

**FEDERAL MEDIATION AND CONCILIATION SERVICE  
2017 CHIEF FOIA OFFICER REPORT  
SUBMITTED BY  
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AND CHIEF FOIA OFFICER**

**Section 1: Steps Taken to Apply the Presumption of Openness**

**A. FOIA Training**

The Federal Mediation and Conciliation Service (FMCS or Agency) averages about 55 Freedom of Information Act (FOIA) requests annually. This relatively small volume of requests is serviced by a staff consisting of a Deputy General Counsel, who devotes approximately 20% of his time to performing the functions of Chief FOIA Officer (CFO), and a Paralegal Specialist, who also spends about 20% of her time on FOIA matters. The CFO was on extended medical leave in 2016, during which the General Counsel and another attorney assumed some FOIA duties, but they did not regularly - and no longer - do so.

Both the CFO and the Paralegal Specialist (100% of the FOIA staff) received FOIA training last year. In July 2016, they attended a two-day course on the “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 which included the following topics, *inter alia*:

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

FMCS intends to have its FOIA staff attend at least one similar training program again this year.

**B. Outreach**

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

**C. Other Initiatives**

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.

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

### **A. Processing Procedures**

The FMCS received no requests for expedited processing in FY2016. Approximately 14 of 58 requests received in FY2016 were from commercial use requestors.

### **B. Requestor Services**

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.

No requests for the services of the Agency’s Public Liaison were received during FY2016 to date.

The FMCS maintains a comprehensive electronic FOIA reference guide which 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>.

## **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 (about 55) requests received annually. However, FMCS does have a procedure in place for identifying and providing collective bargaining notices to the parties to a contract and to government agencies upon simple request without requiring them to file a formal FOIA request. See, **Section V.F. Success Story, infra**.

The Agency does not publicize its proactive disclosures but has not encountered any particular challenge to its posting of records either. Examples of the FMCS proactively disclosing information include: (1) 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>; and (2) “Work Stoppage Data (strikes and lockouts) recorded annually, and during the past two (2) years by month, from 1984 through January 2017, which are available at <https://www.fmcs.gov.wp-content/uploads/2015/07/YourRightToFederalRecords.pdf>.

#### **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.

The FMCS successfully posted all four (4) quarterly reports during FY2016 with information appearing on FOIA.gov.

#### **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 percentage of simple requests for FY2016 was 90.3%. The average number of days for the Agency to process simple requests in FY2016 was 41. That simple requests, and all other requests for that matter, exceeded an average processing time greater than 20 days was due to the absence of the Chief FOIA Officer from work for 6 months due to illness during FY2016.

##### **B. Backlogs**

The Agency had two (2) backlogged requests as of the close of FY2015. That backlog neither increased nor decreased the following year as the backlog at the close of FY2016 was also two (2). This backlog represented three (3) percent of the total number of requests received that year. The reason for not eliminating the backlog in FY2016 was, as noted above, the six-month absence of the CFO in FY2016, during which two (2) others in the General Counsel's Office, who were not generally engaged in FOIA matters, provided FOIA coverage to the extent consistent with their other primary responsibilities.

The FMCS had no backlogged appeals as of the close of either FY2015 or FY2016.

##### **C. Status of Ten Oldest Requests, Appeals and Consultations**

The FMCS had four (4) pending perfected requests as of the close of FY2015. Three of these matters were closed before the end of FY2016, and only one (1) other pending perfected request remained open (a total of two (2)) as of the latter date. None of these cases were closed because the request was withdrawn.

The Agency had no pending appeals or consultations as of the close of FY2015 or FY2016.

### **E. Additional Information on Oldest Request**

One (1) request among the four (4) oldest pending as of the close of FY2015 remained on the oldest pending list as of the close of FY2016. This case was highly complex and required substantial follow-up with several data points within the Agency, a process that was side-tracked when the CFO was absent and other cases demanded the attention of those substituting for him. The CFO expects to respond to this request, and to have responded to all cases filed more than 20 days prior, on or before May 1, 2017.

### **F. Success Story**

A party seeking to renegotiate its expiring collective bargaining agreement must by statute give the opposite party 60 days advanced notice and give FMCS notice within 30 days thereafter. Most parties file online with FMCS using a form known as an "F-7". The filing party is not required to serve the F-7 on its opponent. The Agency extracts the information on the F-7s and enters it on a spreadsheet which is available on the FMCS website.

However, some parties who are not served, as well as government agencies, need an original F-7 document, for example, in litigation. Hence, FMCS has adopted a policy of providing F-7s to any party to that contract, or to a government agency, upon request and without requiring the requesting party to file a FOIA. Most of these requests require expedited treatment and FMCS is able to respond on either the same or the next day. In the context of litigation, which is where most of these requests arise, this policy leading to same day response prevents information requests from causing delay in the legal proceedings.