

Federal Mediation and Conciliation Service

Freedom of Information Act Report

FY 2013

**Federal Mediation and Conciliation Service
2100 K St., NW
Washington, DC 20427**

December 2013

FEDERAL MEDIATION AND CONCILIATION SERVICE

FISCAL YEAR 2013

Freedom of Information Act (FOIA) Report

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I. Information Regarding This Report

- For questions about the Federal Mediation & Conciliation Service (FMCS) annual FOIA report, contact:

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- Electronic copies of this report, or those from previous years, are available at:

<http://www.fmcs.gov/internet/downloadsList.asp?categoryID=466>

- Paper copies of this report may be requested in writing from:

Federal Mediation & Conciliation Service
Office of the General Counsel
2100 K Street, N.W.
Washington, D.C. 20427

II. Making a FOIA Request

- FOIA requests should be sent to:

Federal Mediation & Conciliation Service
Office of the General Counsel
2100 K Street, N.W.
Washington, D.C. 20427
Tel. (202) 606-5444
Fax (202) 606-5345

The formal rules for the making of FOIA requests to the FMCS are set forth in Chapter 12 of Volume 29 of the Code of Federal Regulations. This multiple-volume set is available in all law libraries and federal depository libraries. These regulations also can be accessed on the World Wide Web at <http://www.fmcs.gov/assets/files/FOIA/foiaguidelines.doc>.

- Description of the FMCS:

Congress established the FMCS in 1947 through the Labor Management Relations Act (Taft-Hartley) amendments to the National Labor Relations Act (NLRA) as an independent agency whose mission is “to assist parties to labor disputes in industries affecting commerce to settle such disputes through conciliation and mediation.”¹ Subsequent acts of Congress and Presidential orders have expanded FMCS’s role to providing employment-based mediation services to the private sector and alternative dispute resolution (ADR) programs to government agencies, as well as promoting and establishing labor-management programs in the private sector.

Under Section 8(d)(1) of the NLRA, 29 U.S.C. § 158(d)(1), employers or the representatives of their employees, who are covered by a collective bargaining agreement, must provide written notice to the other party 60 days prior to the expiration date of a proposed termination or modification of the agreement. Section 8(d)(3) of the NLRA requires the party providing notice to also notify the FMCS of the upcoming contract expiration by filing a Notice to Mediation Agencies (F-7 form) in order to provide FMCS with a timely opportunity to proffer its mediation services.

- General categories of the agency’s records to which the FOIA exemptions apply:

The great majority of inquiries to FMCS under FOIA are requests for copies of the Notices to Mediation Agencies or for Work Stoppages information.

FMCS’ denial of requests under FOIA as based on Exemption 6, involving matters of personal privacy, and Exemptions 4 and 5 pertaining to the mediator privilege.

¹ 29 USC § 173. By statute, FMCS’s jurisdiction excludes the rail and airline industries, which are covered by the National Mediation Board under the Railway Labor Act.

III. Acronyms, Definitions, and Exemptions

1. Agency-specific acronyms or terms:

Federal Mediation and Conciliation Service (FMCS)

National Labor Relations Act (NLRA)

Labor Management Relations Act (Taft-Hartley)

2. Definitions of terms:

- a. **Administrative Appeal**—A request to a federal agency asking that it review at a higher administrative level a FOIA determination made by the agency at the initial request level.
- b. **Average Number**—The number obtained by dividing the sum of a group of numbers by the quantity of numbers in the group.
- c. **Backlog**—The number of requests or administrative appeals that are pending at an agency at the end of the fiscal year that are beyond the statutory time period for a response.
- d. **Component**—For agencies that process requests on a decentralized basis, a “component” is an entity, also sometimes referred to as an Office, Division, Bureau, Center, or Directorate, within the agency that processes FOIA requests.
- e. **Consultation**—The procedure whereby the agency responding to a FOIA request first forwards a record to another agency for its review because that other agency has an interest in the document. Once the agency in receipt of the consultation finishes its review of the record, it responds back to the agency that forwarded it. That agency, in turn, will then respond to the FOIA requester.
- f. **Exemption 3 Statute**—A federal statute that exempts information from disclosure and which the agency relies on to withhold information under subsection (b)(3) of the FOIA.
- g. **FOIA Request**—A FOIA request is generally a request to a federal agency for access to records concerning another person (i.e., a “third-party” request), or concerning an organization, or a particular topic of interest. FOIA requests also include requests made by requesters seeking records concerning themselves (i.e., “first-party” requests) when those requesters are not subject to the Privacy Act, such as non-U.S. citizens. Moreover, because all first-party requesters should be afforded the benefit of both the access provisions of the FOIA as well as those of the Privacy Act, FOIA requests also include any first-party requests where an agency determines that it must search beyond its Privacy Act “systems of records” or where a Privacy Act exemption applies, and the agency looks to FOIA to afford the greatest possible access. All requests, which require the agency to utilize the FOIA in responding to the requester, are included in this Report.

Additionally, a FOIA request includes records referred to the agency for processing and direct response to the requester. It does not, however, include records for which the agency has received a consultation from another agency. (Consultations are reported separately in Section XII of this Report.)

- h. **Full Grant**—An agency decision to disclose all records in full in response to a FOIA request.
- i. **Full Denial**—An agency decision not to release any records in response to a FOIA request because the records are exempt in their entireties under one or more of the FOIA exemptions, or because of a procedural reason, such as when no records could be located.

- j. **Median Number**—The middle, not average, number.
- k. **Multi-Track Processing**—A system in which simple requests requiring relatively minimal review are placed in one processing track and more voluminous and complex requests are placed in one or more other tracks. Requests granted expedited processing are placed in yet another track. Requests in each track are processed on a first in/first out basis.
 - i. **Expedited Processing**—An agency will process a FOIA request on an expedited basis when a requester satisfies the requirements for expedited processing as set forth in the statute and in agency regulations.
 - ii. **Simple Request**—A FOIA request that an agency using multi-track processing places in its fastest (non-expedited) track based on the low volume and/or simplicity of the records requested.
 - iii. **Complex Request**—A FOIA request that an agency using multi-track processing places in a slower track based on the high volume and/or complexity of the records requested.
- l. **Partial Grant/Partial Denial**—In response to a FOIA request, an agency decision to disclose portions of the records and to withhold other portions that are exempt under the FOIA, or to otherwise deny a portion of the request for a procedural reason.
- m. **Pending Request or Pending Administrative Appeal**—A request or administrative appeal for which an agency has not taken final action in all respects.
- n. **Perfected Request**—A request for records which reasonably describes such records and is made in accordance with published rules stating the time, place, fees (if any), and procedures to be followed.
- o. **Processed Request or Processed Administrative Appeal**—A request or administrative appeal for which an agency has taken final action in all respects.
- p. **Range in Number of Days**—The lowest and highest number of days to process requests or administrative appeals.
- q. **Time Limits**—The time period in the statute for an agency to respond to a FOIA request (ordinarily twenty working days from receipt of a perfected FOIA request).

3. The nine FOIA exemptions:

- a. **Exemption 1:** Classified national defense and foreign relations information.
- b. **Exemption 2:** Internal agency rules and practices.
- c. **Exemption 3:** Information that is prohibited from disclosure by another federal law.
- d. **Exemption 4:** Trade secrets and other confidential business information.
- e. **Exemption 5:** Inter-agency or intra-agency communications that are protected by legal privileges.
- f. **Exemption 6:** Information involving matters of personal privacy.
- g. **Exemption 7:** Records or information compiled for law enforcement purposes, to the extent that the production of those records: (A) could reasonably be expected to interfere with enforcement proceedings; (B) would deprive a person of a right to a fair trial or an impartial adjudication; (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy; (D) could reasonably be expected to disclose the identity of a confidential source; (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions; or (F) could reasonably be expected to endanger the life or physical safety of any individual.
- h. **Exemption 8:** Information relating to the supervision of financial institutions.
- i. **Exemption 9:** Geological information on wells.

IV. Exemption 3 Statutes

Table 1: Exemption 3 Statutes

Statute	Type of Information Withheld	Case Citation	Component	Number of Times Relied upon per Component	Total Number of Times Relied upon by Agency
					0

V. FOIA Requests

A. Received, Processed and Pending FOIA Requests

Table 2: Received, Processed and Pending FOIA Requests

Component	Number of Requests Pending as of Start of Fiscal Year	Number of Requests Received in Fiscal Year	Number of Requests Processed in Fiscal Year	Number of Requests Pending as of End of Fiscal Year
FMCS	2	113	113	2
				0
AGENCY OVERALL	2	113	113	2

B. Disposition of FOIA Requests

1. All Processed Requests

Table 3: Disposition of FOIA Requests – All Processed Requests

Component	Number of Full Grants	Number of Partial Grants / Partial Denials	Number of Full Denials Based on Exemptions	Number of Full Denials Based on Reasons Other than Exemptions									TOTAL
				No Records	All Records Referred to Another Component or Agency	Request Withdrawn	Fee-Related Reason	Records not Reasonably Described	Improper FOIA Request for Other Reason	Not Agency Record	Duplicate Request	Other *Explain in chart below	
FMCS	38	8	0	24	1	4	1	0	34	1	0	2	113
													0
AGENCY OVERALL	38	8	0	24	1	4	1	0	34	1	0	2	113

2. Full Denials Based on Reasons other than Exemptions

Table 4: Disposition of FOIA Requests – Other Reasons

Component	Description of "Other" Reasons for Denials from Chart B (1)	Number of Times "Other" Reason Was Relied Upon	COMPONENT TOTAL
FMCS	Informational Inquiry	2	2
AGENCY OVERALL			2

3. Number of Times Exemptions Applied

Table 5: Disposition of FOIA Requests – Number of Times Exemptions Applied

Component	Ex. 1	Ex. 2	Ex. 3	Ex. 4	Ex. 5	Ex. 6	Ex. 7(A)	Ex. 7(B)	Ex. 7(C)	Ex. 7(D)	Ex. 7(E)	Ex. 7(F)	Ex. 8	Ex. 9
FMCS	0	0	0	2	2	5	0	0	0	0	0	0	0	0
AGENCY OVERALL	0	0	0	2	2	5	0	0	0	0	0	0	0	0

VI. Administrative Appeals of Initial Determinations of FOIA Requests

A. Received, Processed, and Pending Administrative Appeals

Table 6: Received, Processed and Pending Administrative Appeals

Component	Number of Appeals Pending as of Start of Fiscal Year	Number of Appeals Received in Fiscal Year	Number of Appeals Processed in Fiscal Year	Number of Appeals Pending as of End of Fiscal Year
FMCS	0	2	1	1
				0
AGENCY OVERALL	0	2	1	1

B. All Processed Appeals

Table 7: Disposition of Administrative Appeals – All Processed Appeals

Component	Number Affirmed on Appeal	Number Partially Affirmed & Partially Reversed/Remanded on Appeal	Number Completely Reversed/Remanded on Appeal	Number of Appeals Closed for Other Reasons	TOTAL
FMCS	1	0	0	0	1
					0
AGENCY OVERALL	1	0	0	0	1

C. Reasons for Denial on Appeal

1. Number of Times Exemptions Applied

Table 8: Reasons for Denial on Appeal – Number of Times Exemption Applied

Component	Ex. 1	Ex. 2	Ex. 3	Ex. 4	Ex. 5	Ex. 6	Ex. 7(A)	Ex. 7(B)	Ex. 7(C)	Ex. 7(D)	Ex. 7(E)	Ex. 7(F)	Ex. 8	Ex. 9
FMCS	0	0	0	0	0	0	0	0	0	0	0	0	0	0
AGENCY OVERALL	0	0	0	0	0	0	0	0	0	0	0	0	0	0

2. Reasons other than Exemptions

Table 9: Reasons for Denial on Appeal – Reasons Other than Exemptions

Component	No Records	Records Referred at Initial Request Level	Request Withdrawn	Fee-Related Reason	Records not Reasonably Described	Improper Request for Other Reasons	Not Agency Record	Duplicate Request or Appeal	Request in Litigation	Appeal Based Solely on Denial of Request for Expedited Processing	Other *Explain in chart below
FMCS	0	0	0	0	0	0	0	0	0	0	1
AGENCY OVERALL	0	0	0	0	0	0	0	0	0	0	1

3. "Other" Reasons

Table 10: Reasons for Denial on Appeal – Other Reasons

Component	Description of "Other" Reasons for Denial on Appeal from Chart C (2)	Number of Times "Other" Reason Was Relied Upon	COMPONENT TOTAL
FMCS	Records had been previously supplied to requestor's attorney	1	1
AGENCY OVERALL			1

4. Response Time for Administrative Appeals

Table 11: Reasons for Denial on Appeal – Response Time for Administrative Appeals

Component	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days
AGENCY OVERALL	19.00	19.00	19.00	19.00

5. Ten Oldest Pending Administrative Appeals

Table 12: Reasons for Denial on Appeal – Ten Oldest Administrative Appeals

Component	Sub-Row Heading	10th Oldest Appeal	9th	8th	7th	6th	5th	4th	3rd	2nd	Oldest Appeal
	Date of Appeal										
	Number of Days Pending										
AGENCY OVERALL	Date of Appeal	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	2013-09-18
	Number of Days Pending	0	0	0	0	0	0	0	0	0	8

VII. Processed Requests

A. Response Time for All Processed Perfected Requests

Table 13: Response Time for All Processed Perfected Requests

Component	SIMPLE				COMPLEX				EXPEDITED PROCESSING			
	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days
AGENCY OVERALL	2	3.5	<1	16	13	13.9	1	22	2	8.3	1	22

All response times exceeding 20 days resulted from weather-related office closures.

B. Response Time for Perfected Requests in Which Information Was Granted

Table 14: Response Time for Perfected Requests in Which Information Was Granted

Component	SIMPLE				COMPLEX				EXPEDITED PROCESSING			
	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days
AGENCY OVERALL	4	4.3	<1	16	14	14.8	4	22	2	8.3	1	22

All response times exceeding 20 days resulted from weather-related office closures.

C. Response Time in Day Increments

1. Simple Requests

Table 15: Response Time in Day Increments – Simple Requests

Component	1-20 Days	21-40 Days	41-60 Days	61-80 Days	81-100 Days	101-120 Days	121-140 Days	141-160 Days	161-180 Days	181-200 Days	201-300 Days	301-400 Days	401+ Days	TOTAL
FMCS	95	0	0	0	0	0	0	0	0	0	0	0	0	95
														0
AGENCY OVERALL	95	0	0	0	0	0	0	0	0	0	0	0	0	95

2. Complex Requests

Table 16: Response Time in Day Increments – Complex Requests

Component	1-20 Days	21-40 Days	41-60 Days	61-80 Days	81-100 Days	101-120 Days	121-140 Days	141-160 Days	161-180 Days	181-200 Days	201-300 Days	301-400 Days	401+ Days	TOTAL
FMCS	11	3	0	0	0	0	0	0	0	0	0	0	0	14
														0
AGENCY OVERALL	11	3	0	0	0	0	0	0	0	0	0	0	0	14

All response times exceeding 20 days resulted from weather-related office closures.

3. Requests Granted Expedited Processing

Table 17: Response Time in Day Increments – Requests Granted Expedited Processing

Component	1-20 Days	21-40 Days	41-60 Days	61-80 Days	81-100 Days	101-120 Days	121-140 Days	141-160 Days	161-180 Days	181-200 Days	201-300 Days	301-400 Days	401+ Days	TOTAL
FMCS	3	1	0	0	0	0	0	0	0	0	0	0	0	4
														0
AGENCY OVERALL	3	1	0	0	0	0	0	0	0	0	0	0	0	4

All response times exceeding 20 days resulted from weather-related office closures.

D. All Pending Perfected Requests

Table 18: All Pending Perfected Requests

Component	SIMPLE			COMPLEX			EXPEDITED PROCESSING		
	Number Pending	Median Number of Days	Average Number of Days	Number Pending	Median Number of Days	Average Number of Days	Number Pending	Median Number of Days	Average Number of Days
AGENCY OVERALL	1	3	3	1	0	0	0	0	0

Complex request was tolled (awaiting requestor's response) during this period.

E. Ten Oldest Pending Perfected Requests

Table 19: Ten Oldest Pending Perfected Requests

Component	Sub-Row Heading	10th Oldest Request	9th	8th	7th	6th	5th	4th	3rd	2nd	Oldest Request
	Date of Receipt										
	Number of Days Pending										
AGENCY OVERALL	Date of Receipt	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	2013-09-26	2013-09-03
	Number of Days Pending	0	0	0	0	0	0	0	0	2	2

Oldest request was tolled (awaiting requestor's response) during this period.

VIII. Requests for Expedited Processing and for Fee Waiver

A. Requests for Expedited Processing

Table 20: Requests for Expedited Processing

Component	Number Granted	Number Denied	Median Number of Days to Adjudicate	Average Number of Days to Adjudicate	Number Adjudicated Within Ten Calendar Days
AGENCY OVERALL	4	0	1	1	4

B. Requests for Fee Waiver

Table 21: Requests for Fee Waiver

Component	Number Granted	Number Denied	Median Number of Days to Adjudicate	Average Number of Days to Adjudicate
AGENCY OVERALL	0	1	1	1

Fee waiver request was tolled (awaiting requestor's response) during this period.

IX. FOIA Personnel and Costs

Table 22: FOIA Personnel and Costs

Component	PERSONNEL			COSTS		
	Number of "Full-Time FOIA Employees"	Number of "Equivalent Full-Time FOIA Employees"	Total Number of "Full-Time FOIA Staff"	Processing Costs	Litigation-Related Costs	Total Costs
FMCS	0	1	1	\$80,000.00	\$0.00	\$80,000.00
			0			\$0.00
AGENCY OVERALL	0	1	1	\$80,000.00	\$0.00	\$80,000.00

X. Fees Collected for Processing Requests

Table 23: Fees Collected for Processing Requests

Component	Total Amount of Fees Collected	Percentage of Total Costs
FMCS	\$726.60	0.91%
AGENCY OVERALL	\$726.60	0.91%

XI. FOIA Regulations

<http://www.fmcs.gov/internet/itemDetail.asp?categoryID=428&itemID=21289>

XII. Backlogs, Consultations and Comparisons

A. Backlogs of FOIA Requests and Administrative Appeals

Table 24: Backlogs of FOIA Requests and Administrative Appeals

Component	Number of Backlogged Requests as of End of Fiscal Year	Number of Backlogged Appeals as of End of Fiscal Year
FMCS	0	0
AGENCY OVERALL	0	0

B. Received, Processed, and Pending Consultations

Table 25: Consultations on FOIA Requests – Received, Processed, and Pending Consultations

Component	Number of Consultations Received from Other Agencies that were <u>Pending</u> at Your Agency as of <u>Start</u> of the Fiscal Year	Number of Consultations <u>Received</u> from Other Agencies During the Fiscal Year	Number of Consultations Received from Other Agencies that were <u>Processed</u> by Your Agency During the Fiscal Year	Number of Consultations Received from Other Agencies that were <u>Pending</u> at Your Agency as of <u>End</u> of the Fiscal Year
FMCS	0	0	0	0
				0
AGENCY OVERALL	0	0	0	0

C. Ten Oldest Consultations Received from other Agencies and Pending at the Agency

Table 26: Consultations on FOIA Requests – Ten Oldest Consultations Received from Other Agencies Pending at the FMCS

Component	Sub-Row Heading	10th Oldest Consultation	9th	8th	7th	6th	5th	4th	3rd	2nd	Oldest Consultation
	Date										
	Number of Days										
AGENCY OVERALL	Date	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
	Number of Days	0	0	0	0	0	0	0	0	0	0

D. Comparison of Requests from Previous and Current Annual Report

1. Number Received and Processed from Previous and Current Annual Report

Table 27: Comparison of Requests from Previous and Current Annual Report

Component	NUMBER OF REQUESTS RECEIVED		NUMBER OF REQUESTS PROCESSED	
	Number Received During Fiscal Year from Last Year's Annual Report	Number Received During Fiscal Year from Current Annual Report	Number Processed During Fiscal Year from Last Year's Annual Report	Number Processed During Fiscal Year from Current Annual Report
FMCS	70	113	68	113
AGENCY OVERALL	70	113	68	113

In 2012 the FMCS inadvertently included one (1) appeal in its request totals. The corrected totals for 2012 are 70 requests received and 68 requests processed.

2. Number of Backlogged Requests from Previous and Current Annual Report

Table 28: Comparison of Backlogged Requests from Previous and Current Annual Report

Component	Number of Backlogged Requests as of End of the Fiscal Year from Previous Annual Report	Number of Backlogged Requests as of End of the Fiscal Year from Current Annual Report
FMCS	0	0
AGENCY OVERALL	0	0

E. Comparison of Backlogged and Administrative Appeals

1. Number of Administrative Appeals from Previous and Current Annual Report

Table 29: Comparison of Administrative Appeals from Previous and Current Annual Report

Component	NUMBER OF APPEALS RECEIVED		NUMBER OF APPEALS PROCESSED	
	Number Received During Fiscal Year from Last Year's Annual Report	Number Received During Fiscal Year from Current Annual Report	Number Processed During Fiscal Year from Last Year's Annual Report	Number Processed During Fiscal Year from Current Annual Report
FMCS	1	2	1	1
AGENCY OVERALL	1	2	1	1

2. Number of Backlogged Administrative Appeals from Previous and Current Annual Report

Table 30: Comparison of Backlogged Administrative Appeals from Previous and Current Annual Report

Component	Number of Backlogged Appeals as of End of the Fiscal Year from Previous Annual Report	Number of Backlogged Appeals as of End of the Fiscal Year from Current Annual Report
FMCS	0	0
AGENCY OVERALL	0	0

