

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

Office of the General Counsel

**2011 Chief FOIA Officer Report to the Department of Justice
Pursuant to the Attorney General's FOIA Guidelines**

Overview

The Federal Mediation and Conciliation Service is a small, independent Agency composed of 237 employees. Commensurate with its size, the FMCS received 142 FOIA requests in FY 2010, and processed to conclusion 141 of these requests, 140 of which were closed within 20 business days. Only one of these requests was denied in whole or in part, and none were backlogged as of the end of the fiscal year. Further, the number of appeals received and processed was limited to a single matter and the processing time was a mere 10 days.

The FMCS has a FOIA Officer and a Chief FOIA Officer, but no other formal FOIA structure. Under these circumstances, the vast majority of the AG's FOIA guidelines either are not applicable to an agency of this size or have been implemented previously.

I. Steps Taken to Apply the Presumption of Openness

1. The FMCS applies the presumption of openness to all FOIA requests which it receives. Even where the information sought is specifically exempt under FOIA, the Agency may balance the need for disclosure against the interest protected by the exemption and determine that disclosure is appropriate in the interest of openness. In one such case, where the requestor sought all documents submitted by the successful applicant for a position with the Agency, entire documents were deemed covered by Privacy Exemption 6 to the FOIA. Nevertheless, FMCS produced those documents after carefully reviewing and redacting only those specific words and phrases minimally necessary to protect the privacy of the applicant and others, such as references, named in the records.

Moreover, in the interest of openness, the FMCS has responded to questions directed to the Agency – which it had no obligation to answer under FOIA – as if a proper FOIA request had been made. For example, the Agency received a letter asking whether it had received the statutory notice, regarding a particular hospital, required to be filed with the FMCS 10 days before the strike of a healthcare institution can commence. The FMCS treated the inquiry as a FOIA request and, as a matter of discretion, disclosed the responsive document.

Finally, in furtherance of its efforts to promote openness in the application of FOIA, a FOIA Officer attended two training sessions conducted by DOJ's Office of Information Policy: A "Chief FOIA Officer's Conference" on June 30, 2010, and a "Refresher Training on Guidelines for Preparation of Annual FOIA Reports" on October 12, 2010. Since FOIA issues

are only considered by a single FOIA Officer and a Chief FOIA Officer, publication of the AG's Guidelines and training beyond these individuals were deemed unnecessary.

2. Since the FMCS has applied an "openness" standard prior to the issuance of the 2009 Guidelines, the number of releases in whole or in part shows no substantial variation on the merits of the requests in FY 2010, compared to previous years. For example, of 91 requests received in FY 2008, 62 or 68% were granted in full and 2 or 2% were granted in part. Similarly, in FY 2009, of 130 requests received, 83 or 64% were granted in full and 5 or 4% were granted in part. In FY 2010, of 142 requests received, 68 or 48% were granted in full and one or 1% was granted in part. However, this downturn in the percentage of FY 2010 requests granted was attributable to factors other than denials, such as the absence of records, withdrawals and duplicate requests.

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

Since the FMCS is a small agency, the number of FOIA requests it processes are few and, because they are centrally processed, the Agency does not require complex systems to operate effectively and efficiently. The same FOIA Officer processes all FOIA requests. The Chief FOIA Officer reviews and/or determines the appropriate response in about one-half the cases. The FMCS uses a variety of systems to ensure efficiency and effectiveness including, for example, dedicated electronic filing, log in/out, and request tracking. Three IT personnel have been specially designated to provide information support: one is dedicated to records retrieval, another to technical support and a third to website posting.

III. Steps Taken to Increase Proactive Disclosures

Beginning in FY 2005, the FMCS has made major additions to the information available to the public in its "reading room" located on the Agency's website. This includes frequently sought data concerning, among other things, notices of contract termination, arbitration data, and beginning and ending work stoppages reports. This data is updated on a monthly basis. These new categories of reading room postings, which were completed prior to FY 2010, have resulted in a reduction of Agency FOIA requests of more than 65% since FY 2004. In addition, in order to improve the delivery of FOIA services, the FMCS added a voluntary customer feedback survey form to its reading room prior to FY 2010. However, no additional categories of information were identified during FY 2010 which, if added to the reading room, would have further reduced FOIA requests to the Agency.

IV. Steps Taken to Greater Utilize Technology

- 1.a. The FMCS has the capability to receive all requests electronically.
- 1.b. The FMCS has had this capability since prior to 2009.
- 1.c. The FMCS uses a dedicated email address, which is available on the Agency's website, to receive requests electronically.
- 2.a. The FMCS has the capacity to track all requests electronically.
- 2.b. The FMCS has had this capacity since prior to 2009.

- 2.c. The FMCS uses off-the-shelf email management and word processing to track requests electronically.
- 3.a. The FMCS has the capacity to process all requests electronically.
- 3.b. The FMCS has had this capacity since prior to 2009.
- 3.c. The FMCS uses off-the-shelf email management, word processing and spread sheets to process requests electronically.
- 4.a. The FMCS uses both generic technology (off-the-shelf word processing and spread sheets) and FOIA-specific technology (.XLT and .XML -- templates made available by DOJ) to prepare its Annual FOIA Reports.
- 4.b. The FMCS has not increased the use of technology in anticipation of preparing its Annual Report for next year. To the contrary, the Agency believes the method of reporting should be simplified for small agencies such as FMCS.

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

For the second year in a row, the FMCS had no backlogged requests and no backlogged administrative appeals in FY 2010.

The Chief FOIA Officer and FOIA Officer monitor the FOIA caseload and verify the Agency's capacity to timely process requests on an on-going basis. Based on the FMCS's FY 2010 FOIA performance, they determined that there was no need to increase FOIA staff or improve IT support.

Spotlight on Success

The FMCS's success story lies, not so much in the way it has processed any particular FOIA request during FY 2010, as it does in the journeyman-like, no-backlog manner it has processed the totality of requests and appeals it has received, year after year after year. Thus, for FY 2010, the FMCS processed 141 requests, 40 of which were expedited, none of which was pending at year end, and only one of which was denied in part. The sole appeal filed was processed within 10 days. Similarly, for FY 2009, the Agency processed 133 requests, 35 on an expedited basis, with no backlogged cases. The FMCS limited denials to 3 partials. One appeal was filed and processed within 13 days.

During the previous three years FY 2006-FY 2008, there were only two backlogged requests out of 320 received, and only one of those requests was denied. Two appeals were filed and both were granted in full. These statistics demonstrate the FMCS's "commitment to the principles embodied in FOIA," as urged by President Obama, and serve as a positive response to Attorney General Holder's challenge to each agency to reaffirm its "fundamental commitment to open government."

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