

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

Office of the General Counsel

**2014 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 233 employees. Commensurate with its size, the FMCS received 152 FOIA requests during the time frame covered by this report (March 12, 2013 to date),* processed 136 requests to conclusion, and, with five exceptions, closed all of these within 20 business days. The average response time for all 136 cases was 5.6 days. Only four of these requests were denied in their entirety, while the response to 7 requests had information redacted. Ten cases were backlogged as of the end of the reporting period. One appeal was received and affirmed during this period within 24 days due to the U.S. Government shutdown. See, Steps Taken to Improve Timeliness, *infra*.

The FMCS had only a single part-time FOIA Officer (Chief FOIA Officer or CFO) and no other formal FOIA structure. IT support was available as needed on an *ad hoc* basis. The former non-Chief FOIA Officer retired effective November 30, 2012 and has not been replaced due to budget constraints. 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 with limited personnel, processing a relatively small number of requests, or have been implemented previously.

I. Steps Taken to Apply the Presumption of Openness

During all of the 2014 CFOY, the Chief FOIA Officer has personally responded to all FOIA requests. Hence, on the basis of personal knowledge, and having undertaken all reasonably available steps toward this end as demonstrated herein, the Chief FOIA Officer can attest to the fact that the FMCS's FOIA activities are conducted with a presumption of openness.

The FMCS lacks the personnel and resources to conduct in-house training and, due to conflicts with his other responsibilities, the CFO was unable to attend outside training such as that offered by the Department of Justice (DOJ). However, the CFO intends to make outside training a priority for the coming CFOY and intends to attend DOJ's "The Freedom of Information Act for Attorneys and Access Professionals" course scheduled for May 13-14, 2014

* The 2014 Chief FOIA Officer Year or "2014 CFOY."

in Washington, D.C. Similarly, the FMCS did not engage in any outreach activity. The Agency did, however, post all of its quarterly FOIA reports for FY 2013.

Since it has utilized exemptions in only a small number of cases, the 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, the FMCS would balance the benefit to the requester and the public of releasing the information against the harm of making the disclosure in the specific factual context of the individual case.

The 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 142 requests, of which 82 were full grants, one was a partial grant and none were full denials. Of the 135 requests processed in the 2011 CFOY, 70 were full grants, 4 were partial grants and there were no full denials. Similarly, in the 2012 CFOY, the FMCS processed a total of 91 requests, of which 41 were full grants, 9 were partial grants and none were full denials. Of 75 requests processed in the 2013 CFOY, 31 were full grants, 9 were partial grants and there were no full denials. Finally, of the 136 requests the FMCS processed in 2014 CFOY, 38 were full grants, 7 were partial grants, and 4 were full denials.

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

Since the CFO's responsibility is a part-time function of the Deputy General Counsel, and since there are no other FOIA personnel, the FMCS has no employees which have, or can be, converted to the Government Information Specialist job series. This has been confirmed by the Agency's Human Resources department.

As noted above, the average response time for all cases, including those requesting expedited processing, was a mere 5.6 days; the average time for processing the 4 cases requesting expedited consideration was only one (1) day or one-tenth of the ten-day time period suggested as acceptable by the DOJ for cases requesting expedited handling. In light of this efficient processing, the small size of the Agency, the relatively few number of cases it processes, and the fact that processing is centrally controlled, the Agency does not require complex systems to operate effectively and efficiently. Hence, for example, the FMCS received only one referral and no consultation requests during 2014 CFOY, and, hence, has no need for special procedures for dealing with these situations.

The Chief FOIA Officer currently determines and prepares the appropriate response in all cases. He is training an Administrative Assistant in a supporting role but not as a prospective FOIA Officer. The FMCS uses a variety of systems to ensure effective responses including, for example, dedicated electronic filing, log in/out, request tracking and email communication with requesters. 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. In one instance, where a requester was dissatisfied with the Agency's FOIA response, mediation

services offered by OGIS at NARA were suggested. Finally, 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 Take to Increase Proactive Disclosures

Over the last ten years, the FMCS has made major additions to the information available to the public at its "Fast Track" tab and in its Reading Room located on the Agency's website under "Make Contact." Annually updated Fast Track data includes "Find a Mediator," The FMCS Institute for Conflict Management course offerings and the FMCS Annual Reports. The Reading Room information posted pursuant to Section 552(a)(2) of the FOIA, which requires an agency to make frequently requested records available, includes often 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 categories of Reading Room postings, which were established prior to the 2014 CFOY, have been successful in permitting requesters to access this information without filing formal FOIA requests, as evidenced by a year- to-year reduction of Agency FOIA requests for these data categories of more than 80% since FY 2004. No difficulty has been encountered in posting these or any other records.

As in prior years, the FMCS consolidated each Fiscal Year's 12 monthly reports of contract terminations into a single annual report in order to make the retrieval of F-7 data easier. This allows a party interested in searching data for all of FY 2013, for example, to select a single data set rather than, as previously, having to search and compile data from 12 monthly reports. However, other than the annualization of monthly data, no additional categories of information were identified by the CFO during this reporting period which, if added to Fast Track or the Reading Room, would have lessened the burden on requesters.

In order to improve the delivery of FOIA services, and although it does not otherwise highlight its proactive activity, the FMCS has added a voluntary customer feedback survey form to its Reading Room. This feature functions, *inter alia*, as a proactive device permitting requesters to indicate those types of records that should be made available in the Reading Room without a formal request. In addition, the FMCS periodically reviews its FOIA Log to determine whether any other categories of information should be added to the Reading Room pursuant to Section 552(a)(2).

IV. Steps Taken to Greater Utilize Technology

The FMCS uses a dedicated email address and an internet submission form, which is available on its website, to receive electronic requests. This capacity has been in place since FY 2009. Request processing and tracking systems consist of off-the-shelf email management, word processing and Excel spread sheets. The FMCS has engineered two of its major case tracking systems to easily retrieve records responsive to the most common types of FOIA requests it receives. FOIA requests for email records are handled through a dedicated email archiving and retrieval system. In addition, the FMCS is developing a system for sharing, storing and searching for its documents. During CFOY 2014, the FMCS continued to enhance its Excel

spreadsheet-based tracking system, including functions for its quarterly and annual data reporting.

In light of the FMCS's excellent track record of prompt and efficient FOIA processing, and the relatively small number of FOIA requests it receives, the FMCS does not believe that additional investments in technology would be beneficial or cost effective. Dedicated software to track FOIA requests is not necessary, for example, where the average time for responding to requests is only 5.6 days.

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

1. The FMCS utilizes a separate track for simple requests. On average, the Agency processed simple requests in 7.5 days during FY 2012, 3.5 days during FY 2013, 6.1 days during CFOY 2013, and 3.7 days in CFOY 2014.
2. The FMCS has had no backlogs between the close of FY 2009 and October, 2013. The Agency had no pending cases as of the close of FY 2011, two pending requests (one pending 4 days and one pending 3 days) at the end of FY 2012 and only one pending request (pending two days) as of the close of FY 2013. Pending requests in all prior FYs were closed promptly in the subsequent year. As of the close of both FYs 2011 and 2012, the FMCS had no pending appeals. The FMCS had one pending appeal at the end of FY 2013, which took 24 days, including 11 days of the U.S. Government shutdown, or 13 work days, to resolve. The FMCS was not engaged in any consultations in FYs 2012 or 2013.
3. There was no reduction in the backlog of requests or appeals in FYs 2011, 2012 or 2013, 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 FY 2009, it could not take any additional steps to reduce backlogs. Pending requests as of the end of FYs 2012 and 2013 were closed within 20 days of filing. The FMCS did not have occasion to utilize interim responses during FY 2013. However, the Agency has used interim responses on an *ad hoc* basis in several complex request cases during the 2014 CFOY.

Use of FOIA's Law Enforcement "Exclusions"

The FMCS did not invoke any law enforcement exclusions in any of its FOIA responses during CFOY 2014.

Spotlight on Success

The FMCS wishes to note two successes:

- Despite a very heavy load of recent complex cases requiring significant effort to collect and review materials, the FMCS has made an effort improve its response time on simple requests. As a result of these efforts, processing time on simple requests dropped from 6.1 days in 2013 CFOY (34 requests) to 3.7 days in 2014 CFOY (118 requests).

- The FMCS has been inundated with a substantial number of complex requests seeking voluminous quantities of data beginning in November 2013. For the first time, the Agency has utilized interim responses to facilitate requester access to this information as promptly as possible. As an example, one requester sought all travel related documents including vouchers, travel card records, expense receipts, correspondence, conference brochures, employee calendars, etc., for fourteen named executives over a two-year period. Travel vouchers, which documents were most easily retrievable, were provided in a rolling release to the requester while other more difficult to collect material was being gathered. The FMCS intends to utilize rolling releases in other pending and future cases involving requests for voluminous material as consistent with the “spirit of cooperation” sought by President Obama and a step “to improve FOIA operations and facilitate information disclosure” as stressed by Attorney General Holder.

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