

Federal Maritime Commission

2011 Chief FOIA Officer Report

I. Steps Taken to Apply the Presumption of Openness

1. Describe the steps your agency has taken to ensure that the presumption of openness is being applied to all decisions involving the FOIA. To do so, you should answer the questions listed below and then include any additional information you would like to describe how your agency is working to apply the presumption of openness.

a. Describe how the President's FOIA Memorandum and the Attorney General's FOIA Guidelines have been publicized throughout your agency.

All Federal Maritime Commission (Commission or FMC) employees positioned in the Office of the Secretary (OS) responsible for processing FOIA requests have received a copy of the President's FOIA Memorandum and the Attorney General's FOIA Guidelines. These documents have been shared with the Commission's senior managers including staff in the Commission's Office of the General Counsel who work closely with the OS in processing FOIA requests. While the Commission has long maintained the position of openness and disclosure to the fullest extent possible when responding to FOIA requests, the President's message and the AG's guidelines are regularly discussed and referred to among the FOIA processing staff to ensure that the presumption of openness is being applied. In addition, the Commission's Chief FOIA Officer discussed with senior managers and other Commission staff, the principles outlined in the President's FOIA memorandum and the AG's FOIA guidelines – specifically pointing out the shift to a more open government and disclosure of information that may have been protected from disclosure in the past, even if an exemption correctly applied. These ongoing discussions have been key to further promoting a culture of more openness and disclosure to the fullest extent possible.

b. What training has been attended and/or conducted on the new FOIA Guidelines?

In 2010 all Commission employees responsible for processing FOIA requests attended FOIA training that encompassed the new FOIA guidelines. This included DOJ conducted refresher training for the Chief FOIA Officer, Assistant Secretary, and one new OS staff member. The Chief FOIA Officer also attended Treasury's week-long 2010 Records and Information Management Month Conference and the Federal CIO Council Privacy Committee's 2010 Federal Privacy Summit. The OS also received on site training from Department of Justice (DOJ) staff concerning several Agency specific documents and proper application of FOIA.

c. How has your agency created or modified your internal guidance to reflect the presumption of openness?

In addition to ongoing emphasis on a presumption of openness in discussions and decisions made when processing FOIA requests, language has been added to our internal agency email used to request a search and production of documents responsive to a FOIA. The new language specifically states that all responsive documents are to be provided to the Office of the Secretary for review and final determination for release. Based on the onsite DOJ staff training noted above, internal Standard Operating Procedures and guidance for FOIA professionals was updated. Additionally, the Commission's Secretary (Chief FOIA Officer) or the Assistant Secretary personally reviews all FOIA responses to ensure that the presumption of openness is fully applied.

d. To what extent has your agency made discretionary releases of otherwise exempt information?

During FY 2010, the Commission processed all FOIA requests with an eye towards disclosure whenever possible, balancing the application of an exemption against harm of disclosure. Examples of discretionary releases made by the Commission in the course of processing FOIA requests during FY 2010, included release of private phone lines of Commission employees and internal checklists for an agency licensing program.

e. What exemptions would have covered the information that was released as a matter of discretion?

Exemptions 2 and 5 would have applied to these documents.

f. How does your agency review records to determine whether discretionary releases are possible?

Since the Commission's approach to processing FOIA requests has historically been with an eye towards openness and disclosure to the fullest extent possible, our overall process for reviewing documents responsive to FOIA requests has not significantly changed. The Chief FOIA Officer or the Assistant Secretary works closely with the FOIA professional and reviews all responses to FOIA requests to ensure discretionary release whenever possible. However, notably, during the fiscal year, we formed a team including staff members from the General Counsel, OS, and the Chief FOIA Officer to collectively process documents collected in response to a FOIA request. We found this review and discussion process very effective, particularly where issues of discretionary disclosure were concerned. It helped us collectively develop a better understanding and agreement on the parameters for discretionary release.

g. Describe any other initiatives undertaken by your agency to ensure that the presumption of openness is being applied.

The Commission has in place a policy to administer all FOIA requests with a clear presumption in favor of disclosure. This message is constantly reinforced by outreach and communication of same by the FOIA staff when working with other agency components.

2. Report the extent to which the numbers of requests where records have been released in full and the numbers of requests where records have been released in part has changed from those numbers as reported in your previous year's Annual FOIA Report.

The total number of FOIAs released in full during FY 2009 was five (5) while the total number of FOIAs released in full during FY 2010 was fifteen (15). The total number of FOIAs released in part during FY 2009 was four (4) while the total number of FOIAs released in part during FY 2010 was one (1). While the number of FOIA requests processed in this category, i.e., records "released in full" was greater in FY 2010 compared to FY 2009, the Commission has a long history of processing and responding to all FOIA requests with a presumption of openness and disclosure whenever possible under FOIA. The increase in the number of FOIAs "released in full" is reflective of the improvements we have made in training new staff, streamlining processes, and collaborating with our legal office – all of which has helped reduce our average FOIA processing time.

II. Steps Taken to ensure that Your Agency has an Effective System in Place for Responding to Requests

Describe here the steps your agency has taken to ensure that your system for responding to requests is effective and efficient. This section should include a discussion of how your agency has addressed the key roles played by the broad spectrum of agency personnel who work with FOIA professionals in responding to requests, including, in particular, steps taken to ensure that FOIA professionals have sufficient IT support. To do so, answer the questions below and then include any additional information that you would like to describe how your agency ensures that your FOIA system is efficient and effective.

a. Do FOIA professionals within your agency have sufficient IT support?

The FMC FOIA professional works with the IT Office when necessary to respond to specific FOIA requests requiring IT support.

b. Describe how your agency's FOIA professionals interact with your Open Government Team.

The Commission's Chief FOIA Officer is a member of the Open Government Team and works together with the Commission's IT staff and Office of the Managing Director staff on initiatives and issues as appropriate.

c. Describe the steps your agency has taken to assess whether adequate staffing is being devoted to responding to FOIA requests.

The FMC is a small agency with less than 125 employees. Limited budget and staff resources require the Commission to creatively devote resources to FOIA as needed. As noted above, during the fiscal year a team was formed including staff members from the General Counsel, OS, and the Chief FOIA Officer to process a particularly large number of documents collected in response to a complicated FOIA request.

d. Describe any other steps your agency has undertaken to ensure that your FOIA system operates efficiently and effectively.

Procedures are in place and reviewed on a regular basis and updated as needed to continuously improve efficiency and effectiveness.

III. Steps Taken To Increase Proactive Disclosures

Describe here the steps your agency has taken to increase the amount of material that is available on your agency website, including providing examples of proactive disclosures that have been made since issuance of the new FOIA Guidelines. In doing so, answer the questions listed below and describe any additional steps taken by your agency to make proactive disclosures of information.

a. Has your agency added new material to your agency website since last year?

Yes.

b. What types of records have been posted?

In the past year numerous documents have been added to the Commission's website. The OS maintains an Electronic Reading Room where key filings and issuances in all docketed proceedings before Administrative Law Judges or the Commission are posted. These logs are updated on a daily basis. As well, this year, several topic specific pages were added to the website for ease of public access to important information. These include pages concerning marine environmental issues, the Shanghai Shipping Exchange, U.S. Export and Import Capacity and Equipment Issues and the Deepwater Horizon incident. In the past year, several new proceedings were started by the Commission with significant public impact or public input sought. Each of these was added to the website with high visibility. Also of significance, the Commission posted digitized copies of each of the Commission's Annual Reports to Congress dating back to 1917.

c. Give examples of the types of records your agency now posts that used to be available only by making a FOIA request for them.

A review of requests for documents filed under FOIA received by the Commission showed that many FOIA filers had requested information under FOIA that was already available on the Commission's website – that is, a FOIA request was not necessary to obtain the information. To address this issue, during the Commission's website platform upgrade project, conducted during the fiscal year, the Commission added a more user-friendly feature that allows the public to more easily receive prompt feedback on questions they may have or information they may be looking for, but are not be able to locate. Further enhancements are expected in the next phase of the Commission's website upgrade.

d. What system do you have in place to routinely identify records that are appropriate for posting?

Because the Commission is a small agency, the OS is well aware of all new staff work products and undertakings. We operate with a presumption that anything that will be issued or available to the public will be posted on our website as well. As described above, all Commission formal proceedings are logged on the website and a significant volume of information is readily available without request.

e. How do you utilize social media in disseminating information?

As part of the Commission's website platform upgrade completed during the fiscal year, the ability to support RSS (real simple syndication) was included in the upgrade. The Commission is now using this technology to disseminate all news releases, alerts, Chairman and Commissioner speeches, and all information posted to Commissioners' webpages.

f. Describe any other steps taken to increase proactive disclosures at your agency.

N/A

IV. Steps Taken To Greater Utilize Technology

A key component of the President's FOIA Memorandum was the direction to "use modern technology to inform citizens about what is known and done by their Government." In addition to using the internet to make proactive disclosures, agencies should also be exploring ways to utilize technology in responding to requests. In 2010 agencies reported widespread use of technology in handling FOIA requests. For this section of your Chief FOIA Officer Report for 2011, please answer the following more targeted questions:

1. Electronic receipt of FOIA requests:

a. What proportion of the components within your agency which receive FOIA requests have the capability to receive such requests electronically?

The FMC has the capability to receive all FOIA requests electronically.

b. To what extent have you increased the number of components doing so since the filing of your last Chief FOIA Officer Report?

All FOIA requests are received and processed by the OS.

c. What methods does your agency use to receive requests electronically?

The Commission provides public access on its website to its FOIA email box FOIA@fmc.gov, for receipt of FOIA requests. This email box is monitored by OS staff daily.

2. Electronic tracking of FOIA requests:

a. What proportion of components within your agency which receive FOIA requests have the capability to track such requests electronically?

All FOIA requests are received and processed by the OS, and are logged and tracked using tables organized by fiscal year.

b. To what extent have you increased the number of components doing so since the filing of your last Chief FOIA Officer Report?

N/A

c. What methods does your agency use to track requests electronically?

The Commission uses tables to log and track FOIA request by fiscal year.

3. Electronic processing of FOIA requests:

a. What proportion of components within your agency which receive FOIA requests have the capability to process such requests electronically?

All FOIA requests are received and processed by the OS and to the extent possible, electronic processing is used, i.e., FOIA requests can be received electronically via email; forwarded via email to appropriate agency components for document search; once responsive documents are received by the FOIA professional for processing, depending on the volume and nature of the documents, documents are digitized, reviewed and redacted electronically; and the outgoing FOIA response, as well as responsive documents can be sent via email.

b. To what extent have you increased the number of components doing so since the filing of your last Chief FOIA Officer Report?

Please see response to 3.a. above.

c. What methods does your agency use to process requests electronically?

Historically the review and redacting of responsive documents was done manually. Given the relatively low number of FOIA requests received annually, this was adequate to meet our needs and the automated skill levels of previous FOIA professionals. However, during this past fiscal year, the Commission saw an increase in the number and complexity of certain FOIA requests. To address this challenge and further automate our FOIA processes, the Commission used electronic document scanning and commercial off-the-shelf software to assist FOIA professionals in reviewing and redacting responsive documents electronically.

4. Electronic preparation of your Annual FOIA Report:

a. What type of technology does your agency use to prepare your agency Annual FOIA Report, i.e., specify whether the technology is FOIA-specific or a generic data-processing system?

Other than the technology mentioned above to receive, log/track, and process FOIA requests, the Commission does not use a specific technology to prepare its Annual FOIA Report.

b. If you are not satisfied with your existing system to prepare your Annual FOIA Report, describe the steps you have taken to increase your use of technology for next year.

Currently, the Commission does not receive the volume of FOIA requests to justify the cost of specialized software to prepare its Annual FOIA Report. Additionally, the Commission does not have the employee resources to develop technology to electronically prepare the Annual FOIA report.

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

Improvements to timeliness in responding to pending FOIA requests and reductions in backlogs are both ongoing agency efforts. The President and the Attorney General have emphasized the importance of improving timeliness in responding to requests. Section XII of your Annual FOIA Report includes figures that show your agency's backlog of pending requests and administrative appeals for the past two fiscal years. You should refer to those numbers when completing this section of your Chief FOIA Officer Report. In this section you should address the following elements.

1. If your agency has a backlog, report here whether that backlog is decreasing. That reduction should be measured in two ways. First, report whether the number of backlogged requests and backlogged administrative appeals that remain pending at the end of the fiscal year decreased or increased, and by how many, when compared with last fiscal year. Second, report whether your agency closed in Fiscal Year 2010 the ten oldest of those pending requests and appeals from Fiscal Year 2009, and if not, report how many of them your agency did close.

Our backlog number rose slightly from twelve (12) in FY 2009 to fifteen (15) in FY 2010. However, during the past two years requests received increased in number and complexity. In FY 2010 the Commission closed seven (7) of the ten oldest pending requests from FY 2009. Since the FY 2010 Annual FOIA report, an additional request has been closed. Two (2) of the ten oldest pending requests from FY 2009 remain open. There was one appeal pending from Fiscal Year 2009 that was closed in Fiscal Year 2010.

2. If there has not been a reduction in the backlog as measured by either of these metrics, describe why that has occurred. In doing so, answer the following questions and then include any other additional explanation:

a. Is the backlog increase a result of an increase in the number of incoming requests or appeals?

Yes. The Commission witnessed a significant increase in FOIAs received during the past two years and it appears that this trend will continue.

b. Is the backlog increase caused by a loss of staff?

In part, the backlog increase was caused by loss of staff. An administrative staff member responsible for the administrative processing and tracking of FOIA requests was detailed to another Commission Office. These duties were reassigned to the FOIA professional along with her higher level FOIA processing duties. In addition, the workload of the OS increased in many areas unrelated to FOIA, and the FOIA workload increased substantially as noted above. The Chief FOIA Officer and the FOIA Public Liaison duties are collateral to many other duties in the office.

c. Is the backlog increase caused by an increase in the complexity of the requests received?

Yes.

d. What other causes, if any, contributed to the increase in backlog?

N/A

3. Describe the steps your agency is taking to reduce any backlogs and to improve timeliness in responding to requests and administrative appeals. In doing so answer the following questions and then also include any other steps being taken to improve timeliness.

a. Does your agency routinely set goals and monitor the progress of your FOIA caseload?

Yes. The Office of the Secretary has staff meetings where caseload and priorities are discussed.

b. Has your agency increased its FOIA staffing?

No.

c. Has your agency made IT improvements to increase timeliness?

The FOIA caseload continues to be small enough not to necessitate IT improvements at this time.

d. Has your agency Chief FOIA Officer been involved in overseeing your agency's capacity to process requests?

Yes. The Chief FOIA Officer is actively involved in the FOIA process.

Spotlight on Success

Out of all the activities undertaken by your agency in this last year to increase transparency, describe here one success story that you would like to highlight as emblematic of your efforts.

On September 30, 2010, the Commission upgraded its website operating platform, the first of two major phases in the Commission's website upgrade and redesign process. These upgrades will provide more transparency and public access and input for the Commission's activities, information, and services. While many of the improvements to the upgraded platform will run in the background, some of the immediately noticeable front-end benefits to the public include:

- Improved online visibility of the Commission's website, making it easier for the public to locate and use Commission resources and services;
- Better organization of current information to improve transparency and access;
- Enhanced website search capabilities, particularly within the Electronic Reading Room;
- Improved communication capabilities through RSS feeds and streaming video; and
- Front-end graphic enhancements – wider pages and crisp graphics.