FISCAL YEAR 2022
CHIEF FOIA OFFICER REPORT

U.S. Merit Systems Protection Board

March 2022

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2022 Chief FOIA Officer Report
for the Merit Systems Protection Board (MSPB)
by
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Acting Executive Director and
Chief FOIA Officer

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The MSPB (www.mspb.gov) is an independent, quasi-judicial agency in the Executive Branch that serves as the guardian of Federal merit systems. Our mission is to protect the merit system principles and promote an effective Federal workforce free of prohibited personnel practices. We carry out our statutory responsibilities and authorities primarily by adjudicating individual employee appeals and by conducting merit systems studies. In addition, MSPB reviews the significant actions of the Office of Personnel Management to assess the degree to which those actions may affect merit system principles and prohibited personnel practices. The MSPB is headquartered in Washington, DC, with eight Regional and Field Offices.

Section I: Steps Taken to Apply the Presumption of Openness

The guiding principle underlying the Department of Justice's (DOJ) FOIA Guidelines is the presumption of openness.

Please answer the following questions in order to describe the steps your agency has taken to ensure that the presumption of openness is being applied to all decisions involving the FOIA. You may also include any additional information that illustrates how your agency is working to apply the presumption of openness.

A. FOIA Leadership

1. The Freedom of Information Act (FOIA) requires each agency to designate a Chief FOIA Officer who is a senior official at least at the Assistant Secretary or equivalent level. *See 5 U.S.C. § 552(j)(1)(2018).* Is your agency's Chief FOIA Officer at this level?

   Answer: Yes.

2. Please provide the name and title of your agency's Chief FOIA Officer.

   Answer: William D. Spencer, Clerk of the Board (currently serving as Acting Executive Director).

B. FOIA Training

3. The FOIA directs agency Chief FOIA Officers to ensure that FOIA training is offered to agency personnel. *See 5 U.S.C. § 552(a)(j)(2)(F).* Please describe the efforts your agency has undertaken to ensure proper FOIA training is made available and used by agency personnel.

   Answer: MSPB required all employees to participate in FOIA training in Fiscal Year 2021, and achieved 100% completion. Employees were provided with a substantive

training through PowerPoint slides that they could review at their own pace, and which included a brief overview of the FOIA, current and precedential court decisions, and an explanation of how the FOIA is administered at MSPB. The training slides remain available to all employees on the FOIA page of our agency's intranet.

In certain circumstances, e.g., for newly hired personnel, the FOIA training is reviewed via Zoom for Government with the presenter available to share the content and answer questions.

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

   Answer: Yes. MSPB's FOIA professionals conscientiously monitor training opportunities and attend the trainings that are pertinent to MSPB.

5. If yes, please provide a brief description of the type of training attended or conducted and the topics covered.

   Answer: MSPB staff attended trainings offered by DOJ's Office of Information Policy (OIP), including training for Continuing FOIA Education and the Annual and Chief FOIA Officer Reports. Staff also attended a training given by the American Society of Access Professionals.

   The topics covered by the trainings included recent significant court decisions and the role of the National FOIA Portal.

6. Please 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: 95%.

7. 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: Not applicable.

8. Did the personnel at your agency who have FOIA responsibilities attend training in federal records management during the reporting period?

   Answer: Yes. FOIA personnel attended records management training that was created by MSPB's Records Officer and mandatory for all MSPB employees.

C. *Outreach*

9. Did your FOIA professionals engage in any outreach or dialogue, outside of the standard request process, with the requester community or open government groups regarding your

administration of the FOIA? Please describe any such outreach or dialogue, and, if applicable, any specific examples of how this dialogue has led to improvements in your agency's FOIA administration.

Answer: No. Due to limited resources and workload in our FOIA program, MSPB's FOIA professionals were unable to engage in any formal outreach or dialogue with the requester community.

D. Other Initiatives

10. Describe any efforts your agency has undertaken to inform non-FOIA professionals of their obligations under the FOIA. In particular, please describe:

    - how often and in what formats your agency provides FOIA training or briefings to non-FOIA staff; and
    - if senior leaders at your agency received a briefing on your agency's FOIA resources, obligations and expectations during the FOIA process?

    Answer: As explained above, MSPB deployed mandatory FOIA training for all employees – including senior leaders – in Fiscal Year 2021, and the training is maintained and available to all employees on our agency's intranet. In addition, refresher training is given to any employee or office upon request, and new employees receive FOIA training upon onboarding. The Chief FOIA Officer also provides non-FOIA professionals with relevant information about FOIA obligations or implications when situations arise. We also continue to maintain a FOIA page on our agency's intranet that contains general information about FOIA processing at MSPB.

11. Optional – 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: In an effort to raise awareness about FOIA and the presumption of openness, MSPB's FOIA staff use opportunities during staff meetings and inter-office meetings to share trends in FOIA requests and processing and how those trends may relate to agency programs or initiatives. Additionally, non-FOIA staff at MSPB strive to identify records that could be proactively released.

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

DOJ's FOIA Guidelines emphasize that "[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.

Please answer the following questions to describe the steps your agency has taken to ensure that the management of your FOIA program is effective and efficient. You should also include any additional information that that describes your agency's efforts in this area.

1.   For Fiscal Year 2021, 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 2021 Annual FOIA Report.

Answer: 2 days.

2.   If your agency's average number of days to adjudicate requests for expedited processing was above ten calendar days, according to Section VIII.A. of your agency's Fiscal Year 2021 Annual FOIA Report, please describe the steps your agency will take to ensure that requests for expedited processing are adjudicated within ten calendar days or less.

Answer: Not applicable. MSPB continues to prioritize the adjudication of expedited requests and to grant such requests, when appropriate.

3.   The FOIA Improvement Act of 2016 required all agencies to update their FOIA regulations within180 days. In 2016, OIP issued Guidance for Agency FOIA Regulations and the accompanying Template for Agency FOIA Regulations to assit agencies in updating their regulations in accordance with the statute. Has your agency updated its FOIA regulations in accordance with the FOIA Improvement Act of 2016? If not, what is your agency's plan to update your regulations?

Answer: No. MSPB was not able to complete the updates to its FOIA regulations within the 180-day period following the FOIA Improvement Act of 2016. Beginning January 7, 2017, through March 3, 2022,[1] MSPB lacked a quorum of Senate-confirmed Board members. Because of the significant length of the lack of quorum, Board members were not able to approve the substantive regulation updates. Nonetheless, MSPB FOIA staff follows the mandates as provided by the statute, and have drafted updates to our FOIA regulations in anticipation of new Board members and the restoration of a quorum.

4.   Standard Operating Procedures (SOPs) generally document your agency's internal processes for administering the FOIA beyond your FOIA regulations and FOIA Reference Guide. As noted in OIP's guidance, having SOP's can improve the consistency and guality of an agency's FOIA process. SOPs can also serve as a significant resource for incoming FOIA professionals and a way to preserve much of the agency's institutional knowledge on administering the FOIA from how to handle requests from start-to-finish, to identifying and making proactive disclosures, to maintaining a FOIA website. Does your agency have up-to-date internal SOPs for your FOIA administration?

Answer: No. However, MSPB began memorialzing its Standard Operating Procedures (SOP) in Fiscal Year 2021 and expects to complete them in Fiscal Year 2022. MSPB currently provides general information about its FOIA processes on its website at https://www.mspb.gov/foia/request.htm, and will review and update this website content following the creation of our written SOPs.

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[1] The restoration of MSPB's quorum occurred on March 4, 2022, with the swearing in of Vice Chair Raymond Limon and Board Member Tristan Leavitt.

5.   If not, please provide a timeline for when your agency plans to develop or update its SOPs.

Answer: As noted above, MSPB expects to complete this initiative in Fiscal Year 2022. Notably, in mid-Fiscal Year 2021 MSPB converted a vacant full-time equivalent (FTE) position from 100% records management support to a Government Information Specialist (GIS) position with 50% of their time allocated to MSPB's disclosure programs (FOIA and Privacy Act) and 50% allocated to records management support. MSPB is confident that this allocation will benefit the FOIA program and also recognizes that it takes time to integrate a new position into existing program processes while striving to achieve operational efficiency.

6.   Has your agency established alternative means of access to first-party requested records outside of the FOIA process?

Answer: Yes.

7.   If yes, please provide examples. If no, please explain if such opportunities exist at your agency and whether there are any challenges in establishing alternative means of access.

Answer: First-party requesters almost exclusively seek their MSPB appeal case file. Many requestors are able to access their current or recent appeal files through MSPB's e-Appeal Online system, a web-based system with access restricted to case parties only. Requestors are encouraged to use e-Appeal to access and download electronic copies of their appeal file whenever circumstances allow. However, a significant portion of first-party requesters seek their older records, the majority of which are in paper format and are maintained offsite at Federal Records Centers throughout the United States. In other circumstances, requestors seek a paper copy of their first-party record even when the record is available electronically.

8.   Did your agency conduct a self-assessment of its FOIA administration during the reporting period? If so, please describe the self-assessment methods used, such as analyzing Annual Report or raw data, using active workflows and track management, reviewing and updating processing procedures, etc. In addition, please specifically highlight any data analysis methods or technologies used to assess your agency's FOIA program.

Answer: Yes. At the outset of Fiscal Year 2021, MSPB used the accomplishments and lessons learned in Fiscal Year 2020 to set goals, including quarterly and annual goals for backlog reduction, specific targets to close the ten oldest requests, and goals to maintain our processing times. Through lessons learned from previous years, and a continued focus on backlog reduction while processing new simple requests, MSPB was successful in closing all ten of our oldest requests while also processing more requests overall.

9.   The FOIA Improvement Act of 2016 requires additional notification to requesters about the services provided by the agency's FOIA Public Liaison. Please provide an estimate of the number of times requesters sought assistance from your agency's FOIA Public Liaison during Fiscal Year 2021 (please provide a total number or an estimate of the number).

Answer: MSPB experienced very few instances (less than five) of requesters seeking the services of the FOIA Public Liaison in Fiscal Year 2021.

10.   Has your agency reviewed its FOIA-related staffing capabilities to identify resources needed to respond to current and anticipated FOIA demands?

Answer: Yes. As noted above, MSPB added a 0.5 FTE to further support the FOIA program.

11.   Optional – Please describe:
   - Best practices used to ensure that your FOIA system operates efficiently and effectively
   - Any challenges your agency faces in this area.

Answer: MSPB has one full-time FOIA GIS, and as noted above, added 0.5 FTE in mid-Fiscal Year 2021 to support the FOIA program. We also have cross-trained the FOIA management team to ensure FOIA processing continues even when the full-time FOIA GIS is unavailable or on leave, and the new GIS with 50% FOIA duties will further support this effort. As explained above, MSPB's approach includes setting quarterly and annual goals to manage the FOIA program at the outset of each fiscal year. Our FOIA team meets throughout the year to continuously review and discuss pending FOIA requests. The full-time FOIA GIS and the FOIA Public Liaison maintain almost daily contact to ensure efficiency and to maximize resources. Frequent meetings help identify when other staff can provide triage support to the program, such as for a voluminous request or to assist in the interpretation or scope of a request. This approach assists in maintaining processing times for simple requests and ensures new requests are timely docketed, acknowledged, and triaged. MSPB continues to increase efforts to reach out to requesters when a request is received to ensure we understand the requester's needs and to allow the requester to narrow the request to allow for faster processing. Finally, we continue to benefit from efforts initiated in Fiscal Year 2018 to streamline our electronic searches for certain types of records, thereby making the search and review process more efficient, and in Fiscal Year 2021 we deployed better use of FOIAonline, our FOIA tracking system, to track efforts by staff to search for and prepare potentially responsive records for review and processing.

Section III: Steps Taken to Increase Proactive Disclosures

The Department of Justice has long 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.

1. Please describe what steps your agency takes to identify, track, and post (a)(2) proactive disclosures.

   Answer: MSPB's non-FOIA program staff are aware of their obligations to post (a)(2) disclosures, and regularly coordinate with MSPB's webmaster to ensure that step occurs. MSPB's management and FOIA staff work closely to identify and proactively disclose records that are likely to garner public interest. MSPB also monitors new and processed FOIA requests to identify trends or similarities in requests that require posting under (a)(2)(D). MSPB's FOIA personnel work closely with MSPB's webmaster to track the number of (a)(2) postings to MSPB's website. In preparation for the annual report, the FOIA staff coordinated with the webmaster to complie a list of all records posted to the website, including the date posted.

2. Provide examples of material that your agency has proactively disclosed during the past reporting year, including records that have been requested and released three or more times in accordance with 5 U.S.C. § 552(a)(2)(D). Please include links to these as well.

   Answer:

   We posted Case Reports that provide descriptions of court decisions:
   https://www.mspb.gov/decisions/casereports.htm

   We posted the MSPB COVID-19 Workplace Safety Plan:
   https://www.mspb.gov/coronavirus/MSPBCOVID-19WorkplaceSafetyPlan9-29-21.pdf

   We posted electronic versions of three *Issues of Merit* newsletters issued by MSPB's Office of Policy and Evaluation (OPE):
   https://www.mspb.gov/studies/newsletters.htm

   We posted electronic versions of five research briefs issued by OPE:
   - https://www.mspb.gov/studies/researchbriefs/The_Importance_of_Job_Fit_for_Federal_Agencies_and_Employees_1774214.pdf
   - https://www.mspb.gov/studies/researchbriefs/Direct_Hire_Authority_Under_5_USC_%C2%A7_3304_Usage_and_Outcomes_1803830.pdf
   https://www.mspb.gov/studies/researchbriefs/Determining_an_Acceptable_Level_of_Competence_for_Step_Increases_1823371.pdf
   - https://www.mspb.gov/studies/researchbriefs/Agency_Leader_Responsibilities_Related_to_Prohibited_Personnel_Practices_1832805.pdf
   - https://www.mspb.gov/studies/researchbriefs/Confidence_in_Ability_to_Perform_Successfully_1868023.pdf

We posted an electronic version of a guide issued by OPE:
- https://www.mspb.gov/studies/studies/The_Merit_System_Principles_Keys_to_Managing_the_Federal_Workforce_1371890.pdf

We posted records related to the 2021 Merit Principles Survey:
https://www.mspb.gov/FOIA/SurveyData.htm

We posted agency annual and budget reports:
- https://www.mspb.gov/about/annual_reports/MSPB_APR-APP_for_FY_2020-2022.pdf
- https://www.mspb.gov/about/annual_reports/MSPB_APR_for_FY_2020__1800130.pdf
- https://www.mspb.gov/about/annual_reports/MSPB_FY_2020_Annual_Report_1800131.pdf
- www.mspb.gov/about/budget/FY_2022_Congressional_Budget_Justification.pdf
- https://www.mspb.gov/about/surveys/MSPB_2020_Employee_Viewpoint_Survey_Results.pdf

We posted information on the lack of and subsequent restoration of Board quorum and press releases:
- https://www.mspb.gov/FAQs_Absence_of_Board_Quorum_March_4_2022.pdf
- https://www.mspb.gov/publicaffairs/press_releases/MSPB_Invites_Input_for_Strategic_Planning_1839489.pdf
- https://www.mspb.gov/publicaffairs/press_releases/Website_Redesign_July_2021_1848747.pdf

We posted information from MSPB's Privacy Program:
- https://www.mspb.gov/privacy/Privacy_Impact_Assessment_Qualtrics_12_22_20.pdf
- https://www.mspb.gov/privacy/Box-com-PIA-5-11-21.pdf
- https://www.mspb.gov/privacy/CertificationofVaccinationEMFSQualtricsPIA.pdf

Among the records available in our e-FOIA reading room (https://www.mspb.gov/foia/e-foiareadingroom.htm), we posted or cross-posted the following records:

Pending Petition for Review Data (January 2017-December 31, 2021) (updated monthly):
https://www.mspb.gov/foia/files/february_2022_pfrs_received_and_pending_counts-508.pdf

MSPB Docket Number Construction:
https://www.mspb.gov/foia/files/Docket_Number__Construction.pdf

Fiscal Year 2020 Annual Freedom of Information Act Report:

https://www.mspb.gov/foia/reports/FY_2020_Annual_Freedom_of_Information_Act_Report.pdf

2021 Chief FOIA Officer Report:
https://www.mspb.gov/foia/reports/2021_Chief_FOIA_Officer_Report.pdf

3. Does your agency disseminate common types of material outside of FOIA, including online databases where the public may access them? If yes, please provide examples and, if applicable, statutory authority.

   Answer: MSPB posts common types of materials including agency reports, final decisions, and press releases on its website which any member of the public can access.

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?

   Answer: Yes.

5. If yes, please provide examples of such improvements. In particular, please describe steps your agency is taking to post information in open, machine-readable, and machine-actional formats, to the extent feasible. If not posting in open formats, please explain why and note any challenges.

   Answer: MSPB unveiled a comprehensive redesign of its website in Fiscal Year 2021, based on the U.S. Web Design System. Through this redesign, MSPB improved the customer experience by highlighting popular categories of records, offering better search capability by utilizing Search.gov, and ensuring that resources available through the website are compliant with Section 508 of the Rehabilitation Act. Additionally, recognizing that MSPB customers frequently wish to search and access MSPB Board decisions that are posted to the website, MSPB's new website includes a separate, advanced search tool for searching the database of Board decisions more efficiently.

   Records are posted in machine-readable and -actional formats when relevant, such as the Merit Principles Survey Data that was posted to the website in various formats to proactively meet customer needs.

6. Does your proactive disclosure process or system involve any collaboration with agency staff outside the FOIA office? If so, describe interaction.

   Answer: Yes. As noted above, MSPB's non-FOIA program staff are aware of their obligations to post (a)(2) disclosures, and they regularly coordinate directly with MSPB's webmaster to ensure that step occurs. MSPB's FOIA staff also collaborate with program offices prior to posting proactive disclosures that FOIA staff identify.

Optional -- Please describe:

- The best practices used to improve proactive disclosures
- Any challenges your agency faces in this area.

Answer: MSPB's FOIA staff monitors incoming requests to spot trends and topics of public interest, and vigilantly monitors agency initiatives and current events concerning the agency. Additionally, program offices within MSPB communicate with the FOIA staff to bring matters of public concern or interest to their attention.

MSPB's challenge in this area is balancing limited resources among multiple objectives: timely processing of requests, backlog reduction, and maximizing opportunities to identify and make proactive disclosures.

Section IV: Steps Taken to Greater Utilize Technology

A key component of FOIA administration is using technology to make information more accessible. 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.

1. Has your agency reviewed its FOIA-related technology capabilities to identify resources needed to respond to current and anticipated FOIA demands?

   Answer: Yes.

2. Please briefly describe any new types of technology your agency began using during the reporting period to support your FOIA program.

   Answer: MSPB began using secure file sharing technology to assist in releasing records to requestors more quickly and efficiently. Utilization of this technology has reduced the need to release records in compact disc or paper format through U.S. mail or commercial vendors. MSPB also continued efforts to better leverage other current technology, e.g., the Microsoft Office 365, to conduct both enterprise-level and targeted searches for records.

3. OIP issued guidance in 2017 encouraging agencies to regularly review their FOIA websites to ensure that they contain essential resources, and are informative and user-friendly. Has your agency reviewed its FOIA website(s) during the reporting period to ensure it addresses the elements noted in the guidance?

   Answer: Yes. MSPB continually reviews the FOIA website to ensure that it contains essential resources and is informative and user-friendly. Additionally, as part of MSPB's website redesign, FOIA staff reviewed the new FOIA webpage to ensure that all necessary information was included and user-friendly.

4. Did all four of your agency's quarterly reports for Fiscal Year 2021 appear on your agency's website and on FOIA.gov?

Answer: Yes. MSPB posted quarterly reports for the first, second, and third quarter to FOIA.gov via the OIP-developed tool, and to our website. Following OIP staff guidance, MSPB entered data for the fourth quarter directly to FOIA.gov and did not post fourth quarter data to our website.

5. 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 2022.

    Answer: Not applicable.

6. The FOIA Improvement Act of 2016 requires all agencies to post the raw statistical data used to compile their Annual FOIA Reports. Please provide the link to this posting for your agency's Fiscal Year 2020 Annual FOIA Report and, if available, for your agency's Fiscal Year 2021 Annual FOIA Report.

    Answer: MSPB posted raw data from our Fiscal Year 2020 Annual FOIA Report in both a human-readable CSV form and a machine-readable XML form. Both forms of raw data are available in our e-FOIA Reading Room:
    - Fiscal Year 2020 Report (CSV)
      https://www.mspb.gov/FOIA/reports/xml/FY20_Annual_FOIA_Report_Raw DataExport.xlsx
    - Fiscal Year 2020 Report (XML)
      https://www.mspb.gov/FOIA/reports/xml/FY20_Annual_FOIA_Report.xml
    - Fiscal Year 2021 Report (CSV)
      https://www.mspb.gov/FOIA/reports/FY21_Raw_Data_Export.csv
    - Fiscal Year 2021 Report (XML)
      https://www.mspb.gov/foia/reports/MSPB_FY21_XML_Final.xml

7. (Optional) Please describe:

    - Best practices used in greater utilizing technology
    - Any challenges your agency faces in this area.

    Answer: MSPB's challenge in utilizing new technology is allocating the resources and time to research available technologies and understand how they would improve the FOIA program at MSPB. With the announcement of the sunsetting of the FOIAonline Shared Service by the end of Fiscal Year 2023, MSPB will have to transition to a new FOIA processing platform by Fiscal Year 2024.

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

The Department of Justice has 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 2020 and 2021 Annual FOIA Reports.

A. 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. MSPB utilizes the traditional three-track system for FOIA requests: simple, complex, and expedited requests.

2. If your agency uses a separate track for simple requests, according to Annual FOIA Report section VII.A, was the agency overall average number of days to process simple requests twenty working days or fewer in Fiscal Year 2021?

   Answer: Yes. MSPB's overall average response time for all processed perfected simple requests was 4.49 days in Fiscal Year 2021.

3. Please provide the percentage of requests processed by your agency in Fiscal Year 2021 that were placed in your simple track. Please use the following calculation based on data from your Annual FOIA Report (processed simple requests from Section VII.C.1) *divided by* (requests processed from Section V.A.) x 100.

   Answer: 60%.

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: Not applicable.

B. Backlogs

When answering these questions, please refer to your Fiscal Year 2021 Annual FOIA Report, Sections XII.D-E, which compare the numbers of requests and appeals received, processed, and backlogged between Fiscal Years 2020 and 2021.

BACKLOGGED REQUESTS

5. If your agency had a backlog of requests at the close of Fiscal Year 2021, according to Annual FOIA Report Section XII.D.2, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2020?

   Answer: Yes.

6. If not, according to Annual FOIA Report Section XII.D.1, did your agency process more requests during Fiscal Year 2021 than it did during Fiscal Year 2020?

   Answer: Not applicable.

7. If your agency's request backlog increased during Fiscal Year 2021, please explain why and describe the causes that contributed to your agency not being able to reduce its backlog. When doing so, please also indicate if any of the following were contributing factors:

   - An increase in the number of incoming requests.
   - A loss of staff.
   - An increase in the complexity of the requests received. If possible, please provide examples or briefly describe the types of complex requests contributing to your backlog increase.
   - Impact of COVID-19 and worklplace and safety precautions.
   - Any other reasons – please briefly describe or provide examples when possible.

   Answer: Not applicable.

8. 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 2021. Please use the following calculations based on data from your Annual FOIA Report: (backlogged requests from Section XII.A) *divided by* (requests received from Section V.A) x 100. This number can be greater than 100%. If your agency has no request backlog, please answer with "N/A."

   Answer: 28%.

BACKLOGGED APPEALS

9. If your agency had a backlog of appeals at the close of Fiscal Year 2021, according to Section XII.E.2 of the Annual FOIA Report, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2020?

   Answer: No. The number of backlogged appeals increased by one appeal as reported in Fiscal Year 2020.

10. If not, according to section XII.E.1 of the Annual FOIA Report, did your agency process more appeals during Fiscal Year 2021 than it did during Fiscal Year 2020?

    Answer: No. The number of appeals processed in Fiscal Year 2021 decreased, but kept pace with the number of appeals received.

11. If your agency's appeal backlog increased during Fiscal Year 2021, please explain why and describe the causes that contributed to your agency not being able to reduce its backlog. When doing so, please also indicate if any of the following were contributing factors:

    - An increase in the number of incoming appeals.
    - A loss of staff.

- An increase in the complexity of the requests received. If possible, please provide examples or briefly describe the types of complex requests contributing to your backlog increase.
- Any other reasons – please briefly describe or provide examples when possible.

Answer: The appeal backlog only increased by one, and that appeal presents complex issues.

12. 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 2021. Please use the following calculation based on data from your Annual FOIA Report: (backlogged appeals from Section XII.A) *divided by* (appeals received from Section VI.A) x 100. If your agency did not receive any appeals in Fiscal Year 2021 and/or has no appeal backlog, please answer with "N/A."

Answer: 20%.

C. Backlog Reduction Plans

13. In the 2021 guidelines for Chief FOIA Officer Reports, any agency with a backlog of over 1,000 requests in Fiscal Year 2020 was asked to provide a plan for achieving backlog reduction in the year ahead. Did your agency implement a backlog reduction plan last year? If so, describe your agency's efforts in implementing this plan and note if your agency was able to achieve backlog reduction in Fiscal Year 2021?

Answer: MSPB did not have a backlog of over 1,000 requests in Fiscal Year 2020.

14. If your agency had a backlog of more than 1,000 requests in Fiscal Year 2021, please explain your agency's plan to reduce this backlog during Fiscal Year 2022. In particular, please also detail how your agency developed and plans to execute your backlog reduction plans.

Answer: Not applicable.

D. Status of 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 2020 and Fiscal Year 2021 when completing this section of your Chief FOIA Officer Report.

OLDEST REQUESTS

15. In Fiscal Year 2021, did your agency close the ten oldest pending perfected requests that were reported in Section VII.E. of your Fiscal Year 2020 Annual FOIA Report?

Answer: Yes.

16. 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 2020 Annual FOIA Report. If you had less than ten total oldest requests to close, please indicate that.

    Answer: Not applicable.

17. Beyond work on the ten oldest requests, please describe any steps your agency took to reduce the overall age of your pending requests.

    Answer: MSPB continues to concentrate on backlog reduction. By closing all of the ten oldest requests in Fiscal Year 2020, we demonstrated our commitment to meet this objective.

    We continue to set goals of reducing the processing time for simple requests. By processing simple requests more efficiently and quickly, and striving to keep pace with newly-received simple requests, we reduced the amount of new requests that were left pending at the end of the fiscal year. Each year, as we work through our backlog and clear the oldest of the pending requests, the overall age of pending requests will decrease.

TEN OLDEST APPEALS

18. In Fiscal Year 2021, did your agency close the ten oldest appeals that were reported pending in Section VII.C.5. of your Fiscal Year 2020 Annual FOIA Report?

    Answer: No.

19. 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 VI.C.(5) of your Fiscal Year 2020 Annual FOIA Report. If you had fewer than ten total oldest appeals to close, please indicate that.

    Answer: MSPB had two pending appeals at the end of Fiscal Year 2020 which still remain pending.

20. Beyond work on the ten oldest appeals, please describe any steps your agency took to reduce the overall age of your pending appeals.

    Answer: MSPB FOIA appeal staff work diligently to process appeals as they are filed.

TEN OLDEST CONSULTATIONS

21. In Fiscal Year 2021, did your agency close the ten oldest consultations that were reported pending in your Fiscal Year 2020 Annual FOIA Report?

    Answer: MSPB did not have any pending consultations in Fiscal Year 2020.

22. 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 2020 Annual FOIA Report. If you had fewer than ten total oldest consultations to close, please indicate that.

Answer: Not applicable.

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

23. Briefly explain any obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2020.

    Answer: MSPB was able to close the ten oldest pending requests in Fiscal Year 2020. The appeal backlog only increased by one, and that appeal presents complex issues.

24. 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: Not applicable.

25. 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 2022.

    Answer: While MSPB was successful in closing its ten oldest requests in Fiscal Year 2021, we have identified the ten oldest requests from our backlog for Fiscal Year 2022, and we are working towards setting quarterly goals in an effort to close these ten requests by September 30, 2022.

F. Success Stories

Out of all the activities undertaken by your agency since March 2020 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, OIP will highlight these agency success stories during Sunshine Week. 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 key achievements. A complete description of all your efforts will be contained in the body of your Chief FOIA Officer Report.

Answer: The FOIA program at MSPB continues to improve and mature. We continue to focus on setting and accomplishing goals to maximize the productivity of MSPB's FOIA program. The goal-oriented approach by our small FOIA team resulted in the following notable accomplishments in Fiscal Year 2021:

- Converted a staff vacancy to add a 0.5 FTE to support the FOIA program.
- Provided mandatory FOIA training which was completed by 100% of employees in Fiscal year 2021.
- Closure of all of the ten oldest requests from Fiscal Year 2020.
- Reduced simple track request processing time.

- An increase in our processing rate to keep pace with the increase in requests received during Fiscal Year 2021.