

# **FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

## **ANNUAL FOIA REPORT**

**FY 2010**

### **I. BASIC INFORMATION REGARDING REPORT**

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

Linda H. Ghosal, Esq.  
Chief FOIA Officer  
601 New Jersey Avenue N.W., Suite 9500  
Washington, D.C. 20001  
ph: (202) 434-9930  
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.html>

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

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

### **II. MAKING 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 why some requests are not granted.

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

### III. ACRONYMS, DEFINITIONS, AND EXEMPTIONS

#### 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. **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.
2. **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.
3. **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.
4. **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.
5. **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.
6. **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.
7. **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.)

8. **Full Grant** – an agency decision to disclose all records in full in response to a FOIA request.
9. **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.
10. **Median Number** – the middle, not average, number. For example, of 3, 7, and 14, the median number is 7.
11. **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.
  - a. **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.
  - b. **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.
  - c. **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.

12. **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.
13. **Pending Request or Pending Administrative Appeal** – a request or administrative appeal for which an agency has not taken final action in all respects.
14. **Perfect 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.
15. **Processed Request or Processed Administrative Appeal** – a request or administrative appeal for which an agency has taken final action in all respects.
16. **Range in Number of Days** – the lowest and highest number of days to process requests or administrative appeals.
17. **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).

C. The following are concise descriptions of the nine FOIA exemptions:

1. **Exemption 1:** classified national defense and foreign relations information
2. **Exemption 2:** internal agency rules and practices
3. **Exemption 3:** information that is prohibited from disclosure by another federal law
4. **Exemption 4:** trade secrets and other confidential business information
5. **Exemption 5:** inter-agency or intra-agency communications that are protected by legal privileges
6. **Exemption 6:** information involving matters of personal privacy
7. **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

- 8. **Exemption 8:** information relating to the supervision of financial institutions
- 9. **Exemption 9:** geological information on wells

**IV. EXEMPTION 3 STATUTES**

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

<b>Statute</b>	<b>Type of Information Withheld</b>	<b>Case Citation</b>	<b>Number of Times Relied upon per Component</b>	<b>Total Number of Times Relied upon by Agency</b>
N/A	N/A	N/A	0	0

**V. FOIA REQUESTS**

A. Received, Processed and Pending FOIA Requests

	<b>Number of Requests Pending as of Start of Fiscal Year</b>	<b>Number of Requests Received in Fiscal Year</b>	<b>Number of Requests Processed in Fiscal Year</b>	<b>Number of Requests Pending as of End of Fiscal Year</b>
<b>AGENCY OVERALL</b>	1	98	98	1

B. (1) 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									TOTAL
				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	
AGENCY OVERALL	85	1	0	6	3	3	0	0	0	0	0	0	98

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

Description of “Other” Reasons for Denials from Chart B (1) & Number of Times Those Reasons Were Relied upon	TOTAL
N/A	0

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
<b>AGENCY OVERALL</b>	0	0	0	0	0	0	0	0	0	0	0	0	0	0

**VI. ADMINISTRATIVE APPEALS OF INITIAL DETERMINATIONS OF FOIA REQUESTS**

A. Received, Processed and Pending Administrative 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	0	0	0

B. Disposition of Administrative Appeals – All Processed Appeals

<b>Number Affirmed on Appeal</b>	<b>Number Partially Affirmed &amp; Partially Reversed/Remanded on Appeal</b>	<b>Number Completely Reversed/Remanded on Appeal</b>	<b>Number of Appeals Closed for Other Reasons</b>	<b>TOTAL</b>
0	0	0	0	0

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

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



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

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

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

<b>Description of “Other” Reasons for Denial on Appeal from Chart C (2) &amp; Number of Times Those Reasons Were Relied upon</b>	<b>TOTAL</b>
N/A	0

C. (4) Response Time for Administrative Appeal

<b>Median Number of Days</b>	<b>Average Number of Days</b>	<b>Lowest Number of Days</b>	<b>Highest Number of Days</b>
0	0	0	0

C. (5) Ten Oldest Pending Administrative Appeals

	10 <sup>th</sup> Oldest Appeal	9 <sup>th</sup>	th	th	th	th	th	rd	nd	Oldest Appeal
<b>Date of Receipt of Ten Oldest Appeals</b>	N/A	N/A <sup>8</sup>	N/A <sup>7</sup>	N/A <sup>6</sup>	N/A <sup>5</sup>	N/A <sup>4</sup>	N/A <sup>3</sup>	N/A <sup>2</sup>	N/A	N/A
<b>Number of Days Pending</b>	0	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
<b>AGENCY OVERALL</b>	2	5	<1	22	14.5	17	4	36	0	0	0	0

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
<b>AGENCY OVERALL</b>	2	5	<1	22	14.5	16	4	32	0	0	0	0

C. Processed Requests – Response Time in Day Increments

**Simple Requests**

	<b>1-20 Days</b>	<b>21-40 Days</b>	<b>41-60 Days</b>	<b>61-80 Days</b>	<b>81-100 Days</b>	<b>101-120 Days</b>	<b>121-140 Days</b>	<b>141-160 Days</b>	<b>161-180 Days</b>	<b>181-200 Days</b>	<b>201-300 Days</b>	<b>301-400 Days</b>	<b>401+ Days</b>	<b>TOTAL</b>
<b>AGENCY OVERALL</b>	87	1	0	0	0	0	0	0	0	0	0	0	0	88

**Complex Requests**

	<b>1-20 Days</b>	<b>21-40 Days</b>	<b>41-60 Days</b>	<b>61-80 Days</b>	<b>81-100 Days</b>	<b>101-120 Days</b>	<b>121-140 Days</b>	<b>141-160 Days</b>	<b>161-180 Days</b>	<b>181-200 Days</b>	<b>201-300 Days</b>	<b>301-400 Days</b>	<b>401+ Days</b>	<b>TOTAL</b>
<b>AGENCY OVERALL</b>	7	3	0	0	0	0	0	0	0	0	0	0	0	10

**Requests Granted Expedited Processing**

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

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
<b>AGENCY OVERALL</b>	1	2	2	0	0	0	0	0	0

E. Pending Requests – Ten Oldest Pending Perfected Requests

<b>AGENCY OVERALL</b>	10 <sup>th</sup> Oldest Request and Number of Days Pending	9 <sup>th</sup>	8 <sup>th</sup>	7 <sup>th</sup>	6 <sup>th</sup>	5 <sup>th</sup>	4 <sup>th</sup>	3 <sup>rd</sup>	2 <sup>nd</sup>	Oldest Request and Number of Days Pending
		N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A

**VIII. REQUESTS FOR EXPEDITED PROCESSING AND REQUESTS FOR FEE WAIVER**

A. Requests for Expedited Processing

	<b>Number Granted</b>	<b>Number Denied</b>	<b>Median Number of Days to Adjudicate</b>	<b>Average Number of Days to Adjudicate</b>	<b>Number Adjudicated Within Ten Calendar Days</b>
<b>AGENCY OVERALL</b>	0	0	0	0	0

B. Requests for Fee Waiver

	<b>Number Granted</b>	<b>Number Denied</b>	<b>Median Number of Days to Adjudicate</b>	<b>Average Number of Days to Adjudicate</b>
<b>AGENCY OVERALL</b>	0	0	0	0



**IX. FOIA PERSONNEL AND COSTS**

A. Personnel

B. Costs

	PERSONNEL			COSTS		
	Number of “Full-Time FOIA Employees”	Number of “Equivalent Full-Time FOIA Employees”	Total Number of “Full-Time FOIA Staff”	Processing Costs	Litigation- Related Costs	Total Costs
<b>AGENCY OVERALL</b>	0	0.30	0.30	\$52,000	0	\$52,000

**X. FEES COLLECTED FOR PROCESSING REQUESTS**

	<b>Total Amount of Fees Collected</b>	<b>Percentage of Total Costs</b>
<b>AGENCY OVERALL</b>	\$825.05	1.59

**XI. FOIA REGULATIONS**

[http://www.fmshrc.gov/rules/29cfr2702\\_01.html](http://www.fmshrc.gov/rules/29cfr2702_01.html)

**XII. BACKLOGS, CONSULTATIONS, AND COMPARISONS**

A. Backlogs of FOIA Requests and Administrative Appeals

	<b>Number of Backlogged Requests as of End of Fiscal Year</b>	<b>Number of Backlogged Appeals as of End of Fiscal Year</b>
<b>AGENCY OVERALL</b>	0	0

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

	<b>Number of Consultations Received from Other Agencies that Were <u>Pending</u> at FMSHRC as of <u>Start</u> of the Fiscal Year</b>	<b>Number of Consultations <u>Received</u> from Other Agencies During the Fiscal Year</b>	<b>Number of Consultations Received from Other Agencies that Were <u>Processed</u> by FMSHRC During the Fiscal Year</b>	<b>Number of Consultations Received from Other Agencies that Were <u>Pending</u> at FMSHRC as of <u>End</u> of the Fiscal Year</b>
<b>AGENCY OVERALL</b>	0	0	0	0

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

<b>Agency Overall</b>	<b>10<sup>th</sup> Oldest Consultation and Number of Days Pending</b>	<b>9<sup>th</sup></b>	<b>8<sup>th</sup></b>	<b>7<sup>th</sup></b>	<b>6<sup>th</sup></b>	<b>5<sup>th</sup></b>	<b>4<sup>th</sup></b>	<b>3<sup>rd</sup></b>	<b>2<sup>nd</sup></b>	<b>Oldest Consultation and Number of Days Pending</b>
0	0	0	0	0	0	0	0	0	0	0

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

	<b>NUMBER OF REQUESTS <u>RECEIVED</u></b>		<b>NUMBER OF REQUESTS <u>PROCESSED</u></b>	
	<b>Number Received During Fiscal Year from Last Year's Annual Report</b>	<b>Number Received During Fiscal Year from Current Annual Report</b>	<b>Number Processed During Fiscal Year from Last Year's Annual Report</b>	<b>Number Processed During Fiscal Year from Current Annual Report</b>
<b>AGENCY OVERALL</b>	46	98	47	98

	<b>Number of Backlogged Requests as of End of the Fiscal Year from Previous Annual Report</b>	<b>Number of Backlogged Requests as of End of the Fiscal Year from Current Annual Report</b>
<b>AGENCY OVERALL</b>	0	0

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

	<b>NUMBER OF APPEALS RECEIVED</b>		<b>NUMBER OF APPEALS PROCESSED</b>	
	<b>Number Received During Fiscal Year from Last Year's Annual Report</b>	<b>Number Received During Fiscal Year from Current Annual Report</b>	<b>Number Processed During Fiscal Year from Last Year's Annual Report</b>	<b>Number Processed During Fiscal Year from Current Annual Report</b>
<b>AGENCY OVERALL</b>	0	0	0	0

	<b>Number of Backlogged Appeals as of End of the Fiscal Year from Previous Annual Report</b>	<b>Number of Backlogged Appeals as of End of the Fiscal Year from Current Annual Report</b>
<b>AGENCY OVERALL</b>	0	0

F. Discussion of Other FOIA Activities

Due to the unprecedented surge in FOIA requests received, including a number of complex requests, at the beginning of FY2011, FMSHRC designated an additional employee to serve as Assistant FOIA Officer, whose duties include assisting the Chief FOIA Officer in processing FOIA requests. FMSHRC continues to process FOIA requests electronically when possible, receiving a large percentage of requests via email and submitting documents electronically via email if possible. This reduces paperwork and shortens the processing time.