

Federal Maritime Commission 2016 Chief FOIA Officer Report

Name and Title of Agency's Chief FOIA Officer: Karen V. Gregory

Section I: Steps Taken to Apply the Presumption of Openness

FOIA Training:

1. Did your FOIA professionals or the personnel at your agency who have FOIA responsibilities attend any FOIA training or conference during the reporting period such as that provided by the Department of Justice?

Answer: Yes.

2. Provide an estimate of the percentage of your FOIA professionals and staff with FOIA responsibilities who attended substantive FOIA training during this reporting period.

Answer: 100%

3. OIP has **directed agencies** to "take steps to ensure that all of their FOIA professionals attend substantive FOIA training at least once throughout the year." If your response to the previous question is that less than 80% of your FOIA professionals attended training, please explain your agency's plan to ensure that all FOIA professionals receive or attend substantive FOIA training during the next reporting year.

Answer: N/A

Discretionary Releases:

4. Does your agency have a distinct process or system in place to review records for discretionary release?

Answer: Yes.

- If so, please briefly describe this process.

Answer: Our system for reviewing records for discretionary release is to release all documents unless harm or confusion will result due to the release of such documents.

- If your agency is decentralized, please specify whether all components of your agency have such a process or system in place?

Answer: Our agency is not decentralized.

5. During the reporting period, did your agency make any discretionary releases of information?

Answer: No.

6. What exemption(s) would have covered the material released as a matter of discretion? For a discussion of the exemptions that allow for discretionary releases, please see OIP's guidance on [implementing the President's and Attorney General's 2009 FOIA Memoranda](#).

Answer: N/A

7. Provide a narrative description, as well as some specific examples, of the types of information that your agency released as a matter of discretion during the reporting year.

Answer: N/A

8. If your agency was not able to make any discretionary releases of information, please explain why. For example, you should note here if your agency did not have an opportunity to make discretionary disclosures because you provided full releases in response to all requests or the only exemptions that were applied were those that do not lend themselves to discretionary release (i.e. Exemptions 1, 3, 4, 6, 7A, 7B, 7C, 7F).

Answer: The only information which would have been potentially appropriate for discretionary release was information protected by the deliberative process privilege, exemption (b)(5). Exemption (b)(5) was relied on four times this reporting period when it had been determined that there was potential harm or confusion from release of such information. It is our policy to release all documents with the presumption of openness, when possible.

Other Initiatives:

9. If there are any other initiatives undertaken by your agency to ensure that the presumption of openness is being applied, please describe them here.

Answer: All FOIA requests are processed by the Office of the Secretary and all FOIA staff are fully aware that FOIA requests are to be processed applying the presumption of openness.

Section II: Steps Taken to Ensure that Your Agency Has an Effective System in Place for Responding to Requests

Processing Procedures:

1. For Fiscal Year 2015, what was the average number of days your agency reported for adjudicating requests for expedited processing? Please see Section VIII.A. of your agency's Fiscal Year 2015 Annual FOIA Report.

Answer: 2.8

2. If your agency's average number of days to adjudicate requests for expedited processing was above ten calendar days, please describe the steps your agency will take to ensure that requests for expedited processing are adjudicated within ten calendar days or less.

Answer: N/A

3. On July 2, 2015, OIP issued **new guidance** to agencies on the proper procedures to be used in the event an agency has a reason to inquire whether a requester is still interested in the processing of his or her request. Please confirm here that to the extent your agency may have had occasion to send a "still interested" inquiry, it has done so in accordance with the new guidelines for doing so, including affording requesters thirty working days to respond.

Answer: Our current policy is to provide the FOIA requester 30 working days to respond to a "still interested" letter. In the past we provided an adequate amount of time to respond to our "still interested" letter based on frequency of our ongoing communications with a requestor or lack of response from the requester.

Requester Services:

4. Agency FOIA Requester Service Centers and FOIA Public Liaisons serve as the face and voice of an agency. In this capacity they provide a very important service for requesters, informing them about how the FOIA process works and providing specific details on the handling of their individual requests. The FOIA also calls on agency FOIA Requester Service Centers and FOIA Public Liaisons to assist requesters in resolving disputes. Please explain here any steps your agency has taken to strengthen these services to better inform requesters about their requests and to prevent or resolve FOIA disputes.

- If your agency has not taken any steps recently to strengthen these services, either because there has been no need to due to low demand or because these services are already robust, please briefly explain that that here.

Answer: Our Agency offers each FOIA requester personalized service and the opportunity to talk to, or directly email the FOIA professional processing their request. There has not been a need to take additional steps to strengthen our services as they are already robust and effective in meeting our goal to provide personalized customer service.

Other Initiatives:

5. If there are any other steps your agency has undertaken to ensure that your FOIA system operates efficiently and effectively, such as conducting self-assessments to find greater efficiencies, improving search processes, eliminating redundancy, etc., please describe them here.

Answer: During this reporting period the FOIA professional developed and conducted specialized training for one of the Commission's program areas. Customized FOIA training, focused on a specific program area will help program staff better understand the FOIA process and how it relates to documents maintained in their area. We believe this type of focused training will assist in expediting search efforts and producing relevant responsive documents. This should help improve the overall FOIA processing time and efficiencies.

Additionally, the FOIA professional has been included in the Agency onboarding checklist to brief all new Commission employees on the importance of the FOIA.

Section III: Steps Taken to Increase Proactive Disclosures

Both the **President's** and **Attorney General's** FOIA memoranda focused on the need for agencies to work proactively to post information online without waiting for individual requests to be received.

Please answer the following questions to describe the steps your agency has taken to increase the amount of material that is available on your agency websites. In addition to the questions below, you should also describe any additional steps taken by your agency to make and improve proactive disclosures of information.

Posting Material:

1. Describe your agency's process or system for identifying "frequently requested" records required to be posted online under Subsection (a)(2) of the FOIA. For example, does your agency monitor its FOIA logs or is there some other system in place to identify these records for posting.

Answer: The FOIA professional determines if multiple requests have been received for the same information by consulting the FOIA log. If multiple requests have been identified we work directly with the Agency Webmaster to post such information.

2. Does your agency have a distinct process or system in place to identify other records for proactive disclosure? If so, please describe your agency's process or system.

- Please note that this question is directed towards proactive disclosure of records that go beyond frequently requested records required to be posted under Subsection (a)(2) of the FOIA.

Answer: On an ongoing basis, the Commission proactively posts useful information to its website which likely reduces the number of FOIA requests received annually. The Chief FOIA Officer and webmaster collaborate with Agency staff members from all Commission Offices to maintain the website and post and refresh the most useful information to the public.

3. When making proactive disclosures of records, are your agency's FOIA professionals involved in coding the records for Section 508 compliance or otherwise preparing them for posting? If so, provide an estimate of how much time is involved for each of your FOIA professionals and your agency overall.

- Please note that this question is directed at the efforts of actually posting the records online once all disclosure determinations have been made. For example, efforts to load the records in your web content platform or making the releasable documents accessible in compliance with Section 508 of the Rehabilitation Act.

Answer: The FMC's Chief FOIA Officer is also responsible for the Commission's website and compliance with all government-wide website requirements – including ensuring that all documents created by the Commission and posted on its website are compliant with section 508 of the American's with Disabilities Act. Given the FMC's size, we have approached document accessibility proactively, that is, whenever possible, FMC documents are created with 508 in mind so that remediation of a document is not necessary or limited should it become necessary to post it to the FMC's website. Therefore, Agency Records for proactive disclosure are made 508 compliant by the owner or creator of the document/record prior to posting. 508 compliance training has been developed and provided by the Webmaster to Agency personnel that are responsible for creating such documents. Since FMC documents are created with 508

accessibility in mind, few documents posted to the Commission's website during the reporting period required post-remediation. During the reporting period, the FOIA professionals did spend approximately four hours making FOIA documents and reports compliant for posting that were not 508 compliant. In addition, during this reporting period we processed a FOIA request that required all responsive documents to be 508 compliant which took more than 24 hours to convert.

4. Has your agency encountered challenges that make it difficult to post records you otherwise would like to post?

Answer: Yes

5. If so, please briefly explain those challenges.

Answer: Older documents that were created prior to 508 compliance requirements present a challenge to posting. Also, PowerPoint presentations are extremely difficult, if not impossible, to make compliant, therefore, we do not post them. When we have graphs and charts in reports, we make sure to describe them in the text and rely on our Accessibility Notice, http://www.fmc.gov/about/accessibility_notice.aspx, to alert users to contact the FMC with any accessibility problems.

6. Provide examples of material that your agency has proactively disclosed during the past reporting year, including links to the posted material.

Answer: This past reporting year, the Commission has added to our website under news releases, links to compromise agreements entered into by our Bureau of Enforcement. Previously, the public did not have access to compromise agreements through our website. Below is a sample of a news release posted this past year that linked to several compromise agreements:

<http://www.fmc.gov/NR15-20/>

In the "News and Events" section of our website, we frequently post actions by the Commission of interest to the shipping public.

Also, we believe the list of licensed and bonded Ocean Transportation Intermediaries (OTIs) posted to our website, mentioned in last years' report has proved to be beneficial in decreasing the number of FOIA requests for such information. The OTI list is an active database with weekly updates providing new OTI information as it becomes available. The list can be found on our website at:

<http://www2.fmc.gov/oti/>

7. Did your agency use any means to publicize or highlight important proactive disclosures for public awareness? If yes, please describe those efforts.

- For example, this can be done through social media or with the offering of e-mail subscription services.

Answer: We use twitter to inform the public of news releases and offer an RSS feed for these releases. We tweeted about two Reports on U.S. Port Congestion that generated interest on twitter. Also, during this reporting period our tweets included frequently requested information regarding compromise agreement documents. Our home page slides were used to highlight

items of interest to the shipping public such as port forums and the Ocean Transportation Intermediaries (OTI) database.

Other Initiatives:

8. If there are any other steps your agency has taken to increase proactive disclosures, please describe them here.

Answer: No.

Section 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.

Please answer the following questions to describe how your agency is utilizing technology to improve its FOIA administration and the public's access to information. You should also include any additional information that that describes your agency's efforts in this area.

Making Material Posted Online More Usable:

1. Beyond posting new material, is your agency taking steps to make the posted information more useable to the public, especially to the community of individuals who regularly access your agency's website?

- Steps can include soliciting feedback on the content and presentation of posted material, improving search capabilities on your agency website, posting material in open formats, making information available through mobile applications, providing explanatory material, etc.

Answer: Yes.

2. If yes, please provide examples of such improvements.

- If your agency is already posting material in its most useful format, please describe these efforts.

ANSWER: Many of the individuals that access our website are from the shipping community. Of interest to the shipping community are carrier and marine terminal operator agreement filings under the Shipping Act. The Commission maintains an online agreement library that contains pertinent information on each of the Agreements on file with the Commission. In an effort to provide this information in a more user friendly format, improve search capabilities, and add new information of public interest about these agreement filings, the Commission has redesigned its Agreement Library and is in the process of migrating historical data to the new system. This new web application will be launched in 2016.

Other Initiatives:

3. Did your agency successfully post all four quarterly reports for Fiscal Year 2015?

Answer: Yes.

4. If your agency did not successfully post all quarterly reports, with information appearing on FOIA.gov, please explain why and provide your agency's plan for ensuring that such reporting is successful in Fiscal Year 2016.

Answer: N/A

5. Do your agency's FOIA professionals use e-mail or other electronic means to communicate with requesters whenever feasible? See OIP Guidance, "[The Importance of Good Communication with FOIA Requesters 2.0: Improving Both the Means and the Content of Requester Communications.](#)" (Nov. 22, 2013) If yes, what are the different types of electronic means that are utilized by your agency to communicate with requesters?

Answer: Yes. Our default means of communication with requesters is via email. We provide interim responses and status updates when appropriate. Also, this reporting period we have increased our efforts to further define or narrow the scope of a request with the requester either by email or phone. In many cases, once a FOIA requester understands the nature and type of documents the Commission maintains, we are able to narrow the scope of the request and more quickly process and provide responsive documents. This approach has also enabled us to re-classify some FOIA requests from "complex" to "simple" allowing these to be processed more quickly in our simple FOIA track. We also continuously strive to provide the requesters responsive documents in the format in which they are requested.

6. If your agency does not communicate electronically with requests as a default, are there any limitations or restrictions for the use of such means? If yes, does your agency inform requesters about such limitations? See *id.*

Answer: N/A

Section V: Steps Taken to Improve Timeliness in Responding to Requests and Reducing Backlogs

The President's [FOIA Memorandum](#) and the Attorney General's [2009 FOIA Guidelines](#) have emphasized the importance of improving timeliness in responding to requests. This section of your Chief FOIA Officer Report addresses both time limits and backlog reduction. Backlog reduction is measured both in terms of numbers of backlogged requests or appeals and by looking at whether agencies closed their ten oldest requests, appeals, and consultations.

For the figures required in this Section, please use the numbers contained in the specified sections of your agency's 2015 Annual FOIA Report and, when applicable, your agency's 2014 Annual FOIA Report.

Simple Track: Section VII.A of your agency's Annual FOIA Report, entitled "FOIA Requests – Response Time for All Processed Requests," includes figures that show your agency's average response times for processed requests. For agencies utilizing a multi-track system to process requests, there is a category for

"simple" requests, which are those requests that are placed in the agency's fastest (non-expedited) track, based on the low volume and/or simplicity of the records requested.

1. Does your agency utilize a separate track for simple requests?

Answer: Yes.

2. If so, for your agency overall in Fiscal Year 2015, was the average number of days to process simple requests twenty working days or fewer?

Answer: Yes.

3. Please provide the percentage of requests processed by your agency in Fiscal Year 2015 that were placed in your simple track.

Answer: 31%

4. If your agency does not track simple requests separately, was the average number of days to process all non-expedited requests twenty working days or fewer?

Answer: N/A

Backlogs: Section XII.A of your agency's Annual FOIA Report, entitled "Backlogs of FOIA Requests and Administrative Appeals" shows the numbers of any backlogged requests or appeals from the fiscal year. You should refer to these numbers from your Annual FOIA Reports for both Fiscal Year 2014 and Fiscal Year 2015 when completing this section of your Chief FOIA Officer Report.

Backlogged Requests

5. If your agency had a backlog of requests at the close of Fiscal Year 2015, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2014?

Answer: Yes.

6. If not, explain why and describe the causes that contributed to your agency not being able reduce its backlog. When doing so, please also indicate if any of the following were contributing factors:

Answer: N/A

7. If you had a request backlog please report the percentage of requests that make up the backlog out of the total number of requests *received* by your agency in Fiscal Year 2015.

Answer: 29%

- To calculate your agency's percentage, you must divide the number of backlogged requests reported in Section XII.A. of your Fiscal Year 2015 Annual FOIA Report by the number of requests received in Fiscal Year 2015, which can be found in Section V.A. of your Annual FOIA Report. Once divided, you can multiply that number by 100 to get the percentage.

Backlogged Appeals

8. If your agency had a backlog of appeals at the close of Fiscal Year 2015, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2014?

Answer: We did not have any appeals at the close of Fiscal Year 2015.

9. If not, explain why and describe the causes that contributed to your agency not being able reduce backlog. When doing so, please also indicate if any of the following were contributing factors:

Answer: N/A

10. If you had an appeal backlog please report the percentage of appeals that make up the backlog out of the total number of appeals *received* by your agency in Fiscal Year 2015. If your agency did not receive any appeals in Fiscal Year 2015 and/or has no appeal backlog, please answer with "N/A."

- To calculate your agency's percentage, you must divide the number of backlogged appeals reported in Section XII.A. of your Fiscal Year 2015 Annual FOIA Report by the number of appeals received in Fiscal Year 2015, which can be found in Section V.A. of your Annual FOIA Report. Once divided, you can multiply that number by 100 to get the percentage.

Status of Ten Oldest Requests, Appeals, and Consultations: Section VII.E, entitled "Pending Requests – Ten Oldest Pending Requests," Section VI.C.(5), entitled "Ten Oldest Pending Administrative Appeals," and Section XII.C., entitled "Consultations on FOIA Requests – Ten Oldest Consultations Received from Other Agencies and Pending at Your Agency," show the ten oldest pending requests, appeals, and consultations. You should refer to these numbers from your Annual FOIA Reports for both Fiscal Year 2014 and Fiscal Year 2015 when completing this section of your Chief FOIA Officer Report.

Ten Oldest Requests

11. In Fiscal Year 2015, did your agency close the ten oldest requests that were reported pending in your Fiscal Year 2014 Annual FOIA Report?

Answer: No.

12. If no, please provide the number of these requests your agency was able to close by the end of the fiscal year, as listed in Section VII.E of your Fiscal Year 2014 Annual FOIA Report. If you had less than ten total oldest requests to close, please indicate that.

- For example, if you only had seven requests listed as part of your "ten oldest" in Section VII.E. and you closed six of them, you should note that you closed six out of seven "oldest" requests.

Answer: Of the ten oldest requests, we closed eight by the end of fiscal year 2015. However, as of the writing of this Report, the FMC had closed all ten of our oldest FOIA requests that had been pending at the close of FY 2014.

13. Of the requests your agency was able to close from your ten oldest, please indicate how many of these were closed because the request was withdrawn by the requester. If any were closed because the request was withdrawn, did you provide any interim responses prior to the withdrawal?

Answer: Five requests were withdrawn and of those we provided one interim response.

Ten Oldest Appeals

14. In Fiscal Year 2015, did your agency close the ten oldest appeals that were reported pending in your Fiscal Year 2014 Annual FOIA Report?

Answer: N/A

15. If no, please provide the number of these appeals your agency was able to close by the end of the fiscal year, as listed in Section VII.C.(5) of your Fiscal Year 2014 Annual FOIA Report. If you had less than ten total oldest appeals to close, please indicate that.

- For example, if you only had seven appeals listed as part of your "ten oldest" in Section VII.C.(5) and you closed six of them, you should note that you closed six out of seven "oldest" appeals.

Ten Oldest Consultations

16. In Fiscal Year 2015, did your agency close the ten oldest consultations that were reported pending in your Fiscal Year 2014 Annual FOIA Report?

Answer: N/A

17. If no, please provide the number of these consultations your agency was able to close by the end of the fiscal year, as listed in Section XII.C. of your Fiscal Year 2014 Annual FOIA Report. If you had less than ten total oldest consultations to close, please indicate that.

- For example, if you only had seven consultations listed as part of your "ten oldest" in Section XII.C. and you closed six of them, you should note that you closed six out of seven "oldest" consultations.

Additional Information on Ten Oldest Requests, Appeals, and Consultations & Plans:

18. Briefly explain any obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2014.

Answer: As noted above, we did not have any pending appeals or consultations during the reporting period. As to processing our oldest FOIA requests, obstacles we may face are usually related to the general complexity of the request and the time spent working with FOIA requesters to help narrow and clarify the scope of their requests.

19. If your agency was unable to close any of its ten oldest requests because you were waiting to hear back from other agencies on consultations you sent, please provide the date the request was initially received by your agency, the date when your agency sent the consultation, and the date when you last contacted the agency where the consultation was pending.

Answer: N/A

20. If your agency did not close its ten oldest pending requests, appeals, or consultations, please provide a plan describing how your agency intends to close those "ten oldest" requests, appeals, and consultations during Fiscal Year 2016.

Answer: As of the writing of this Report, the FMC has closed its ten oldest FOIA requests that were pending as of the end of fiscal year 2014. We are also on track to close our ten oldest FOIA requests that were pending at the close of FY 2015.

Interim Responses:

Not required, but agencies may answer the questions for this section from the [high-volume guidelines](#) if they have information they would like to include.

Use of the FOIA's Law Enforcement Exclusions

1. Did your agency invoke a statutory exclusion, 5 U.S.C. § 552(c)(1), (2), (3), during Fiscal Year 2015?

Answer: No

2. If so, please provide the total number of times exclusions were invoked.

Answer: N/A

Success Story

Not required, but agencies may answer the questions for this section from the [high-volume guidelines](#) if they have information they would like to include.

- **We have found that posting current and relevant information to the Commission's website decreases the number of FOIA requests submitted to the Commission.**
- **Working with requesters to narrow or better describe/clarify the scope of their request has been beneficial to both the requestor and the FMC.**
- **Provide specialized training to employees. We have found that customized in-house FOIA training specific to the typical documents requested under FOIA and maintained by a particular office/bureau is more effective than just general FOIA training. Here we are able to work with the actual documents maintained by a program area and explain with specificity how the document will likely be handled under FOIA.**