

FEDERAL MEDIATION AND CONCILIATION SERVICE
UNITED STATES GOVERNMENT
WASHINGTON, DC 20427

Office of the General Counsel

**2012 Chief FOIA Officer Report to the Department of Justice
Pursuant to the Attorney General's FOIA Guidelines**

Overview

The Federal Mediation and Conciliation Service (FMCS) is a small, independent Agency composed of 235 employees. Commensurate with its size, the FMCS received a mere 89 FOIA requests during the time frame covered by this report (March 1, 2011 to date), and processed 87 of these requests to conclusion, all of which were closed within 20 business days. Only one of these requests was denied in its entirety, while the response to 7 requests had information redacted. No cases were backlogged as of the end of the reporting period, nor were any appeals received during this period.

The FMCS has a FOIA Officer and a Chief FOIA Officer, but no other formal FOIA structure. Under these circumstances, the vast majority of the Attorney General's FOIA Guidelines either are not applicable to an agency of this size or have been implemented previously.

I. Steps Taken to Apply the Presumption of Openness

The Chief FOIA Officer personally responds to approximately 40% of the FOIA requests and confers with the FOIA Officer on some additional 20% of the FOIA cases. Hence, on the basis of personal knowledge, the Chief FOIA Officer can attest to the fact that FMCS's FOIA activities are conducted with a presumption of openness. This presumption of openness was reinforced by the October 13, 2011, attendance of the FOIA Officer and Chief FOIA Officer at DOJ's Refresher Training on the Guidelines for Preparation of Annual FOIA Reports, and the attendance of the Chief FOIA Officer at the review of the Guidelines for 2012 Chief FOIA Officer Reports.

FMCS has not had occasion to make discretionary releases of otherwise exempt information. However, were such a potential opportunity to present itself, the Agency would utilize a balancing test to determine whether or not to make a discretionary disclosure. Specifically, FMCS would balance the benefit to the requester and the public of releasing the information against the harm of making the disclosure in the specific factual context of the individual case.

FMCS has also furthered the interest of openness by frequently compiling data for requesters, rather than supplying them with raw data, in order to provide them with information in the most useful form. For instance, one requester sought work stoppage data for thirteen

selected states over a ten year period. FMCS could have directed the requester to the Agency's website, where this information could have been extracted with great difficulty from monthly reports of all struck employers listed alphabetically rather than state by state. Instead, with its electronic capabilities, the Agency prepared and produced a file listing struck employers year by year on a state by state basis limited to the thirteen states of interest. See also, Spotlight on Success, infra,

In addition, in order to maximize its responsiveness, FMCS attempts to direct requesters to an alternative source of information when it lacks information responsive to the request. Thus, in a case where the requester sought documents from what appeared to be a corporate cash distribution arbitration (rather than a labor or employment arbitration), FMCS suggested the requester contact FINRA, which operates the largest monetary and business disputes resolution forum in the securities industry, and provided FINRA's arbitration website.

FMCS's pattern of full and partial disclosures has been consistent from FY 2010 to FY 2011, when considered in the context of the number of cases processed each year. In FY 2010, the Agency processed a total of 141 requests, of which 68 were full grants, one was a partial grant and none were full denials. Similarly, of 111 requests processed in FY 2011, 53 were full grants, 8 were partial denials and there were no full denials.

II. Steps Taken to Ensure that This Agency has an Effective System in Place for Responding to Requests

Since the FMCS is a small agency, the number of FOIA requests it processes are limited as shown above and, because they are centrally processed, the Agency does not require complex systems to operate effectively and efficiently. The same FOIA Officer processes all FOIA requests. The Chief FOIA Officer prepares, reviews and/or determines the appropriate response in over one-half the cases. The FMCS uses a variety of systems to ensure efficiency and effectiveness including, for example, dedicated electronic filing, log in/out, and request tracking. Three IT personnel have been specially designated to provide information support: one is dedicated to website posting, another to technical support and a third to records retrieval.

III. Steps Taken to Increase Proactive Disclosures

Since the close of FY 2004, the FMCS has made major additions to the information available to the public in its "reading room" located on the Agency's website. This includes frequently sought data concerning, among other things, notices of contract termination, arbitration data, and beginning and ending work stoppages reports. **This data is updated on a monthly basis.** These new categories of reading room postings, which were completed prior to FY 2012, have resulted in a **year to year reduction of Agency FOIA requests of more than 80%** since FY 2004. In addition, in order to improve the delivery of FOIA services, the FMCS also added a voluntary customer feedback survey form to its reading room prior to FY 2012. However, no additional categories of information were identified during the reporting period which, if added to the reading room, would have further reduced FOIA requests to the Agency.

IV. Steps Taken to Greater Utilize Technology

The FMCS has had the capability to receive and process all requests electronically on a centralized basis since 2009. The Agency uses a dedicated email address, which is available on the Agency' website, to receive electronic requests. The FMCS has the capacity to track all requests electronically and uses off-the-shelf email management, word processing and spread sheet systems to process requests. The Agency also utilizes its Case and Contact Management System, originally developed to track mediation cases, to perform document search and retrieval. In addition, the Agency is developing a separate document system for sharing, storing and searching for its documents. However, given its record of prompt responses to FOIA requests, FMCS has not seen the need for implementing a requester tracking system.

V. Steps Taken to Improve Timeliness in Responding to Requests and Reduce Backlogs

1. FMCS utilizes a separate track for simple requests. On average the Agency processed simple requests in 7 days.
2. FMCS had no requests and no appeals, backlogged or pending, as of the close of FY 2010 and FY 2011.
3. There was no reduction in the backlog of requests or appeals because there was no backlog in either category to begin with.
4. FMCS's goal is to process and respond to requests as quickly as possible. Its average processing time of 7 days for simple requests, no responses older than 20 days and the absence of a request or appeal backlog for either FYs 2010 or 2011, are a testament to the successful attainment of this goal. In as much as the Agency has not incurred any backlogs as of the close of FYs 2010 or 2011, it has not taken any additional steps to "reduce backlogs and improve timeliness."
5. FMCS has not has occasion to engage in a consultation process with another agency.

Use of FOIA's Law Enforcement "Exclusions"

FMCS did not invoke any law enforcement exclusion in any of its FOIA responses during FY 2011.

Spotlight on Success

FMCS has been particularly successful in its administration of cases involving complex requests for records of collective bargaining agreements, which records the parties are required to submit to the Agency by law 60-90 days prior to contract expiration. These records are organized and updated on a monthly basis and are available on the FMCS website. A requester seeking information regarding a specific agreement would have to review some 200-250 or more entries per month to locate this data; if the requester did not know the month in which the data was filed, it might have to review, for example, 12 months of entries or a total of some 3000 total entries to find the single record of group of records of interest.

While FOIA requires the production of data by an agency under appropriate circumstances, it does not require an agency to manipulate data to put it in a format deemed most useful by the requester. Nevertheless, on numerous occasions, FMCS has extracted information from collective bargaining records available on its website, manipulated that data electronically and printed it on a spreadsheet for the requester in a format most responsive to the requester's inquiry. FMCS believes this approach is consistent with the "spirit of cooperation" sought by President Obama and exemplifies the type of "proactive disclosure" whose importance was stressed by Attorney General Holder.

For example, one requester sought data identifying (1) contracts due to expire during the most recent 12 month period in North Dakota, and (2) all contracts expiring during a 5 year period in Iowa and South Dakota. An on-line search would have required the requester to review about 3000 entries to identify (1) [one year of North Dakota contracts] and some 12,500 entries to identify (2) [Iowa and South Dakota contracts over a 5 year period]. Instead of imposing this burden on the requester, FMCS electronically extracted the data sought, printed it on a spreadsheet and produced it for the requester. The Agency followed a similar approach in several other data intensive cases.

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