

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION
ANNUAL FOIA REPORT
FY 2006

I. BASIC INFORMATION REGARDING REPORT

- A. Name, title, address, and telephone number of person(s) to be contacted with questions about the report:

Thomas A. Stock, Executive Director
601 New Jersey Avenue N.W., Suite 9500
Washington, D.C. 20001
ph: (202) 434-9905
fx: (202) 434-9906

- B. Electronic address for report on the World Wide Web:

<http://www.fmshrc.gov>

- C. How to obtain a copy of the of the report in paper form.

Refer to A above.

II. HOW TO MAKE A FOIA REQUEST

- A. Names, addresses, and telephone numbers of all individual agency components and offices that receive FOIA requests.

Refer to I A above.

- B. Brief description of the agency's response-time ranges.

For FY 2006 the response time ranged from 0 to 45 days.

- C. Brief description of why some requests are not granted.

While the FOIA provides generally for the disclosure of records in the possession of agencies and departments of the executive branch of the U.S. Government, it also contains exemptions for nine categories of records that are specifically protected from disclosure. These exemptions protect against the disclosure of information that would harm the privacy of individuals, proprietary interests of business, functioning of the

government, and other important interests, and include information related solely to the internal personnel rules and practices of an agency, and documents related to an agency's internal deliberative processes. The Commission, like other federal agencies, may refuse to disclose an agency record that falls within any of the FOIA's nine statutory exemptions. In addition, under FOIA reporting procedures, requests for which the agency has no records are treated as requests not granted. A request for a document that does not qualify as an "agency record" may be denied. When a record contains some information that qualifies as exempt, the FOIA provides for disclosure of reasonably segregable portions of the record after deletion of the portions that are exempt.

III. DEFINITIONS OF TERMS AND ACRONYMS USED IN THE REPORT

A. Agency-specific acronyms or other terms.

Commission — Federal Mine Safety and Health Review Commission
Mine Act — Federal Mine Safety and Health Act of 1977

B. Basic terms, expressed in common terminology.

1. **FOIA/PA Request** — Freedom of Information Act/Privacy Act request. A FOIA request is generally a request for access to records concerning a third party, an organization, or a particular topic of interest. A Privacy Act request is a request for records concerning oneself; such requests are also treated as FOIA requests. (All requests for access to records, regardless of which law is cited by the requester, are included in this report.)
2. **Initial Request** — A request to a federal agency for access to records under the Freedom of Information Act.
3. **Appeal** — A request to a federal agency asking that it review at a higher administrative level a full denial or partial denial of access to records under the Freedom of Information Act, or any other FOIA determination such as a matter pertaining to fees.
4. **Processed Request or Appeal** — A request or appeal for which an agency has taken a final action on the request or the appeal in all respects.
5. **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 in each track are processed on a first-in/first-out basis. A requester who has an urgent need for records may request expedited processing (see below).

6. **Expedited Processing** — An agency will process a FOIA request on an expedited need or urgency for the records which warrants prioritization of his or her request over other requests that were made earlier.
7. **Simple Request** — A FOIA request that an agency using multi-track processing places in its fastest (non-expedited) track based on the volume and/or simplicity of records requested.
8. **Complex Request** — A FOIA request that an agency using multi-track processing places in its slower track based on the volume and/or complexity of records requested.
9. **Grant** — An agency decision to disclose all records in full in response to a FOIA request.
10. **Partial Grant** — An agency decision to disclose a record in part in response to a FOIA request, deleting information determined to be exempt under one or more of the FOIA's exemptions; or a decision to disclose some records in their entirety, but to withhold others in whole or in part.
11. **Denial** — An agency decision not to release any part of a record or records in response to a FOIA request because all the information in the requested record is determined by the agency to be exempt under one or more of the FOIA's exemptions, or for some procedural reason (such as because no record is located in response to a FOIA request).
12. **Time Limits** — The time period in the Freedom of Information Act for an agency to respond to a FOIA request (ordinarily 20 working days from proper receipt of a "perfected" FOIA request).
13. **"Perfected" Request** — A FOIA request for records which adequately describes the records sought, which has been received by the FOIA office of the agency or agency component in possession of the records, and for which there is no remaining question about the payment of applicable fees.
14. **Exemption 3 Statute** — A separate federal statute prohibiting the disclosure of a certain type of information and authorizing its withholding under FOIA subsection (b)(3).
15. **Median Number** — The middle, not average, number. For example, of 3, 7, and 14, the median number is 7.

16. **Average Number** — The number obtained by dividing the sum of a group of numbers by the quantity of numbers in the group. For example, of 3, 7, and 14, the average number is 8.

IV. EXEMPTION 3 STATUTES

A. List of Exemption 3 statutes relied on by agency during current fiscal year.

0

V. INITIAL FOIA/PA ACCESS REQUESTS

A. Numbers of initial requests.

1. Number of request pending as of end of preceding fiscal year: 0
2. Number of requests received during current fiscal year: 25
3. Number of requests processed during current fiscal year: 25
4. Number of requests pending as of end of current fiscal year: 0

B. Disposition of initial requests.

1. Number of total grants: 20
2. Number of partial grants: 1 *
**(7-year retention period expired and certain records were destroyed)*
3. Number of denials: 0

a. Number of times each FOIA exemption used (counting each exemption once per request).

- (1) Exemption 1: 0
- (2) Exemption 2: 0
- (3) Exemption 3: 0
- (4) Exemption 4: 0
- (5) Exemption 5: 0

- (6) Exemption 6: 0
- (7) Exemption 7A: 0
- (8) Exemption 7B: 0
- (9) Exemption 7C: 0
- (10) Exemption 7D: 0
- (11) Exemption 7E: 0
- (12) Exemption 7F: 0
- (13) Exemption 8: 0
- (14) Exemption 9: 0

4. Other reasons for non-disclosure (total): 5

- a. No records: 5
- b. Referrals: 0
- c. Request withdrawn: 0
- d. Fee-related reason: 0
- e. Records not reasonably described: 0
- f. Not a proper FOIA request for some other reason: 0
- g. Not an agency record: 0
- h. Duplicate request: 0
- i. Other (specify) 0

VI. APPEALS OF INITIAL DENIALS OF FOIA/PA REQUEST

A. Number of appeals.

- 1. Number of appeals received during fiscal year: 0

2. Number of appeals processed during fiscal year: 0

B. Disposition of appeals.

1. Number completely upheld: 0

2. Number partially reversed: 0

3. Number completely reversed: 0

a. Number of times each FOIA exemption used (counting each exemption once per appeal).

(1) Exemption 1: 0

(2) Exemption 2: 0

(3) Exemption 3: 0

(4) Exemption 4: 0

(5) Exemption 5: 0

(6) Exemption 6: 0

(7) Exemption 7A: 0

(8) Exemption 7B: 0

(9) Exemption 7C: 0

(10) Exemption 7D: 0

(11) Exemption 7E: 0

(12) Exemption 7F: 0

(13) Exemption 8: 0

(14) Exemption 9: 0

4. Other reasons for non-disclosure (total): 0

a. No records

- b. Referrals:
- c. Request withdrawn:
- d. Fee-related reason:
- e. Records not reasonably described:
- f. Not a proper FOIA request for some other reason:
- g. Not an agency record:
- h. Duplicate request:
- i. Other (specify):

VII. COMPLIANCE WITH TIME LIMITS/STATUS OF PENDING REQUESTS

A. Median Processing time for requests processed during the year.

- 1. Simple requests (if multiple tracks used).
 - a. Number of requests processed: 25
 - b. Median number of days to process: 7
- 2. Complex requests (specify for any and all tracks used).
 - a. Number of requests processed: 0
 - b. Median number of days to process: 0
- 3. Requests accorded expedited processing.
 - a. Number of requests processed: 0
 - b. Median number of days to process: 0

B. Status of Pending Requests

- 1. Number of requests pending as of end of current fiscal year: 0
- 2. Median number of days that such requests were pending as of that date: 0

VIII. COMPARISONS WITH PREVIOUS YEAR(S) (OPTIONAL)

- A. Comparison of numbers of requests received:
- B. Comparison of numbers of requests processed:
- C. Comparison of median numbers of days requests were pending as of end of fiscal year:
- D. Other statistics significant to agency: The Commission did not receive any requests for expedited processing.
- E. Other narrative statements describing agency efforts to improve timeliness of FOIA performance and to make records available to the public (e.g., backlog-reduction efforts; specification of average number of hours per processed request; training activities; public availability of new categories of records):

IX. COSTS/FOIA STAFFING

- A. Staffing levels.
 - 1. Number of full-time FOIA personnel: 0
 - 2. Number of personnel with part-time or occasional FOIA duties (in total work-years): 1
 - 3. Total number of personnel (in work-years): 1
- B. Total costs (including staff and all resources).
 - 1. FOIA processing (including appeals): \$2,961.42
 - 2. Litigation-related activities (estimated): 0
 - 3. Total costs: \$2,961.42
 - 4. Comparison with previous year(s) (including percentage of change) (optional):
- C. Statement of additional resources needed for FOIA compliance (optional):

X. FEES

- A. Total amount of fees collected by agency for processing requests: \$282.75

B. Percentage of total costs: 9.5%

XI. FOIA REGULATIONS (Including Fee Schedule)

The Commission's FOIA regulations are available on its website <http://www.fmshrc.gov>.

XII. Report on FOIA Executive Order Implementation

A. Description of supplementation/modification of agency improvement plan (if applicable)

Not applicable. (FMSHRC has determined that it will undertake a comprehensive review of its FOIA regulations and procedures beginning later in 2007 and anticipates that it will be making revisions to those regulations and procedures. Accordingly, FMSHRC plans to supplement its improvement plan by August 1, 2007.)

B. Report on agency implementation of its plan, including its performance in meeting milestones, with respect to each improvement area.

Pursuant to the requirements of Executive Order No. 13,392, FMSHRC developed a FOIA Improvement Plan, which was submitted in June 2006. In developing its plan, FMSHRC reviewed its FOIA program for the areas of potential improvement identified in the Executive Order. Based on its review, FMSHRC determined that the improvement areas for its plan would be: (1) improved customer service and (2) website improvements.

With regard to improved customer service, FMSHRC's goal was to provide training and orientation to its program staff to ensure that FOIA staff provides continued professional delivery of customer service. To reach this goal, FMSHRC determined that it would issue revised written instructions to its staff on procedures for control, information gathering, and response to FOIA requests. The target completion date was December 31, 2006. Although FMSHRC has made continuing efforts to ensure that FOIA requests continue to be handled professionally and expeditiously, it was not able to issue revised written instructions by the target date. (See Point C, below)

With regard to website improvement, FMSHRC sought to improve its website in order to continue to provide historical and current information on its mission responsibilities, thus lessening the need for FOIA requests. FMSHRC determined that it would take the following steps: (1) document and refine the process of decisional website postings; (2) document and refine the process of audio website postings of meetings and oral arguments; (3) document and review procedures for deleting obsolete website material; (4) examine ways to increase the historical

database of FMSHRC decisions; and (5) explore economical methods of using website decisional postings as citable references.

FMSHRC has made substantial progress in carrying out its website improvement initiatives. The process of posting decisions and other important information on the website has been reviewed and streamlined, and the Commission's FOIA Public Liaison Officer is now also the direct contact with the webmaster. A designated Commission staff member now directly feeds the audio of meetings and oral arguments to the webmaster for posting on the FMSHRC website, and such audio postings are being made shortly after the meetings and oral arguments – in some cases on the same day as the proceeding. The process for detecting and removing obsolete material from the website has been reviewed and improved, and one staff attorney has been assigned the responsibility for checking the website on a regular basis to determine if materials are obsolete and should be removed or modified. FMSHRC is also in the process of ascertaining whether there is an efficient and economical means of using decisional postings as citable references.

C. Identification and discussion of any deficiency in meeting plan milestones (if applicable)

FMSHRC was not able to issue revised written instructions to its staff on procedures for control, information gathering, and response to FOIA requests by the target completion date of December 31, 2006. An initial review of the Commission's FOIA regulations, guidelines, and internal procedures in connection with issuing the written instructions revealed that certain problems in those regulations, guidelines, and procedures needed to be addressed before workable and effective instructions could be issued. Accordingly, the Commission has determined that it should undertake a comprehensive review of its FOIA regulations, guidelines, and procedures and engage in rulemaking to eliminate potential problems and streamline its procedures. Because FMSHRC had to undertake expedited rulemaking to implement key provisions of the MINER Act, which was enacted in June 2006, it was unable to also undertake rulemaking to address its FOIA regulations during the same general time frame. (Rulemaking to implement the MINER Act was completed in January 2007.) FMSHRC intends to modify its FOIA Implementation Plan by August 1, 2007, to establish milestones for proposing revised FOIA regulations. At the same time, it will establish target dates for promulgating final revised regulations and issuing written instructions to assist in implementing those revised regulations.

D. Additional narrative statement regarding other executive order-related activities (optional)

Not applicable.

E. Concise descriptions of FOIA exemptions

The nine FOIA exemptions authorize federal agencies to withhold information covering: (1) classified national defense and foreign relations information; (2) internal agency rules and practices; (3) information that is prohibited from disclosure by another federal law; (4) trade secrets and other confidential business information; (5) inter-agency or intra-agency communications that are protected by legal privileges; (6) information involving matters of personal privacy; (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; (8) information relating to the supervision of financial institutions; and (9) geological information on wells.

F. Additional statistics

1. Time range of requests pending, by date of request (or, where applicable, by date of referral from another agency)

December 13, 2006 to January 12, 2007

2. Time range of consultations pending with other agencies, by date of initial interagency communication

Not applicable.

G. Attachment: Agency improvement plan (in current form)

<http://www.fmshrc.gov/foia/foiaimproveplan.pdf>
