

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION
ANNUAL FOIA REPORT
FY 2007**

I. BASIC INFORMATION REGARDING REPORT

A. Name, title, address, and telephone number of person(s) to be contacted with questions about the report:

James Y. Callear, Deputy General Counsel
Chief FOIA Officer
601 New Jersey Avenue N.W., Suite 9500
Washington, D.C. 20001
ph: (202) 434-9934
fx: (202) 434-9944
email: fmsarc@fmsarc.gov

B. Electronic address for report on the World Wide Web:

<http://www.fmsarc.gov/foia/foia-updates>.

C. How to obtain a copy of the of the report in paper form.

Contact the Chief FOIA Officer at the address, telephone number, or email address above.

II. HOW TO MAKE A FOIA REQUEST

A. Names, addresses, and telephone numbers of all individual agency components and offices that receive FOIA requests.

All FOIA requests to the Federal Mine Safety and Health Review Commission are made to the Chief FOIA Officer at the address above.

B. Brief description of the agency's response-time ranges.

For FY 2007, the response time ranged from 0 to 211 days.

C. Brief description of why some requests are not granted.

The most frequent reason why requests are not granted is that no records responsive to the request are located.

III. DEFINITIONS OF TERMS AND ACRONYMS USED IN THE REPORT

A. Agency-specific acronyms or other terms.

1. Commission — Federal Mine Safety and Health Review Commission.
2. FMSHRC — Federal Mine Safety and Health Review Commission.
3. Mine Act — Federal Mine Safety and Health Act of 1977.

B. Basic terms, expressed in common terminology.

1. FOIA/PA Request — Freedom of Information Act/Privacy Act request. A FOIA request is generally a request for access to records concerning a third party, an organization, or a particular topic of interest. A Privacy Act request is a request for records concerning oneself; such requests are also treated as FOIA requests. (All requests for access to records, regardless of which law is cited by the requester, are included in this report.)
2. Initial Request — A request to a federal agency for access to records under the Freedom of Information Act.
3. Appeal — A request to a federal agency asking that it review at a higher administrative level a full denial or partial denial of access to records under the Freedom of Information Act, or any other FOIA determination such as a matter pertaining to fees.
4. Processed Request or Appeal — A request or appeal for which an agency has taken a final action on the request or the appeal in all respects.
5. 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 in each track are processed on a first-in/first-out basis. A requester who has an urgent need for records may request expedited processing (see below).
6. Expedited Processing — An agency will process a FOIA request on an expedited need or urgency for the records which warrants prioritization of his or her request over other requests that were made earlier.
7. Simple Request — A FOIA request that an agency using multi-track processing places in its fastest (non-expedited) track based on the volume and/or simplicity of records requested.

8. Complex Request — A FOIA request that an agency using multi-track processing places in its slower track based on the volume and/or complexity of records requested.
9. Grant — An agency decision to disclose all records in full in response to a FOIA request.
10. Partial Grant — An agency decision to disclose a record in part in response to a FOIA request, deleting information determined to be exempt under one or more of the FOIA's exemptions; or a decision to disclose some records in their entirety, but to withhold others in whole or in part.
11. Denial — An agency decision not to release any part of a record or records in response to a FOIA request because all the information in the requested record is determined by the agency to be exempt under one or more of the FOIA's exemptions, or for some procedural reason (such as because no record is located in response to a FOIA request).
12. Time Limits — The time period in the Freedom of Information Act for an agency to respond to a FOIA request (ordinarily 20 working days from proper receipt of a "perfected" FOIA request).
13. "Perfected" Request — A FOIA request for records which adequately describes the records sought, which has been received by the FOIA office of the agency or agency component in possession of the records, and for which there is no remaining question about the payment of applicable fees.
14. Exemption 3 Statute — A separate federal statute prohibiting the disclosure of a certain type of information and authorizing its withholding under FOIA subsection (b)(3).
15. Median Number — The middle, not average, number. For example, of 3, 7, and 14, the median number is 7.
16. 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.

IV. EXEMPTION 3 STATUTES

- A. List of Exemption 3 statutes relied on by agency during current fiscal year.

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V. INITIAL FOIA/PA ACCESS REQUESTS

A. Numbers of initial requests.

1. Number of request pending as of end of preceding fiscal year: 1*
2. Number of requests received during current fiscal year: 41
3. Number of requests processed during current fiscal year: 42
4. Number of requests pending as of end of current fiscal year: 0

B. Disposition of initial requests.

1. Number of total grants: 26
2. Number of partial grants: 0
3. Number of denials: 0
 - a. Number of times each FOIA exemption used (counting each exemption once per request).
 - (1) Exemption 1: 0
 - (2) Exemption 2: 0
 - (3) Exemption 3: 0
 - (4) Exemption 4: 0
 - (5) Exemption 5: 0
 - (6) Exemption 6: 0
 - (7) Exemption 7A: 0
 - (8) Exemption 7B: 0
 - (9) Exemption 7C: 0
 - (10) Exemption 7D: 0
 - (11) Exemption 7E: 0
 - (12) Exemption 7F: 0
 - (13) Exemption 8: 0
 - (14) Exemption 9: 0

* The FOIA request that is identified as pending at the end of FY 2006 was inadvertently not included as a pending request at the end of the fiscal year in the FY 2006 FOIA Annual Report.

4. Other reasons for non-disclosure (total):

- a. No records: 15
- b. Referrals: 0
- c. Request withdrawn: 1
- d. Fee-related reason: 0
- e. Records not reasonably described: 0
- f. Not a proper FOIA request for some other reason: 0
- g. Not an agency record: 0
- h. Duplicate request: 0
- i. Other: 0

VI. APPEALS OF INITIAL DENIALS OF FOIA/PA REQUEST

A. Number of appeals.

- 1. Number of appeals received during fiscal year: 0
- 2. Number of appeals processed during fiscal year: 0

B. Disposition of appeals.

- 1. Number completely upheld: 0
- 2. Number partially reversed: 0
- 3. Number completely reversed: 0
 - a. Number of times each FOIA exemption used (counting each exemption once per appeal).
 - (1) Exemption 1: 0
 - (2) Exemption 2: 0
 - (3) Exemption 3: 0
 - (4) Exemption 4: 0
 - (5) Exemption 5: 0

- (6) Exemption 6: 0
- (7) Exemption 7A: 0
- (8) Exemption 7B: 0
- (9) Exemption 7C: 0
- (10) Exemption 7D: 0
- (11) Exemption 7E: 0
- (12) Exemption 7F: 0
- (13) Exemption 8: 0
- (14) Exemption 9: 0

4. Other reasons for non-disclosure (total): 0

VII. COMPLIANCE WITH TIME LIMITS/STATUS OF PENDING REQUESTS

A. Median Processing time for requests processed during the year.

1. Simple requests (if multiple tracks used).

a. Number of requests processed: 42

b. Median number of days to process: 20

2. Complex requests (specify for any and all tracks used).

a. Number of requests processed: 0

b. Median number of days to process: 0

3. Requests accorded expedited processing.

a. Number of requests processed: 0

b. Median number of days to process: 0

B. Status of Pending Requests

1. Number of requests pending as of end of current fiscal year: 0

2. Median number of days that such requests were pending as of that date: 0

VIII. COMPARISONS WITH PREVIOUS YEAR(S)

A. Comparison of numbers of requests received:

64% increase in requests received over FY 2006.

B. Comparison of numbers of requests processed:

68% increase in requests processed over FY 2006.

C. Comparison of median numbers of days requests were pending as of end of fiscal year:

There were no requests pending at the end of FY 2007.

D. Other statistics significant to agency:

The Commission did not receive any requests for expedited processing.

E. Other narrative statements describing agency efforts to improve timeliness of FOIA performance and to make records available to the public:

The Commission instituted several changes in its tracking of FOIA requests to ensure that all requests were answered within the statutory 20-working day response period.

IX. COSTS/FOIA STAFFING

A. Staffing levels.

1. Number of full-time FOIA personnel: 0

2. Number of personnel with part-time or occasional FOIA duties (in total work-years): .10

3. Total number of personnel (in work-years): .10

B. Total costs (including staff and all resources).

1. FOIA processing (including appeals): \$4200

2. Litigation-related activities (estimated): 0

3. Total costs: \$4200

C. Statement of additional resources needed for FOIA compliance: 0

X. FEES

A. Total amount of fees collected by agency for processing requests: \$34.80

B. Percentage of total costs: Less than 1%

XI. FOIA REGULATIONS (Including Fee Schedule)

The Commission's FOIA regulations are available on its website: <http://www.fmshrc.gov/foia>.

XII. Report on FOIA Executive Order Implementation

As required in the instructions issued by the Office of Information and Privacy of the Department of Justice, this section of the Commission annual report, with the exception of subsection F., is referenced to the 2007 calendar year, while the preceding portion of the report is referenced to the fiscal year. This different reporting period for the Commission's activities under Executive Order 13,392 ensures that a full twelve-month period is covered in describing agency actions to implement the executive order.

A. Description of supplementation/modification of agency improvement plan

None

B. Report on agency implementation of its plan, including its performance in meeting milestones, with respect to each improvement area.

The Commission has now fully implemented its FOIA Improvement Plan as supplemented by the August 1, 2007 updated status report. As noted in the status report, the Commission undertook a comprehensive review of its FOIA rules and internal administrative procedures in handling FOIA requests. This comprehensive review delayed full implementation of improvements in the area of customer service. The improvements in those identified areas have now been fully implemented.

With regard to improved customer service, FMSHRC's goal was to provide training and orientation to its FOIA staff to ensure that they provide timely and professional delivery of customer service. To reach this goal, FMSHRC determined that it would issue revised written instructions to its staff on procedures for control, information gathering, and responses to FOIA requests. To this end, during the 2007 calendar year, the Commission issued two memoranda to staff. Since the issuance of those memoranda and changes in the Commission's tracking log, the Commission has successfully responded to nearly all requests within 20 working days.

With regard to website improvement, FMSHRC sought to improve its website in order to provide greater access to historical and current information on its mission and responsibilities, thus lessening the need for FOIA requests. Following the Commission's review and revision of its FOIA rules, including the fee schedule, and its changes in administrative handling of FOIA requests, the Commission revised and updated its website to facilitate the delivery of information through the website. To this end, the Commission redesigned its website to expand the information content on the web, as well as ensuring that the website is "user friendly." Significantly, the Commission revised its FOIA Guide, which is available on the Commission's website, to better explain the procedures for making FOIA requests and to fully describe the information available in the Commission's reading room at headquarters and in its electronic reading room on the web.

C. Identification and discussion of any deficiency in meeting plan milestones (if applicable).

1. The Commission identified one area for improvement that it was unable to address by the original target date – customer service.
2. The original target date for issuing revising instructions to Commission staff on procedures for control, information gathering, and response to FOIA requests was December 31, 2006.
3. The Commission undertook plenary review of its FOIA rules and procedures and subsequently issued two memoranda to staff in calendar year 2007 to implement changes in the area of customer service
4. The Commission has fully implemented the improvements in the Improvement Plan, and no future remedial steps need to be taken.

D. Additional narrative statement regarding other executive order-related activities.

During the calendar year, the Commission has revised, updated, or developed several publications available at the Commission's reading room and on its website. These publications are designed to facilitate transparency of Commission activities, enhance public understanding of the Commission, and assist both practitioners and lay people in participating in Commission hearings. "How a Case Proceeds before the Commission," "Guide to Commission Proceedings," and "Frequently Asked Questions" will assist in delivering information about the Commission to the public and carrying out the spirit of the FOIA.



On December 19, 2007, the Commission published final rule changes to its FOIA rules. The Commission updated its fee schedule for FOIA requests which had not been done in over ten years. The Commission also made changes in its rules to reflect the greater use and availability of documents in electronic form. Finally the Commission designated the Chief FOIA Officer as the agency official responsible for initial FOIA requests, rather than the Commission’s Chairman, to facilitate the Commission’s handling of those requests.

E. Concise descriptions of FOIA exemptions

The nine FOIA exemptions authorize federal agencies to withhold information covering: (1) classified national defense and foreign relations information; (2) internal agency rules and practices; (3) information that is prohibited from disclosure by another federal law; (4) trade secrets and other confidential business information; (5) inter-agency or intra-agency communications that are protected by legal privileges; (6) information involving matters of personal privacy; (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; (8) information relating to the supervision of financial institutions; and (9) geological information on wells.

F. Additional statistics

1. The ten oldest pending FOIA requests:

| Calendar Year | 1999 | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 |
|---------------|------|------|------|------|------|------|------|------|------|
| Requests | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |

2. Consultations

a.) Number of consultations received, processed, and pending:

| | | |
|--|--|--|
| Consultations Received from Other Agencies During FY07 | Consultations Received from Other Agencies that Were Processed During FY07 | Consultations Received from Other Agencies that Were Pending as of October 1, 2007 |
| 0 | 0 | 0 |

b.) Ten oldest pending consultations received from other agencies:

| Year | 1999 | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 |
|-------------------|------|------|------|------|------|------|------|------|------|
| Consults Received | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |

G. Attachment: Agency improvement plan (in current form) and updated status report.

<http://www.fmssrc.gov/foia/foiaimproveplan>.
<http://www.fmssrc.gov/foia/FOIASupplemental>.