

**FEDERAL MEDIATION AND CONCILIATION SERVICE
FISCAL YEAR 2004 FOIA REPORT**

I. Basic Information Regarding Report

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

Mery Skolochenko
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Federal Mediation and Conciliation Service
2100 K Street, N.W.
Washington, D.C. 20427
Tel. No. (202) 606-5444

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

www.fmcs.gov/foia/foia.htm

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

Send a written request to:

Federal Mediation and Conciliation Service
Office of the General Counsel
2100 K Street, N.W.
Washington, D.C. 20427

II. How to Make a FOIA Request

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

FOIA requests should be sent to: Federal Mediation and Conciliation Service, Office of the General Counsel, 2100 K Street, N.W., Washington, D.C., 20427. The telephone number for the Office of General Counsel is (202) 606-5444. The formal rules for the making of FOIA requests to the Federal Mediation and Conciliation Service are set forth in Chapter 12 of Volume 29 of the Code of Federal Regulations. This multiple-volume set is available in all law libraries and federal depository libraries. These regulations also can be accessed at www.fmcs.gov/foia/foia.htm on the World Wide Web.

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

Under the FOIA, all federal agencies are required to respond to a FOIA request within twenty business days, excluding Saturdays, Sundays, and legal holidays. This period does not begin until the request is actually received by the FOIA office of the component that maintains the records sought. An agency is not required to send out the releasable documents by the last business day; it can send you a letter informing you of its decision and then send out the documents within a reasonable time afterward.

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

The FOIA provides access to all federal agency records (or portions of those records), except for those records that are withheld under any of nine exemptions or three exclusions (reasons for which an agency may withhold records from a requester). The 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) certain types of information compiled for law enforcement purposes; (8) information relating to the supervision of financial institutions; and (9) geological information on wells. The three exclusions, which are rarely used, pertain to especially sensitive law enforcement and national security matters.

III. Definitions of Terms and Acronyms Used in the Report

A. Agency-specific acronyms or other terms.

1. FMCS --Federal Mediation and Conciliation Service.

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 basis when a requester has shown an exceptional 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 a 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 entireties, 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 records 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:
National Labor Relations Act 29 USC §151 et seq.

1. Brief description of type(s) of information withheld under each statute: Redacted confidential client information from the records in order to maintain the confidentiality of the mediation process.

2. Statement of whether a court has upheld the use of each statute. If so, then cite example:

No court has upheld the statute in the FOIA context; however, the Ninth Circuit Court of Appeals recognized the statutory basis under the NLRA to maintain confidentiality within the labor mediation context and has quashed subpoenas for FMCS mediators. NLRB v. Joseph Macaluso, Inc. dba Lemon Tree, 618 F 2d 51 (9th Cir. 1980)

V. Initial FOIA/PA Access Requests

A. Numbers of initial requests.

1. Number of requests pending as of end of preceding fiscal year: 10¹

2. Number of requests received during current fiscal year: 449

3. Number of requests processed during current fiscal year: 447

4. Number of requests pending as of end of current fiscal year: 12

¹ "Last year this number was reported as 30. Because of better record keeping practices, we have determined that the number should be 10."

B. Disposition of initial requests.

1. Number of total grants: 431

2. Number of partial grants: 1

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 7(A): 0

(8) Exemption 7(B): 0

(9) Exemption 7(C): 0

(10) Exemption 7(D): 0

(11) Exemption 7(E): 0

(12) Exemption 7(F): 0

(13) Exemption 8: 0

(14) Exemption 9: 0

4. Other reasons for nondisclosure (total): 15

a. no records: 14

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 (specify): 0

VI. Appeals of Initial Denials of FOIA/PA Requests

A. Numbers 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: N/A

(2) Exemption 2: N/A

- (3) Exemption 3: N/A
 - (4) Exemption 4: N/A
 - (5) Exemption 5: 0
 - (6) Exemption 6: N/A
 - (7) Exemption 7(A): N/A
 - (8) Exemption 7(B): N/A
 - (9) Exemption 7(C): N/A
 - (10) Exemption 7(D): N/A
 - (11) Exemption 7(E): N/A
 - (12) Exemption 7(F): N/A
 - (13) Exemption 8: N/A
 - (14) Exemption 9: N/A
4. Other reasons for nondisclosure (total) N/A
- a. no records: 0
 - b. referrals: N/A
 - c. request withdrawn: N/A
 - d. fee-related reason: N/A
 - e. records not reasonably described: N/A
 - f. not a proper FOIA request for some other reason: N/A
 - g. not an agency record: N/A
 - h. duplicate request: N/A
 - i. other (specify): N/A

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: N/A

b. median number of days to process: N/A

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

a. number of requests processed: 447

b. median number of days to process: 8

3. Requests accorded expedited processing.

a. number of requests processed: N/A

b. median number of days to process: N/A

B. Status of pending requests.

1. Number of requests pending as of end of current fiscal year: 12

2. Median number of days that such requests were pending as of that date: 84

VIII. Comparisons with Previous Year(s) (Optional)

A. Comparison of numbers of requests received _____

B. Comparison of numbers of requests processed _____

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

D. Other statistics significant to agency Received 0 request for Expedited processing, therefore granted 0.

E. Other narrative statements describing agency efforts to improve timeliness of FOIA performance and to make records available to the public (e.g., backlog-reduction efforts; specification of average number of hours per processed request; training activities; public availability of new categories of records) _____

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):
0.80
3. Total number of personnel (in work-years): 0.80

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

1. FOIA processing (including appeals): \$43,845
2. Litigation-related activities (estimated): 0
3. Total costs: \$43,845
4. Comparison with previous year(s) (including percentage of change) (optional)

C. Statement of additional resources needed for FOIA compliance (optional)

X. Fees

- A. Total amount of fees collected by agency for processing requests: 0
- B. Percentage of total costs: N/A

XI. FOIA Regulations (Including Fee Schedule)

FMCS's regulations can be accessed at www.fmcs.gov/foia/foia.htm on the World Wide Web.