

# Federal Maritime Commission

## 2014 Chief FOIA Officer Report

---

**Name and Title of agency Chief FOIA Officer: Karen V. Gregory, Secretary**

### **Section I: Steps Taken to Apply the Presumption of Openness**

The guiding principle underlying the President's FOIA Memorandum and the Attorney General's FOIA Guidelines is the presumption of openness.

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.

#### *FOIA Training:*

1. Did your agency hold an agency FOIA conference, or otherwise conduct training during this reporting period?

**Answer: Yes**

2. If so, please provide the number of conferences or trainings held, a brief description of the topics covered, and an estimate of the number of participants from your agency who were in attendance.

**Answer: Agency FOIA training was conducted during the reporting period. The training was offered to employees in the Office of the Secretary, Office of Management Services and Office of Information Technology. Topics discussed were defining the FOIA, the importance of processing requests with a clear presumption of openness, Agency responsibilities, and specific office responsibilities when conducting a search for responsive FOIA documents. Also included in the session was a question and answer period to address any specific questions concerning the FOIA process. The FMC is a small Agency with only 120 employees. Twelve employees participated in this training or 10% of all FMC staff.**

3. Did your FOIA professionals attend any FOIA training during the reporting period such as that provided by the Department of Justice?

**Answer: Yes**

4. Provide an estimate of the percentage of your FOIA professionals who attended substantive FOIA training during this reporting period.

**Answer: 100%**

5. OIP has issued guidance that [every agency should make core, substantive FOIA training available to all their FOIA professionals at least once each year](#). Provide your agency's plan for ensuring that such training is offered to all agency FOIA professionals by March 2015. Your plan should

anticipate an upcoming reporting requirement for your 2015 Chief FOIA Officer Reports that will ask whether all agency FOIA professionals attended substantive FOIA training in the past year.

**Answer: The FMC is currently in full compliance with this OIP guidance and will remain in compliance in the future. The FMC's FOIA Professional is scheduled to attend the FOIA training for Attorneys and Access Professionals provided by DOJ OIP in May 2014.**

*Outreach:*

6. Did your FOIA professionals engage in any outreach and dialogue with the requester community or open government groups regarding your administration of the FOIA? If so, please briefly discuss that engagement.

**Answer: Since the volume of our requests is small, we did not engage in formal outreach with open government groups. However, our FOIA Professional attended the Sixth Annual Freedom of Information Day Celebration presented by American University College of Law's Collaboration on Government Secrecy. Points of views were shared from FOIA requesters, the public, and government employees during panel discussions.**

**Most of our Agency FOIA requests are unique, if the request is not simple, we usually have a one-on-one dialogue with the individual requester. As a result, we are able to help the requester perfect their request and educate them on our process. We believe our requesters are pleased with the service received. We have not had any appeals filed for the past three consecutive years.**

*Discretionary Disclosures:*

In his 2009 FOIA Guidelines, the Attorney General strongly encouraged agencies to make discretionary releases of information even when the information might be technically exempt from disclosure under the FOIA. OIP encourages agencies to make such discretionary releases whenever there is no foreseeable harm from release.

7. Does your agency have a formal process in place to review records for discretionary release? If so, please briefly describe this process. If your agency is decentralized, please specify whether all components at your agency have a process in place for making discretionary releases.

**Answer: Our process for review of records for discretionary release is to release all documents unless there may be confusion or harm from disclosure. Our Agency is not decentralized.**

8. During the reporting period did your agency make any discretionary releases of otherwise exempt information?

**Answer: The information that our Agency exempts from disclosure is protected by statute, information of personal privacy, or financial information. In these cases, it would not be beneficial to make discretionary releases and would in fact cause harm. It is our policy to make discretionary releases of information whenever possible. This past reporting period we provided analysts notes that could have been redacted pursuant to the deliberative process.**

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

**Answer: Exemption 5**

10. Provide a narrative description, or some examples of, the types of information that your agency released as a matter of discretion.

**Answer: Email correspondence.**

11. If your agency was not able to make any discretionary releases of information, please explain why.

*Other Initiatives:*

12. Did your agency post all of the required quarterly FOIA reports for Fiscal Year 2013? If not, please explain why not and what your plan is for ensuring that such reporting is successfully accomplished for Fiscal Year 2014.

**Answer: Yes.**

13. Describe any other initiatives undertaken by your agency to ensure that the presumption of openness is being applied. If any of these initiatives are online, please provide links in your description.

**Answer: No new initiatives have been undertaken as the Commission is already doing everything that it can to apply the presumption of openness. Administration of the FOIA is centralized and all FOIA requests are processed by the Office of the Secretary. As the Commission Secretary and Chief FOIA Officer, I ensure that the presumption of openness is being applied.**

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

As the Attorney General emphasized in his FOIA Guidelines, "[a]pplication of the proper disclosure standard is only one part of ensuring transparency. Open government requires not just a presumption of disclosure, but also an effective system for responding to FOIA requests." It is essential that agencies effectively manage their FOIA program.

Describe here the steps your agency has taken to ensure that your management of your FOIA program is effective and efficient. 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.

*Personnel:*

During Sunshine Week 2012 OPM announced the creation of a new job series entitled the Government Information Series, to address the work performed by FOIA and Privacy Act professionals. Creation of this distinct job series was a key element in recognizing the professional nature of their work.

1. Has your agency converted all of its FOIA professionals to the new Government Information Specialist job series?

**Answer: Yes.**

2. If not, what proportion of personnel has been converted to the new job series?

3. If not, what is your plan to ensure that all FOIA professionals' position descriptions are converted?

*Processing Procedures:*

4. For Fiscal Year 2013 did your agency maintain an average of ten or less calendar days to adjudicate requests for expedited processing? If not, describe the steps your agency will take to ensure that requests for expedited processing are adjudicated within ten calendar days or less.

**Answer: Yes, as reported in the FY2013 Annual FOIA report, the Commission took an average of five days to adjudicate requests for expedited processing.**

5. Has your agency taken any steps to make the handling of consultations and referrals more efficient and effective, such as entering into agreements with other agencies or components on how to handle certain categories or types of records involving shared equities so as to avoid the need for a consultation or referral altogether, or otherwise implementing procedures that speed up or eliminate the need for consultations. If so, please describe those steps.

**Answer: Our Agency receives/sends no more than one or two referrals/consultations annually. All persons involved in the FOIA process discuss the most efficient effective way to handle consultations/referrals on an individual basis.**

*Requester Services:*

6. Do you use e-mail or other electronic means to communicate with requesters when feasible?

**Answer: Yes.**

7. Does your agency notify requesters of the mediation services offered by the Office of Government Information Services (OGIS) at NARA?

**Answer: Yes.**

8. Describe 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.

**Answer: After a self-assessment and review of our FOIA processes, we are currently working on implementing new procedures to further streamline the FOIA process and ensure all Agency components are aware of the importance of providing responsive documents in a timely manner.**

### **Section III: Steps Taken to Increase Proactive Disclosures**

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

Describe here the steps your agency has taken both to increase the amount of material that is available on your agency website, and the usability of such information, including providing examples of proactive

disclosures that have been made during this past reporting period (i.e., from March 2013 to March 2014). In doing so, answer the questions listed below and describe any additional steps taken by your agency to make and improve proactive disclosures of information.

*Posting Material:*

1. Do your FOIA professionals have a system in place to identify records for proactive disclosures?

**Answer: As mentioned above, most of our FOIA requests are unique. Therefore, there are not duplicate responsive records to be posted proactively. However, the Commission continues to proactively post useful information to our website which likely reduces the number of FOIAs received annually.**

2. If so, describe the system that is in place.

**Answer: The Chief FOIA Officer and the Agency Webmaster work diligently to maintain the website and post the most useful information.**

3. Provide examples of material that your agency has posted this past reporting period, including links to where this material can be found online.

**Answer: New webpage for comments received on pending Agreements filed with the Commission at: [www.fmc.gov/resources/public\\_comments.aspx](http://www.fmc.gov/resources/public_comments.aspx)**

*Making Posted Material More Useful:*

4. Beyond posting new material, is your agency taking steps to make the posted information more useful to the public, especially to the community of individuals who regularly access your agency's website, such as soliciting feedback on the content and presentation of posted material, improving search capabilities on the site, posting material in open formats, making information available through mobile applications, providing explanatory material, etc.?

**Answer: The Agency Webmaster monitors how the public uses our website and is continuously seeking ways to identify the information that is the most current and useful to our audience.**

5. If so, provide examples of such improvements.

**Answer: The FMC's Homepage was recently updated and information reorganized based on user input. Examples include: Adding our Twitter feed to the Homepage; reorganizing our "Browse by Topic" Section and prioritizing links to high priority content in those sections; reorganizing links to content under "Popular Pages"; upgrading listings and categories in our newsroom; and consolidating high priority information into one location on a high profile topic that was receiving more than normal press and public interest.**

6. Did your agency use any means to publicize or highlight important proactive disclosures for public awareness? If so, was social media utilized?

**Answer: See above answer, and yes social medial was used.**

7. Has your agency encountered challenges that make it difficult to post records you otherwise would like to post? If so, please briefly explain what those challenges are.

**Answer: Our Agency does an excellent job of posting significant information; the only challenges are the lack of resources to make more creative state-of-the-art improvements.**

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

**Answer: We are currently working on a format to post our open FOIA requests to the website.**

## **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. Over the past several years agencies have reported widespread use of technology in receiving and tracking FOIA requests and preparing agency Annual FOIA Reports. For 2014, as we have done over the past years, the questions have been further refined and now also address different, more innovative aspects of technology use.

*Online tracking of FOIA requests:*

1. Can a FOIA requester track the status of his/her request electronically?

**Answer: No. As stated above we are currently working on a process to post our open FOIA requests to our Agency website. The FOIA requester will be able to see how many requests are in the queue prior to theirs.**

If yes, how is this tracking function provided to the public? For example, is it being done through regularly updated FOIA logs, online portals, or other mediums?

2. Describe the information that is provided to the requester through the tracking system. For example, some tracking systems might tell the requester whether the request is "open" or "closed," while others will provide further details to the requester throughout the course of the processing, such as "search commenced" or "documents currently in review." List the specific types of information that are available through your agency's tracking system.
3. In particular, does your agency tracking system provide the requester with an estimated date of completion for his/her request?
4. If your agency does not provide online tracking of requests, is your agency taking steps to establish this capability? If not, please explain why.

**Answer: Yes, we are taking steps to post our open FOIA requests to our Agency website.**

*Use of technology to facilitate processing of requests:*

5. Beyond using technology to redact documents, is your agency taking steps to utilize more advanced technology to facilitate overall FOIA efficiency, such as improving record search capabilities, utilizing document sharing platforms for consultations and referrals, or employing software that can sort and de-duplicate documents?

**Answer: Yes.**

6. If so, describe the technological improvements being made.

**Answer: During 2013 the FMC launched efforts to upgrade its Enterprise Management System and has plans to launch Microsoft SharePoint during FY 2014, resources permitting. It is anticipated that SharePoint will enhance our ability to manage our FOIA process.**

7. Are there additional technological tools that would be helpful to achieving further efficiencies in your agency's FOIA program?

**Answer: Yes, software to aide in preparation of the FOIA Annual report, however, we are a small Agency and do not have the funds to purchase such software.**

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

The President and the Attorney General have emphasized the importance of improving timeliness in responding to requests. This section 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 those contained in the specified sections of your agency's 2013 Annual FOIA Report and, when applicable, your agency's 2012 Annual FOIA Report.*

### *Simple Track Requests:*

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

**Answer: Yes.**

- b. If so, for your agency overall, for Fiscal Year 2013, was the average number of days to process simple requests twenty working days or fewer?

**Answer: Yes, the average number of days, as reported in the FY2013 FOIA Annual Report was 7.5.**

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

*Backlogs and "Ten Oldest" Requests, Appeals and Consultations:*

2. 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. 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 2012 and Fiscal Year 2013 when completing this section of your Chief FOIA Officer Report.

Backlogs

- a. If your agency had a backlog of requests at the close of Fiscal Year 2013, did that backlog decrease as compared with Fiscal Year 2012?

**Answer: No.**

- b. If your agency had a backlog of administrative appeals in Fiscal Year 2013, did that backlog decrease as compared to Fiscal Year 2012?

Ten Oldest Requests

- c. In Fiscal Year 2013, did your agency close the ten oldest requests that were pending as of the end of Fiscal Year 2012?

**Answer: No.**

- d. 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 2012 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 two of them, you should note that you closed two out of seven "oldest" requests.

**Answer: We closed six out of ten "oldest" requests.**

Ten Oldest Appeals

- e. In Fiscal Year 2013, did your agency close the ten oldest administrative appeals that were pending as of the end of Fiscal Year 2012?

**Answer: N/A**

- f. If no, please provide the number of these appeals your agency was able to close, as well as the number of appeals your agency had in Section VI.C.(5) of your Fiscal Year 2012 Annual FOIA Report.

**Answer: N/A**

Ten Oldest Consultations

- g. In Fiscal Year 2013, did your agency close the ten oldest consultations received by your agency and pending as of the end of Fiscal Year 2012?

**Answer: N/A**

- h. If no, please provide the number of these consultations your agency did close, as well as the number of pending consultations your agency listed in Section XII.C. of your Fiscal Year 2012 Annual FOIA Report.

**Answer: N/A**

*Reasons for Any Backlogs:*

3. If you answered “no” to any of the questions in item 2 above, describe why your agency was not able to reduce backlogs and/or close the ten oldest pending requests, appeals, and consultations. In doing so, answer the following questions then include any additional explanation:

Request and/or Appeal Backlog

- a. Was the lack of a reduction in the request and/or appeal backlog a result of an increase in the number of incoming requests or appeals?

**Answer: No.**

- b. Was the lack of a reduction in the request and/or appeal backlog caused by a loss of staff?

**Answer: No.**

- c. Was the lack of a reduction in the request and/or appeal backlog caused by an increase in the complexity of the requests received?

**Answer: Yes.**

- d. What other causes, if any, contributed to the lack of a decrease in the request and/or appeal backlog?

**Answer: None.**

“Ten oldest” Not Closed

- e. Briefly explain the obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2012.

**Answer: The requests received have increased in complexity requiring more time to review and make determinations.**

- f. If your agency was unable to close any of its ten oldest requests or appeals 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**

*Plans for Closing of Ten Oldest Pending Requests, Appeals, and Consultations and Reducing Backlogs:*

Given the importance of these milestones, it is critical that Chief FOIA Officers assess the causes for not achieving success and create plans to address them.

4. If your agency did not close its ten oldest pending requests, appeals, and consultations, please provide a plan describing how your agency intends to close those “ten oldest” requests, appeals, and consultations during Fiscal Year 2014.

**Answer: New procedures are in place to help Agency components improve response time. Also, additional resources will be provided on a temporary basis to assist with closing the oldest FOIA request.**

5. If your agency had a backlog of more than 1000 pending requests and did not reduce that backlog in Fiscal Year 2013, provide your agency’s plan for achieving backlog reduction in the year ahead.

**Answer: N/A**

#### *Interim Responses:*

OIP has issued **guidance** encouraging agencies to make interim releases whenever they are working on requests that involve a voluminous amount of material or require searches in multiple locations. By providing rolling releases to requesters agencies facilitate access to the requested information.

6. Does your agency have a system in place to provide interim responses to requesters when appropriate?

**Answer: We do not have a system in place however; we do handle each FOIA on an individual basis and provide interim responses when appropriate.**

7. If your agency had a backlog in Fiscal Year 2013, please provide an estimate of the number or percentage of cases in the backlog where a substantive, interim response was provided during the fiscal year, even though the request was not finally closed.

**Answer: We did not provide an interim response for any of the backlogged requests that were not closed.**

### **Use of FOIA’s Law Enforcement “Exclusions”**

In order to increase transparency regarding the use of the FOIA’s statutory law enforcement exclusions, which authorize agencies under certain exceptional circumstances to “treat the records as not subject to the requirements of [the FOIA],” 5 U.S.C. § 552(c)(1), (2), (3), please answer the following questions:

1. Did your agency invoke a statutory exclusion during Fiscal Year 2013?

**Answer: No law enforcement “exclusions” were used.**

2. If so, what was the total number of times exclusions were invoked?

**Answer:N/A**

### **Spotlight on Success**

Out of all the activities undertaken by your agency since March 2013 to increase transparency and improve FOIA administration, please briefly describe here at least one success story that you would like to highlight as emblematic of your agency’s efforts. The success story can come from any one of the five key areas. As noted above, these agency **success stories** will be highlighted during Sunshine Week by OIP. To

facilitate this process, all agencies should use bullets to describe their success story and limit their text to a half page. The success story is designed to be a quick summary of a key achievement. A complete description of all your efforts will be contained in the body of your Chief FOIA Officer Report.

**Answer:**

- **The training conducted during the reporting period in combination with briefings the FOIA Public Liaison has had with upper level Agency employees, has further emphasized to our employees the importance of a thorough search for documents in a timely fashion with a presumption of openness. This has significantly increased awareness and improved the quality and timeliness of responsive documents.**
- **A self-assessment resulting in the streamlining of our FOIA process has shown an improvement in the efficiency of responses during the first quarter of Fiscal Year 2014.**