FMCS 2009 FOIA Annual Report

I.   BASIC INFORMATION REGARDING REPORT

1.   Mery Skolochenko

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      Federal Mediation and Conciliation Service
      2100 K Street, N.W.
      Washington, D.C. 20427
      Tel. No. (202) 606-5444

2.   www.fmcs.gov/foia/foia.htm

3.   Send a written request to:

      Federal Mediation and Conciliation Service
      Office of the General Counsel
      2100 K Street, N.W.
      Washington, D.C. 20427

II.   MAKING A FOIA REQUEST

1.   FOIA requests should be sent to: Federal Mediation and Conciliation Service, Office of the General Counsel, 2100 K Street, N.W., Washington, D.C., 20427. The telephone number for the Office of General Counsel is (202) 606-5444. The formal rules for the making of FOIA requests to the Federal Mediation and Conciliation Service are set forth in Chapter 12 of Volume 29 of the Code of Federal Regulations. This multiple-volume set is available in all law libraries and federal depository libraries. These regulations also can be accessed at **www.fmcs.gov/foia/foia.htm** on the World Wide Web.

2.   The FMCS' primary responsibility is to mediate collective bargaining negotiations and to otherwise assist in the development of improved workplace relations.

Under Section 8(d)(1) of the National Labor Relations Act, 29 U.S.C. § 158(d)(1), employers or the representatives of their employees, who are covered by a collective bargaining agreement, must provide written notice to the other party 60 days prior to the expiration date of a proposed termination or modification of the agreement. Section 8(d)(3) of the National Labor Relations Act requires the party providing notice to also notify the FMCS of the upcoming contract expiration by filing a Notice to Mediation Agencies (F-7 form) in order to provide FMCS with a timely opportunity to proffer its mediation services.

The great majority of inquiries to FMCS under the Freedom of Information Act (FOIA) are requests for copies of the Notices to Mediation Agencies or for Work Stoppages information.

FMCS' denial of requests under FOIA as based on Exemption 6, involving matters of personal privacy, and Exemptions 4 and 5 pertaining to the mediator privilege.

III.   ACRONYMS, DEFINITIONS, AND EXEMPTIONS

1.   FMCS used for the Federal Mediation and Conciliation Service.

2.   Tterms used in this Report:

a.   **Administrative Appeal** – a request to a federal agency asking that it review at a higher administrative level a FOIA determination made by the agency at the initial request level.

b.   **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.

c.   **Backlog** – the number of requests or administrative appeals that are pending at an agency at the end of the fiscal year that are beyond the statutory time period for a response.

d.   **Component** – for agencies that process requests on a decentralized basis, a "component" is an entity, also sometimes referred to as an Office, Division, Bureau, Center, or Directorate, within the agency that processes FOIA requests. The FOIA now requires that agencies include in their Annual FOIA Report data for both the agency overall and for each principal component of the agency.

e. **Consultation** – the procedure whereby the agency responding to a FOIA request first forwards a record to another agency for its review because that other agency has an interest in the document. Once the agency in receipt of the consultation finishes its review of the record, it responds back to the agency that forwarded it. That agency, in turn, will then respond to the FOIA requester.

f. **Exemption 3 Statute** – a federal statute that exempts information from disclosure and which the agency relies on to withhold information under subsection (b)(3) of the FOIA.

g. **FOIA Request** – a FOIA request is generally a request to a federal agency for access to records concerning another person (i.e., a "third-party" request), or concerning an organization, or a particular topic of interest. FOIA requests also include requests made by requesters seeking records concerning themselves (i.e., "first-party" requests) when those requesters are not subject to the Privacy Act, such as non-U.S. citizens. Moreover, because all first-party requesters should be afforded the benefit of both the access provisions of the FOIA as well as those of the Privacy Act, FOIA requests also include any first-party requests where an agency determines that it must search beyond its Privacy Act "systems of records" or where a Privacy Act exemption applies, and the agency looks to FOIA to afford the greatest possible access. All requests which require the agency to utilize the FOIA in responding to the requester are included in this Report.

Additionally, a FOIA request includes records referred to the agency for processing and direct response to the requester. It does not, however, include records for which the agency has received a consultation from another agency. (Consultations are reported separately in Section XII of this Report.)

h. **Full Grant** – an agency decision to disclose all records in full in response to a FOIA request.

i. **Full Denial** – an agency decision not to release any records in response to a FOIA request because the records are exempt in their entireties under one or more of the FOIA exemptions, or because of a procedural reason, such as when no records could be located.

j. **Median Number** – the middle, not average, number. For example, of 3, 7, and 14, the median number is 7.

k. **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 granted expedited processing are placed in yet another track. Requests in each track are processed on a first in/first out basis.

i. **Expedited Processing** – an agency will process a FOIA request on an expedited basis when a requester satisfies the requirements for expedited processing as set forth in the statute and in agency regulations.

ii. **Simple Request** – a FOIA request that an agency using multi-track processing places in its fastest (non-expedited) track based on the low volume and/or simplicity of the records requested.

iii. **Complex Request** – a FOIA request that an agency using multi-track processing places in a slower track based on the high volume and/or complexity of the records requested.

l. **Partial Grant/Partial Denial** – in response to a FOIA request, an agency decision to disclose portions of the records and to withhold other portions that are exempt under the FOIA, or to otherwise deny a portion of the request for a procedural reason.

m. **Pending Request or Pending Administrative Appeal** – a request or administrative appeal for which an agency has not taken final action in all respects.

n. **Perfected Request** – a request for records which reasonably describes such records and is made in accordance with published rules stating the time, place, fees (if any) and procedures to be followed.

o. **Processed Request or Processed Administrative Appeal** – a request or administrative appeal for which an agency has taken final action in all respects.

p. **Range in Number of Days** – the lowest and highest number of days to process requests or administrative appeals.

q. **Time Limits** – the time period in the statute for an agency to respond to a FOIA request (ordinarily twenty working days from receipt of a perfected FOIA request).

3. Include the following concise descriptions of the nine FOIA exemptions:

a. **Exemption 1**: classified national defense and foreign relations information

b. **Exemption 2**: internal agency rules and practices

c. **Exemption 3**: information that is prohibited from disclosure by another federal law

d. **Exemption 4**: trade secrets and other confidential business information

e. **Exemption 5**: inter-agency or intra-agency communications that are protected by legal privileges

f. **Exemption 6**: information involving matters of personal privacy

g. **Exemption 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

h. **Exemption 8**: information relating to the supervision of financial institutions

i. **Exemption 9**: geological information on wells

IV. EXEMPTION 3 STATUTES

A. Exemption 3 Statutes Relied upon to Withhold Information

Statute	Type of Information Withheld	Case Citation	Number of Times Relied upon per Component	Total Number of Times Relied upon by Agency
N/A	N/A	N/A	N/A	N/A

V. FOIA REQUESTS

A. Received, Processed and Pending FOIA Requests

	Number of Requests Pending as of Start of Fiscal Year	Number of Requests Received in Fiscal Year	Number of Requests Processed in Fiscal Year	Number of Requests Pending as of End of Fiscal Year
	3	130	133	0
AGENCY OVERALL	3	130	133	0

B. Disposition of FOIA Requests – All Processed Requests

	Number of Full Grants	Number of Partial Grants/ Partial Denials	Number of Full Denials Based on Exemptions	Number of Full Denials Based on Reasons Other than Exemptions									
				No Records	All Records Referred to Another Component or Agency	Request Withdrawn	Fee-Related Reason	Records not Reasonably Described	Improper FOIA Request for Other Reason	Not Agency Record	Duplicate Request	Other *Explain in chart below	TOTAL
	83	5	0	33	0	0	5	0	0	7	0	0	133
AGENCY OVERALL	83	5	0	33	0	0	5	0	0	7	0	0	133

B. (2) Disposition of FOIA Requests – "Other" Reasons for "Full Denials Based on Reasons Other than Exemptions" from Section V, B (1) Chart

Component	Description of "Other" Reasons for Denials from Chart B (1) & Number of Times Those Reasons Were Relied upon	TOTAL
N/A	Description #	N/A

B. (3) Disposition of FOIA Requests – Number of Times Exemptions Applied

	Ex. 1	Ex. 2	Ex. 3	Ex. 4	Ex. 5	Ex. 6	Ex. 7(A)	Ex. 7(B)	Ex. 7(C)	Ex. 7(D)	Ex. 7(E)	Ex. 7(F)	Ex. 8	Ex. 9
	0	0	0	2	2	2	0	0	0	0	0	0	0	0
AGENCY OVERALL	0	0	0	2	2	2	0	0	0	0	0	0	0	0

VI. ADMINISTRATIVE APPEALS OF INITIAL DETERMINATIONS OF FOIA REQUEST

A. Received, Processed and Pending Administrative Appeals

Number Affirmed on Appeal	Number Partially Affirmed & Partially Reversed/Remanded on Appeal	Number Completely Reversed/Remanded on Appeal	Number of Appeals Closed for Other Reasons	TO
0	0	0	1	

B. Disposition of Administrative Appeals – All Processed Appeals

Number of Appeals Pending as of Start of Fiscal Year	Number of Appeals Received in Fiscal Year	Number of Appeals Processed in Fiscal Year	Number of Appeals Pending as of End of Fiscal Year
0	1	1	0

C. (1) Reasons for Denial on Appeal – Number of Times Exemptions Applied

Ex. 1	Ex. 2	Ex. 3	Ex. 4	Ex. 5	Ex. 6	Ex. 7(A)	Ex. 7(B)	Ex. 7(C)	Ex. 7(D)	Ex. 7(E)	Ex. 7(F)	Ex. 8	Ex.9
0	0	0	0	0	0	0	0	0	0	0	0	0	0
0	0	0	0	0	0	0	0	0	0	0	0	0	0

No Records	Records Referred at Initial Request Level	Request Withdrawn	Fee-Related Reason	Records not Reasonably Described	Improper Request for Other Reasons	Not Agency Record	Duplicate Request or Appeal	Request in Litigation	Appeal Based Solely on Denial of Request for Expedited Processing	Other *Explain in chart below
0	0	0	0	0	0	1	0	0	0	1

C. (2)   Reasons for Denial on Appeal – Reasons Other than Exemptions

C. (3)   Reasons for Denial on Appeal – "Other" Reasons from Section VI, C (2) Chart

Description of "Other" Reasons for Denial on Appeal from Chart C (2) & Number of Times Those Reasons Were Relied upon	TOTAL
Description #	1 Not Agency Records

C. (4)   Response Time for Administrative Appeals

     1.   Provide the median, average, and range in number of days to respond to administrative appeals.

Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days
18	18	5	18

C. (5) Ten Oldest Pending Administrative Appeals

	10th Oldest Appeal	9th	8th	7th	6th	5th	4th	3rd	2nd	Oldest Appeal
Date of Receipt of Ten Oldest Appeals	Date	0	0	0	0	0	0	0	0	0
Number of Days Pending	#	0	0	0	0	0	0	0	0	0

VII. FOIA REQUESTS: RESPONSE TIME FOR PROCESSED AND PENDING REQUESTS

A. Processed Requests – Response Time for All Processed Perfected Requests

	SIMPLE				COMPLEX				EXPEDITED PROCESSING			
	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days
	6	6	1	20	0	0	0	0	2	2	1	2
AGENCY OVERALL	6	6	1	20	0	0	0	0	2	2	1	2

B.   Processed Requests – Response Time for Perfected Requests in Which Information Was Granted

	SIMPLE				COMPLEX				EXPEDITED PROCESSING			
	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days
	6	6	1	20	0	0	0	0	2	2	1	2
AGENCY OVERALL	6	6	1	20	0	0	0	0	2	2	1	2

C.   Processed Requests – Response Time in Day Increments

Simple Requests

	1-20 Days	21-40 Days	41-60 Days	61-80 Days	81-100 Days	101-120 Days	121-140 Days	141-160 Days	161-180 Days	181-200 Days	201-300 Days	301-400 Days	401+ Days	TOTAL
	98	0	0	0	0	0	0	0	0	0	0	0	0	98
AGENCY OVERALL	98	0	0	0	0	0	0	0	0	0	0	0	0	98

Complex Requests

	1-20 Days	21-40 Days	41-60 Days	61-80 Days	81-100 Days	101-120 Days	121-140 Days	141-160 Days	161-180 Days	181-200 Days	201-300 Days	301-400 Days	401+ Days	TOTAL
	0	0	0	0	0	0	0	0	0	0	0	0	0	0
AGENCY OVERALL	0	0	0	0	0	0	0	0	0	0	0	0	0	0

Requests Granted Expedited Processing

	1-20 Days	21-40 Days	41-60 Days	61-80 Days	81-100 Days	101-120 Days	121-140 Days	141-160 Days	161-180 Days	181-200 Days	201-300 Days	301-400 Days	401+ Days	TOTAL
	35	0	0	0	0	0	0	0	0	0	0	0	0	35
AGENCY OVERALL	35	0	0	0	0	0	0	0	0	0	0	0	0	35

D.   Pending Requests – All Pending Perfected Requests

	SIMPLE			COMPLEX			EXPEDITED PROCESSING		
	Number Pending	Median Number of Days	Average Number of Days	Number Pending	Median Number of Days	Average Number of Days	Number Pending	Median Number of Days	Average Number of Days
	0	0	0	0	0	0	0	0	0
AGENCY OVERALL	0	0	0	0	0	0	0	0	0

Agency Overall	10th Oldest Request and Number of Days Pending	9th	8th	7th	6th	5th	4th	3rd	2nd	Oldest Request and Number of Days Pending
	Date		0	0	0	0	0	0	0	0
	Number of Days	0								

E.   Pending Requests – Ten Oldest Pending Perfected Requests

	10th Oldest Request and Number of Days Pending	9th	8th	7th	6th	5th	4th	3rd	2nd	Oldest Request and Number of Days Pending
Date			0	0	0	0	0	0	0	0
Number of Days		0								

VIII. REQUESTS FOR EXPEDITED PROCESSING AND REQUESTS FOR FEE WAIVER

A.   Requests for Expedited Processing

	Number Granted	Number Denied	Median Number of Days to Adjudicate	Average Number of Days to Adjudicate	Number Adjudicated Within Ten Calendar Days
	18	14	2	2	18
AGENCY OVERALL	18	14	2	2	18

B.   Requests for Fee Waiver

	Number Granted	Number Denied	Median Number of Days to Adjudicate	Average Number of Days to Adjudicate
	0	0	0	0
AGENCY OVERALL	0	0	0	0

IX.   FOIA PERSONNEL AND COSTS

A.   Personnel

1.   A "full-time FOIA employee" is a full-time employee who performs FOIA duties 100% of the time. The number of such employees should be reported in Column 1 of the chart below.

2.   An "equivalent full-time FOIA employee" is created by adding together the percentages of time dedicated to FOIA duties by employees performing less than full-time FOIA duties. Each time 100% is reached, the time expended is counted as one "equivalent full-time FOIA employee." The number of such "equivalent" employees should be reported in Column 2 of the chart below.

3.   Employees performing less than full-time FOIA duties are either a) part-time employees who perform FOIA duties all, or part, of the time, or b) full-time employees who perform FOIA duties less than 100% of the time.

4.   The following examples illustrate how to calculate the number of "equivalent full-time FOIA employees."

a.   Example #1: Assume three full-time employees with part-time or occasional FOIA duties. If Employee #1 performs FOIA duties 50% of the time, and Employees #2 and #3 each perform FOIA duties 25% of the time, together they perform 100% (50+25+25) FOIA duties. Therefore, the FOIA duties of these three employees are the equivalent of 1 "full-time FOIA employee," because a "full-time FOIA employee" is equal to 100%. This component would report "1" in Column 2 of the chart below.

b.   Example #2: Assume six full-time employees with part-time or occasional FOIA duties. If Employees #1, #2, #3 and #4 each perform FOIA duties 50% of the time, Employee #5 performs FOIA duties 75% of the time, and Employee #6 performs FOIA duties 10% of the time, together they perform 285% (50x4 + 75+10) FOIA duties. Because a "full-time FOIA employee" is equal to 100%, the FOIA duties of these six employees are the equivalent of 2.85 "full-time FOIA employees." This component would report "2.85" in Column 2 of the chart below.

c.   Example #3: Assume Employee #1 is a part-time employee who works *twenty* hours/week and performs FOIA duties *half* of his time. As a part-time employee who works twenty hours/week, the most FOIA work Employee #1 could perform is 50%. Because Employee #1 performs FOIA duties only *half* of his already part-time schedule, he performs 25% FOIA duties (i.e., half of the 50% maximum). Assume Employee #2 is a part-time employee who works *thirty-two* hours/week and performs FOIA duties *all* of her time. As a part-time employee who works thirty-two hours/week, the most FOIA work Employee #2 could perform is 80%. Because Employee #2 performs FOIA duties *all* of her time, she performs 80% FOIA duties. Together, the two employees perform 105% (25+80) FOIA duties. Therefore, their combined FOIA duties are the equivalent of 1.05 "full-time

FOIA employees," and this component would report "1.05" in Column 2 of the chart below.

B.   Costs

1.   Processing Costs: Add together all costs expended by the agency for processing FOIA requests at the initial request and administrative appeal levels. Include salaries of FOIA personnel, overhead, and any other FOIA-related expenses. (An agency's budget will often be a useful resource for this information.)

X.   FEES COLLECTED FOR PROCESSING REQUESTS

	Total Amount of Fees Collected	Percentage of Total Costs
	$747.00	0.12%

	PERSONNEL			COSTS		
	Number of "Full-Time FOIA Employees"	Number of "Equivalent Full-Time FOIA Employees"	Total Number of "Full-Time FOIA Staff" (The sum of Columns 1 & 2)	Processing Costs (At initial request and appeal levels)	Litigation-Related Costs	Total Costs
	0	0.55	0.55	$63,000	0	$63,000
AGENCY OVERALL	0	0.55	0.55	$63,000	0	$63,000

XI. FOIA REGULATIONS

http://www.fmcs.gov/assets/files/FOIA/foiaguidelines.doc

XII. BACKLOGS, CONSULTATIONS, AND COMPARISONS

A.   Backlogs of FOIA Requests and Administrative Appeals

	Number of Backlogged Requests as of End of Fiscal Year	**Number of Backlogged Appeals as of End of Fiscal Year**
	0	0
AGENCY OVERALL	0	0

B.   Consultations on FOIA Requests – Received, Processed, and Pending Consultations

	Column 1	Column 2	Column 3	Column 4
	Number of Consultations Received from Other Agencies that Were Pending at Your Agency as of Start of the Fiscal Year	**Number of Consultations Received from Other Agencies During the Fiscal Year**	**Number of Consultations Received from Other Agencies that Were Processed by Your Agency During the Fiscal Year**	**Number of Consultations Received from Other Agencies that Were Pending at Your Agency as of End of the Fiscal Year**
	0	0	0	0
AGENCY OVERALL	0	0	0	0

C. Consultations on FOIA Requests – Ten Oldest Consultations Received from Other Agencies and Pending at Your Agency

	10th Oldest Consultation and Number of Days Pending	9th	8th	7th	6th	5th	4th	3rd	2nd	Oldest Consultation and Number of Days Pending
	Date		0	0	0	0	0	0	0	0
	Number of Days	0								

	10th Oldest Consultation and Number of Days Pending	9th	8th	7th	6th	5th	4th	3rd	2nd	Oldest Consultation and Number of Days Pending
Agency Overall	Date		0	0	0	0	0	0	0	0
	Number of Days	0								

D. Comparison of Numbers of Requests from Previous and Current Annual Report – Requests Received, Processed, and Backlogged

	Column 1	Column 2	Column 3	Column 4
	NUMBER OF REQUESTS RECEIVED		**NUMBER OF REQUESTS PROCESSED**	
	Number Received During Fiscal Year from Last Year's Annual Report	**Number Received During Fiscal Year from Current Annual Report**	**Number Processed During Fiscal Year from Last Year's Annual Report**	**Number Processed During Fiscal Year from Current Annual Report**
	107	130	107	133
AGENCY OVERALL	107	130	107	133

	Column 1	Column 2
	Number of Backlogged Requests as of End of the Fiscal Year from Previous Annual Report	**Number of Backlogged Requests as of End of the Fiscal Year from Current Annual Report**
	0	0
AGENCY OVERALL	0	0

E. Comparison of Numbers of Administrative Appeals from Previous and Current Annual Report – Appeals Received, Processed, and Backlogged

	Column 1	Column 2	Column 3	Column 4
	NUMBER OF APPEALS <u>RECEIVED</u>		**NUMBER OF APPEALS <u>PROCESSED</u>**	
	Number Received During Fiscal Year from Last Year's Annual Report	**Number Received During Fiscal Year from Current Annual Report**	**Number Processed During Fiscal Year from Last Year's Annual Report**	**Number Processed During Fiscal Year from Current Annual Report**
	0	1	0	1
AGENCY OVERALL	0	1	0	1

	Column 1	Column 2
	Number of Backlogged Appeals as of End of the Fiscal Year from Previous Annual Report	**Number of Backlogged Appeals as of End of the Fiscal Year from Current Annual Report**
	0	0
AGENCY OVERALL	0	0