

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

**2015 Chief FOIA Officer Report  
Submitted By Michael J. Bartlett  
Chief FOIA Officer and Deputy General Counsel**

**Overview**

The Federal Mediation and Conciliation Service (FMCS) is a small, independent agency composed of 233 employees. Commensurate with its size, the FMCS received 141 FOIA requests during FY 2014, processed 137 requests to conclusion and, with 19 exceptions, closed all of these within 20 business days. The average response time for the 89 simple requests was 7.3 days. Only two requests were denied in their entirety, while information was redacted in 12 instances. Further, only two cases were backlogged as of the end of the reporting period. No new appeals were received. However, one appeal pending as of the start of the FY was affirmed.

The FMCS had only a single part-time FOIA Officer (Chief FOIA Officer or CFO) and no other formal FOIA structure. IT support was available as needed on an *ad hoc* basis. The former non-Chief FOIA Officer retired effective November 30, 2012 and has not been replaced due to budget constraints. A contract employee provided part-time administrative assistance. Under these circumstances, and as demonstrated by the statistics set forth in the 2014 Annual Report, many of the Attorney General's FOIA Guidelines either are not applicable to an agency of this size with limited personnel, processing a relatively small number of requests, or have been implemented previously.

**I. Steps Taken to Apply the Presumption of Openness**

**FOIA Training:**

During the reporting period (March 2014 to date), the Chief FOIA Officer (CFO) has personally responded to all FOIA requests. Hence, on the basis of personal knowledge, and having undertaken all reasonably available steps toward this end as demonstrated herein, the CFO can attest to the fact that the FMCS's FOIA activities are conducted with a presumption of openness.

The FMCS lacks the personnel and resources to conduct in-house training and, due to conflicts with his other responsibilities and two requests which were extraordinary in scope and complexity, both of which pose a challenge to any training commitment, the CFO was unable to attend outside training such as that offered by the Office of Information Policy (OIP). However, the CFO intends to make outside training a priority for FY 2015. In this regard, the CFO – as a first choice of training - would attend a program for “[FOIA] Attorneys and Access Processions” if OIP schedules one in 2015 as it did in 2014.

**Discretionary Releases and Other Initiatives:**

Since it has utilized exemptions in only ten cases during FY 2014, the 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 the Attorney General's "foreseeable harm" standard to determine whether release or denial is appropriate. Specifically, FMCS would be guided by DOJ's position that it "will defend the denial of a FOIA request only if (1) the Agency reasonably foresees that disclosure would harm an interest protected by one of the statutory exemptions, or (2) disclosure is prohibited by law. Upon review of the ten cases where one or more exemptions were involved, it was determined that all satisfied the first criteria of the "foreseeable harm" standard. Moreover, while not within the category of discretionary releases because no exemption was involved, in several cases the FMCS provided additional information to that which had been requested, which the Agency believed would be helpful to the requestor based on the nature and scope of the inquiry.

The FMCS's pattern of full and partial disclosures has been consistent from FY to FY when considered in the context of the number of cases processed each year. More importantly, a pattern virtually absent the invocation of any exemptions demonstrates the application of a presumption of openness. Thus, in the 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 based on exemptions. Of the 111 requests processed in FY 2011, 53 were full grants, 8 were partial grants and there were no full denials based on exemptions. Similarly, in FY 2012, the FMCS processed a total of 69 requests, of which 29 were full grants, 8 were partial grants and only one was a full denial based on an exemption. Of 113 requests processed in FY 2013, 38 were full grants, 8 were partial grants and there were no full denials based on exemptions. Finally, of the 137 requests the FMCS processed in FY 2014 38 were full grants, 7 were partial grants, and 4 were full denials.

**II. Steps Taken to Ensure that This Agency Has an Effective System in Place for Responding to Requests****Personnel:**

Since the CFO's responsibility is a part-time function of the Deputy General Counsel, and since there are no other FOIA personnel, the FMCS has no employees which have, or can be, converted to the Government Information Specialist job series. This has been confirmed by the Agency's Human Resources department.

**Processing Procedures:**

The FMCS received no requests, and processed no cases, for expedited processing during FY 2014.

**Requester Services:**

The FMCS notifies requesters of the mediation services offered by the Office of Government Information Services (OGIS) in any case in which the requester registers a complaint or disagreement with the outcome. No cases of this type arose during FY 2014. Beginning in March 2015, the Agency intends to provide this notification as a matter of course in all cases in which the requester is granted less than he or she seeks.

When assessing fees, the FMCS always provides the requester with a detailed breakdown of how fees were calculated and assessed. If estimated fees appear to be running particularly high, it is FMCS practice to discuss the matter of fees, including ways in which fees might be reduced while still preserving the essence of the request, with the requester. Any resulting changes to the request are memorialized in writing.

**Other Initiatives:**

During FY 2014, “simple” requests were processed in a median time of 2 days. And despite several exceptionally large, difficult, “complex” request cases, the median time for processing complex cases was 32 days. In view of these statistics, the small size of the Agency, the relatively few number of cases it processes, and the fact that processing is centrally controlled by the Chief FOIA Officer, who currently determines and prepares the appropriate response in all cases, the Agency does not require complex systems to operate effectively and efficiently.

The FMCS uses a variety of systems to ensure effective and efficient responses including, for example, dedicated electronic filing, log in/out, request tracking and email communication with requesters. 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. Finally, given the Agency’s small size, there is substantial overlap among FOIA and Open Government personnel, which necessarily results in significant interaction between these two functions.

**III. Steps Take to Increase Proactive Disclosures****Posting Material:**

Since all FOIA requests are processed by the CFO, he is in a position to make a determination with respect to proactive disclosure on a case-by-case or category basis. Hence, the Agency has no need for any other process or system. The CFO is open to suggestions of proactive disclosure from Agency personnel outside the FOIA office, but none have been received to date. As is the case with proactive disclosures above, the CFO is in a position to identify “frequently requested” records that should be posted online.

Over the last ten years, the FMCS has made major additions to the information available to the public at its “Fast Track” tab and in its Reading Room located on the Agency’s website under “Make Contact.” Annually updated Fast Track data includes “Find a Mediator,” The

FMCS Institute for Conflict Management course offerings and the FMCS Annual Reports. The Reading Room information posted pursuant to Section 552(a)(2) of the FOIA, which requires an agency to make frequently requested records available, includes often sought data concerning, among other things, notices of contract termination (F-7 Notices), arbitration data, and beginning and ending work stoppages reports. These data are updated on a monthly basis. These categories of Reading Room postings, which were established prior to the FY 2014, have been successful in permitting requesters to access this information without filing formal FOIA requests, as evidenced by a year-to-year reduction of Agency FOIA requests for these data categories of more than 80%.

#### **IV. Steps Taken to Greater Utilize Technology**

##### **Making Material Posted Online More Useful:**

The FMCS has taken several steps to make posted information more useful to the public, particularly those who regularly access the Agency's Reading Room.

First, the essential information contained in the most sought-after FMCS documents – some 22,000 notices of contract expiration and requests to bargain (F-7 notices) filed each year – is incorporated monthly on Excel spreadsheets in the Reading Room for ease of reference. This obviates the need for what otherwise would be requesters filing hundreds of FOIA requests for individual F-7s.

Second, the FMCS consolidates each Fiscal Year's 12 monthly reports of contract terminations into a single annual report in the FOIA Reading Room in order to make the retrieval of F-7 data easier. This allows a party interested in searching data for all of FY 2014, for example, to select a single FY 2014 data set rather than, as previously, having to search and compile data from 12 monthly FY 2014 reports. However, other than reducing F-7 data to Excel Spreadsheets and the annualization of monthly data, no additional categories of information were identified by the CFO during this reporting period which, if added to the Reading Room, would have lessened the burden on requesters or made the posted information more useful to them.

Third, the Agency has provided a "Requester Feedback" form in the Reading Room, which requesters are invited to use to help the Agency improve its services to requesters in the future. In order to maximize participation and encourage frankness, taking part in the survey is voluntary and responses are anonymous.

The Agency has not encountered any challenges that make it difficult to post records it otherwise would like to post.

##### **Other Initiatives:**

The FMCS posted all four quarterly reports for FY 2014 on the Agency website and the reports properly appear on FOIA.gov.

The Agency utilizes email whenever feasible to communicate with requesters. Unless the requester asks for production in another format, this includes responding on the merits of requests using email attachments to provide documents. Only where the production is too extensive for an email attachment will first class mail be used to transmit the documents on one or more CDs. The FMCS also uses email to confer with requesters concerning other than ultimate issues, such as ways to limit fees, and to confirm agreements reached by phone regarding, for example, modifications to an original request.

## **V. Steps Taken to Improve Timeliness in Responding to Requests and Reducing Backlogs**

### **Simple Track:**

The FMCS utilizes a separate track for simple requests. On average, the Agency processed simple requests in 7.3 days during FY 2014, compared with 3.5 days during FY 2013 and 7.5 days during FY 2012. Sixty Five percent (65%) of the requests processed in FY 2014 were simple track cases.

### **Backlogs:**

The Agency had 2 backlogged requests ranging from 203 to 238 days as of the close of FY 2014. As of the close of FY 2013, the FMCS had no backlogs and only one request pending 2 days. The two requests in FY 2014, which exceeded 200 days as of the close of the FY, were due to the extraordinary scope and complexity of these requests. The number of backlogged cases, as a percentage of total requests received for FY 2014, was one point 4 percent (1.4%).

The FMCS had no backlog of appeals at the close of FY 2014 ("N/A"), compared to the close FY 2013 when the Agency had one appeal pending, which took 24 days, including 16 days of the U.S. Government shutdown, or 13 work days, to resolve.

### **Status of Ten Oldest Requests, Appeals and Consultations:**

As noted above, the one (1) request pending two (2) days as of the end of FY 2013 was promptly closed on the merits (not withdrawn) in FY 2014. As also noted, the FMCS had no backlog of appeals at the close of FY 2014 as opposed to FY 2013, where the Agency had one (1) appeal pending as of the close of that FY. Finally, the FMCS engaged in no consultations during either FY 2013 or FY 2014.

### **Additional Information on Ten Oldest Requests, Appeals, and Consultations & Plans:**

While FMCS had no difficulty closing in early FY 2014 the single request case from FY 2013, 2 request cases filed during FY 2014 over 200 days ago remain open. This is due to the breadth and complexity of the requests, one of which requires review of some 10,000 pages. This poses a significant on-going burden for the sole, part-time Chief FOIA officer.

### **Use of FOIA's Law Enforcement Exclusions**

The FMCS did not invoke any statutory exclusions, 5 U.S.C. §552(c)(1), (2), (3), during FY 2014.

Michael J. Bartlett  
Chief FOIA Officer  
Federal Mediation and Conciliation Service  
February 27, 2015