 58 request, for a total of 24%.

The FMCS had no backlogged appeals as of the close of either FY 2017 or FY 2018.

The FMCS is not required to implement a backlog reduction plan because its current backlog is 14 requests and the threshold for a backlog reduction plan is 1,000 backlog requests. Nevertheless, the FOIA program is working on strategies to reduce its current backlog.

C. Status of Ten Oldest Requests

The FMCS closed 9 of the 10 oldest requests pending in FY 2018. None of these cases were closed because the request was withdrawn.

We have taken steps to prioritize old requests, and to ensure that new requests are processed quickly to reduce the processing time.

D. Ten Oldest Appeals and Consultations

The Agency had no pending appeals or consultations as of the close of FY 2018.

E. Additional Information on Oldest Requests

The number of FOIA requests has increased and that may require more time of the personnel assigned to process these requests. We are currently prioritizing these old requests, and expect to process them within the next three months.

F. Success Story

The Agency posted its FOIA logs for the years 2010-2017.