

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

**2016 Chief FOIA Officer Report
Submitted By Dawn E. Starr
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Overview

The Federal Mediation and Conciliation Service (FMCS) is a small, independent agency composed of 232 employees. The FMCS has a FOIA Officer and a Chief FOIA Officer, but no other formal structure. Commensurate with its size, the FMCS received 55 FOIA requests during FY 2015, processed 57 requests to conclusion and, with 9 exceptions, closed all of these within 20 business days. The average response time for the 54 simple requests was 13 days. No requests were denied in their entirety, while information was redacted in one instance. Further, only two cases were backlogged as of the end of the reporting period and no new appeals were received.

1. Steps Taken to Apply the Presumption of Openness

FOIA Training:

During the reporting period (March 2015 to date), the Chief FOIA Officer (CFO) 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 CFO can attest to the fact that the FMCS's FOIA activities are conducted with a presumption of openness.

Due to conflicts with his other responsibilities and due to staff shortage, the CFO was unable to attend outside training such as that offered by the Office of Information Policy (OIP). However, the CFO provided substantive and continuous training to the FOIA Officer on FOIA and its processes; thus, providing training to 50% of the FOIA personnel. In addition, the CFO and the FOIA Officer were scheduled to attend the January 26-27 OIP training, but the training was cancelled due to snow. Both of them are scheduled to attend the July 12-13 OIP training "[FOIA] for Attorneys and Access Professionals."

Discretionary Releases and Other Initiatives:

During FY 2015, the FMCS had a process in place to review records for discretionary release; however, FMCS did not have the opportunity to make discretionary releases of otherwise exempt information. The FMCS will release discretionary records if it determines that there is no foreseeable harm of an interest protected by one of the statutory exemptions, and if the disclosure is not prohibited by law. Moreover, while not within the category of discretionary releases because no exemption was involved, in several cases the FMCS provided additional information to that which had been requested, which the Agency believed would be helpful to

the requestor based on the nature and scope of the inquiry. The FMCS did not undertake additional initiatives to ensure that the presumption of openness was being applied.

The FMCS's pattern of full and partial disclosures has been consistent from fiscal year to fiscal year when considered in the context of the number of cases processed each year. More importantly, a pattern virtually absent the invocation of any exemptions demonstrates the application of a presumption of openness. Thus, in the FY 2010 the Agency processed a total of 141 requests, of which 68 were full grants, one was a partial grant and none were full denials based on exemptions. Of the 111 requests processed in FY 2011, 53 were full grants, 8 were partial grants and there were no full denials based on exemptions. Similarly, in FY 2012, the FMCS processed a total of 69 requests, of which 29 were full grants, 8 were partial grants and only one was a full denial based on an exemption. Of 113 requests processed in FY 2013, 38 were full grants, 8 were partial grants and there were no full denials based on exemptions. In FY 2014, of the 137 requests the FMCS processed 38 were full grants, 7 were partial grants, and 4 were full denials. Finally, in FY 2015, of the 57 requests processed, 32 were full grants, 3 partial grants, and there were no full denials.

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

FOIA Requester Service Center:

The CFO informs requesters about the FOIA process, the handling of individual requests or the steps for resolving FOIA disputes. He has exercised discretion in several cases to telephone requesters for clarification rather than utilize a formal written clarification requests. Requesters have responded positively to this form of personalize service. Beyond this, because of low demand and because the services are robust, there has been no need to strengthen the way in which FMCS informs requesters about the FOIA process, the handling of individual requests or the steps for resolving FOIA disputes.

The FMCS notifies requesters of the mediation services offered by the Office of Government Information Services (OGIS) in any case in which the requester registers a complaint or disagreement with the outcome. No cases of this type arose during FY 2015.

Processing Procedures:

The FMCS received no requests for expedited processing and processed no such cases during FY 2015. The FMCS did not have the opportunity to send a "still interested" inquiry, but will follow the July 2, 2015, OIP guidance, including affording requesters thirty working days to respond.

Requester Services:

The FMCS notifies requesters of the mediation services offered by the Office of Government Information Services (OGIS) in any case in which the requester registers a complaint or disagreement with the outcome. No cases of this type arose during FY 2015.

Other Initiatives:

The FMCS uses a variety of systems to ensure effective and efficient 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. 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.

3. Steps Take to Increase Proactive Disclosures

Posting Material:

Since all FOIA requests are processed by the CFO, he is in a position to make a determination with respect to proactive disclosure on a case-by-case or category basis. The CFO reviews FOIA logs to determine trends in the type of information requested and to determine if the Agency has received multiple requests on the same subject. The CFO is also open to suggestions of proactive disclosure from Agency personnel outside the FOIA office, but none have been received to date. As is the case with proactive disclosures above, the CFO is in a position to identify "frequently requested" records that should be posted online.

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 FY 2014, 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%.

FMCS's FOIA staff is not involved in coding records for Section 508 compliance or otherwise preparing the records for posting. This is a function of the Information Technology (IT) Department. FMCS has not encountered challenges to posting FOIA material. For various years, FMCS has proactively disclosed the F-7 notices, which can be accessed at <http://www.fmcs.gov/resources/documents-and-data/#tab-90fea121958da1c860a> . At

conferences and meetings, the Director of Arbitration Services informs the public about the availability of the F-7 notices in the FMCS website.

4. Steps Taken to Greater Utilize Technology

Making Material Posted Online More Useful:

In FY 2015, 3 out of 4 quarterly reports were displayed at FOIA OIP. We will ensure that all quarterly reports are posted in FY 2016.

The FMCS has taken several steps to make posted information more useful to the public, particularly those who regularly access the Agency's Reading Room. First, the essential information contained in the most sought-after FMCS documents – some 22,000 notices of contract expiration and requests to bargain (F-7 notices) filed each year – is incorporated monthly on Excel spreadsheets in the Reading Room for ease of reference. This obviates the need for what otherwise would be requesters filing hundreds of FOIA requests for individual F-7s.

Second, the FMCS consolidates each Fiscal Year's 12 monthly reports of contract terminations into a single annual report in the FOIA Reading Room in order to make the retrieval of F-7 data easier. This allows a party interested in searching data for all of FY 2015, for example, to select a single FY 2015 data set rather than, as previously, having to search and compile data from 12 monthly FY 2015 reports. However, other than reducing F-7 data to Excel Spreadsheets and the annualization of monthly data, no additional categories of information were identified by the CFO during this reporting period which, if added to the Reading Room, would have lessened the burden on requesters or made the posted information more useful to them.

Third, the Agency has provided a "Requester Feedback" form in the Reading Room, which requesters are invited to use to help the Agency improve its services to requesters in the future. In order to maximize participation and encourage frankness, taking part in the survey is voluntary and responses are anonymous.

The Agency has not encountered any challenges that make it difficult to post records it otherwise would like to post.

Other Initiatives:

The Agency utilizes email whenever feasible to communicate with requesters. Unless the requester asks for production in another format, this includes responding on the merits of requests using email attachments to provide documents. Only where the production is too extensive for an email attachment will first class mail be used to transmit the documents on one or more CDs. The FMCS also uses email to confer with requesters concerning other than ultimate issues, such as ways to limit fees, and to confirm agreements reached by phone regarding, for example, modifications to an original request.

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

Simple Track:

The FMCS utilizes a separate track for simple requests. On average, the Agency processed simple requests in 12 days during FY 2015, compared with 7.3 days during FY 2014. Ninety eight percent (98%) of the requests processed in FY 2015 were simple track cases.

Backlogs:

The Agency had the same number of backlogged requests at the end of the FY 2014 and FY 2015; that is, 2 backlogged requests at the end of FY 2014 and 2 backlogged requests at the end of FY 2015. For that reason, the backlogged requests remain the same at 2, representing 3.6% of the requests. The Agency was not able to eliminate its backlog of 2 requests due to shortage of staff at the end of FY 2015 fiscal year. FMCS's appeal backlog remained at 0, since there was no backlog at the end of FY 14 or FY 15. FMCS's consultation backlog remained at 0, since there was no backlog at the close of FY 2014 and FY 2015.

Status of Ten Oldest Requests, Appeals and Consultations:

FMCS closed the 2 requests that were reported pending in its FY 2014 Annual FOIA Report. As also noted, the FMCS had no backlog of appeals or consultations at the close of FY 2014 and FY 2015.

FMCS did not face obstacles in closing its ten oldest requests, appeals or consultations from FY 2014 or FY 2015. It is important to note that FMCS did not have any pending appeals or consultations in FY 2014 or FY 2015.

FMCS did not close its 2 backlogged requests for FY 2014 or FY 2015 through withdrawal of the requests.

We are not providing any plan to close the ten oldest pending requests, appeals, or consultations because we have no pending requests, appeals or consultations.

Use of FOIA's Law Enforcement Exclusions:

The FMCS did not invoke any statutory exclusions, 5 U.S.C. §552(c)(1), (2), (3), during FY 2015.

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March 17, 2016