

**FEDERAL MEDIATION AND CONCILIATION SERVICE
UNITED STATES GOVERNMENT
WASHINGTON, DC 20427**

Office of the General Counsel

**2013 Chief FOIA Officer Report to the Department of Justice
Pursuant to the Attorney General's FOIA Guidelines**

Overview

The Federal Mediation and Conciliation Service (FMCS) is a small, independent agency composed of 236 employees. Commensurate with its size, the FMCS received a mere 69 FOIA requests during the time frame covered by this report (March 12, 2012 to date),* and processed 67 requests to conclusion, and, with one exception, closed all of these within 20 business days. The average response time for all 67 cases was 7.2 days. Only two of these requests were denied in their entirety, while the response to 4 requests had information redacted. No cases were backlogged as of the end of the reporting period. Two appeals were received and affirmed during this period.

For most of the reporting period, the FMCS had a FOIA Officer and a Chief FOIA Officer, but no other formal FOIA structure. IT support was available as needed on an ad hoc basis. The FOIA Officer retired effective November 30, 2012 and has not been replaced. Under these circumstances, and as demonstrated below, the vast majority of the Attorney General's FOIA Guidelines either are not applicable to an agency of this size processing a limited number of requests or have been implemented previously.

I. Steps Taken to Apply the Presumption of Openness

During most of the 2013 CFOY, the Chief FOIA Officer personally responded to approximately 40% of the FOIA requests and conferred with the FOIA Officer on some additional 20% of the FOIA cases. Beginning December 1, 2012, the Chief FOIA Officer responded to all requests. Hence, on the basis of personal knowledge, the Chief FOIA Officer can attest to the fact that FMCS's FOIA activities are conducted with a presumption of openness. This presumption of openness was reinforced by the attendance of the FOIA Officer at DOJ's Refresher Training on the Guidelines for Preparation of Annual FOIA Reports during the 2013 CFOY.

FMCS has not had occasion to make discretionary releases of otherwise exempt information. However, were such a potential opportunity to present itself, the Agency would utilize a balancing test to determine whether or not to make a discretionary disclosure. Specifically, FMCS would balance the benefit to the requester and the public of releasing the

* The 2013 Chief FOIA Officer Year or "2013 CFOY."

information against the harm of making the disclosure in the specific factual context of the individual case.

FMCS has also furthered the interest of openness by frequently compiling data for requesters, rather than supplying them with raw data, in order to provide them with information in the most useful form. For instance, one state agency requester sought work stoppage data for three selected states over a twelve year period. FMCS could have directed the requester to the Agency's website, where this information could have been extracted with great difficulty from monthly reports of all strikes and lockouts listed alphabetically by employer rather than state by state. Instead, with its electronic capabilities, the Agency created a new Excel database containing this information and posted it in its FOIA Reading Room where it could be easily accessed by the requester. Further, since the requester indicated it desired this information on an on-going basis, the Agency committed to updating the Reading Room file annually, thereby negating the need for further requests for this information. See also, *Spotlight on Success*, infra.

FMCS's pattern of full and partial disclosures has been consistent from CFOY to CFOY, when considered in the context of the number of cases processed each year. Thus, in the 2010 CFOY, the Agency processed a total of 143 requests, of which 82 were full grants, one was a partial grant and none were full denials. Of the 136 requests processed in the 2011 CFOY, 70 were full grants, 4 were partial grants and there was one full denial. Similarly, in the 2012 CFOY, FMCS processed a total of 91 requests, of which 41 were full grants, 9 were partial grants and none were full denials. Finally, of 67 requests processed in the 2013 CFOY to date, 28 were full grants, seven were partial grants and 2 were full denials.

II. Steps Taken to Ensure that This Agency Has an Effective System in Place for Responding to Requests

Since the FMCS is a small agency, the number of FOIA requests it processes are limited as shown above and, because they are centrally processed, the Agency does not require complex systems to operate effectively and efficiently. The Chief FOIA Officer currently prepares, reviews and/or determines the appropriate response in all cases. He is training a new Assistant in a supporting role, and that Assistant may eventually receive sufficient training to become the new FOIA Officer. The FMCS uses a variety of systems to ensure effective responses including, for example, dedicated electronic filing, log in/out, and request tracking. Three IT personnel have been specially designated to provide information support: one is dedicated to website posting, another to technical support and a third to records retrieval. Given the Agency's small size, there is substantial overlap among FOIA and Open Government personnel, which necessarily results in significant interaction between these two functions.

III. Steps Taken to Increase Proactive Disclosures

Since the close of FY2004, the FMCS has made major additions to the information available to the public in its Reading Room located on the Agency's website. This includes frequently sought data concerning, among other things, notices of contract termination (F-7 Notices), arbitration data, and beginning and ending work stoppages reports. These data are

updated on a monthly basis. These new categories of Reading Room postings, which were completed prior to the 2013 CFOY, have resulted in a year to year reduction of Agency FOIA requests of more than 80% since FY2004. In addition, in order to improve the delivery of FOIA services, the FMCS also added a voluntary customer feedback survey form to its Reading Room prior to the 2013 CFOY.

During the 2013 CFOY, in order to make the retrieval of F-7 data easier, FMCS consolidated each Fiscal Year's 12 monthly reports into a single annual report in the FOIA Reading Room. This allows a party interested in searching data for all of FY2011, for example, to select a single FY2011 data icon rather than, as previously, having to search data from 12 monthly FY2011 reports. See also, *Spotlight On Success*, [infra](#). However, other than the annualization of monthly data, no additional categories of information were identified during the reporting period which, if added to the Reading Room, would have further reduced FOIA requests to the Agency.

IV. Steps Taken to Greater Utilize Technology

The FMCS has had the capability to receive and process all requests electronically on a centralized basis since FY2009. The Agency uses a dedicated email address, which is available on the Agency's website, to receive electronic requests. The FMCS has the capacity to track all requests electronically and uses off-the-shelf email management, word processing and Excel spread sheet systems to process requests. The Agency also utilizes its Case and Contact Management System, originally developed to track mediation cases, to perform document search and retrieval. In addition, the Agency is developing a separate document system, due to be implemented within the next 6 months, for sharing, storing and searching for its documents. Finally, during the 2013 CFOY, the FMCS added a number of enhancements to its Excel spreadsheet-based tracking system, including tracking for periods of tolling, estimated due dates incorporating the Federal holiday calendar and quarterly request tracking. In light of FMCS's track record of prompt and efficient FOIA processing, the Agency has deemed it unnecessary to provide requesters with the ability to track requests on line.

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

1. FMCS utilizes a separate track for simple requests. On average, the Agency processed simple requests in 7.5 days during FY2012 and 6.3 days during the 2013 CFOY.
2. FMCS has had no backlogs since the close of FY2009. The Agency had no pending cases as of the close of FY2011 and only two pending requests [one pending 4 days and one pending 3 days] at the end of FY2012. As of the close of both FYs 2011 and 2012, FMCS had no pending appeals.
3. There was no reduction in the backlog of requests or appeals in FY2011, FY2012 or the 2013 CFOY, because there was no backlog in any of these categories to begin with. In as much as the Agency has not incurred any backlogs since FY2009, it could not take any additional steps to reduce backlogs.

Use of FOIA's Law Enforcement "Exclusions"

FMCS did not invoke any law enforcement exclusion in any of its FOIA responses during FY2012 or the 2013 CFOY.

Spotlight on Success

Each year, FMCS receives several complex requests for records noticing termination of collective bargaining agreements and proposing negotiations for new agreements (F-7 Notices). Parties are required to submit F-7 Notices to the Agency by law 60-90 days prior to contract expiration. Historically, these records have been organized and updated on a monthly basis and have been available on the FMCS website. A requester seeking information regarding a specific agreement, who knew the year but did not know the month in which the data was filed, might have to review as many as 12 months of entries, or a total of some 15,000 entries, to find the single record or group of records of interest.

While FOIA requires the production of data by an agency under appropriate circumstances, it does not require an agency to manipulate data to put it in a format deemed most useful by the requester. Nevertheless, on numerous occasions in the past, FMCS has extracted requested F-7 information from collective bargaining data available on its website and provided it to requesters, because the burden of having to search month after month of information to find the data responsive to the requester's inquiry was substantial.

During the 2013 CFOY, the FMCS took a major step to remove the burden assumed by the Agency in conducting individualized searches and retrievals and the burden otherwise placed on requesters required to search monthly files. FMCS combined the monthly reports for each 12-month period into a single annual report for each Fiscal Year beginning FY1997 through FY2012. See Section III, *supra*. This proactive data reorganization was similar to that described in Section I. with respect to work stoppage reports. FMCS believes this approach to both F-7 and work stoppage data is consistent with the "spirit of cooperation" sought by President Obama and exemplifies the type of "proactive disclosure" whose importance was stressed by Attorney General Holder.

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