

**Chief FOIA Officer Report for the
Chemical Safety and Hazard Investigation Board (CSB)**

March 18, 2013

Timeframe for Report

Unless otherwise noted, this 2013 Chief FOIA Officer Report addresses agency activities that have occurred since the filing of last year's Report, which was March 12, 2012, up until the date of the 2013 Report, as indicated above. Thus, the general reporting period for the Chief FOIA Officer Report is March 2012 to March 2013.

Name and Title of Agency Chief FOIA Officer:

Christopher W. Warner, Senior Counsel

Section I: Steps Taken to Apply the Presumption of Openness

The guiding principle underlying the President's FOIA Memorandum and the Attorney General's FOIA Guidelines is the presumption of openness.

Describe the steps your agency has taken to ensure that the presumption of openness is being applied to all decisions involving the FOIA. To do so, you should answer the questions listed below and then include any additional information you would like to describe how your agency is working to apply the presumption of openness.

1. Did your agency hold an agency FOIA conference, or otherwise conduct training during this reporting period?

Did your FOIA professionals attend any FOIA training, such as that provided by the Department of Justice?

The CSB did not hold an agency FOIA conference during this reporting period. As a micro-agency (approximately 40 employees), the CSB would not typically hold an in-house FOIA conference. Instead, personnel with FOIA duties are encouraged to identify and pursue appropriate external FOIA training opportunities.

In his 2009 FOIA Guidelines, the Attorney General strongly encouraged agencies to make discretionary releases of information even when the information might be technically exempt from disclosure under the FOIA. OIP encourages agencies to make such discretionary releases whenever there is no foreseeable harm from release.

2. Did your agency make any discretionary releases of otherwise exempt information?

No. The CSB investigative information that is most frequently the subject of FOIA requests is generally either clearly releasable or clearly exempt for reasons that do not

allow discretionary release (e.g., confidential business information, private personal information). The CSB continues to look for opportunities where discretionary releases may be appropriate.

3. What exemptions would have covered the information that was released as a matter of discretion?

Not applicable.

4. Provide a narrative description, or some examples of, the types of information that your agency released as a matter of discretion.

Not applicable.

5. Describe any other initiatives undertaken by your agency to ensure that the presumption of openness is being applied.

The CSB is continuing its initiative to post on the agency web site the results and voting materials for all votes taken by the agency's Board. This makes proactively available to the public, without the need for a FOIA request, extensive information about the Board's decision- and policy-making.

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

As the Attorney General emphasized in his FOIA Guidelines, "[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."

This section should include a discussion of how your agency has addressed the key roles played by the broad spectrum of agency personnel who work with FOIA professionals in responding to requests, including, in particular, steps taken to ensure that FOIA professionals have sufficient IT support.

Describe here the steps your agency has taken to ensure that its system for responding to requests is effective and efficient. To do so, answer the questions below and then include any additional information that you would like to describe how your agency ensures that your FOIA system is efficient and effective.

1. Do FOIA professionals within your agency have sufficient IT support?

The CSB IT staff is highly competent, up-to-date on technology relevant to FOIA processing, and very responsive to FOIA support needs. However, because of the limited number of IT staff and the extent of their non-FOIA responsibilities, requests for FOIA support have to be balanced with other commitments and cannot always be given the highest priority. This impacts the agency's overall ability to timely process complex FOIA requests. Additional resources – specifically one or two full time information

management personnel – would improve the CSB's ability to have voluminous investigation files ready for FOIA processing at the same time, or soon after, a request is received. This, in turn, would enable the CSB to begin reviewing and releasing records more quickly, which would likely reduce the total amount of time that complex requests remain pending in the backlog.

2. Do your FOIA professionals work with your agency's Open Government Team?

Yes. There is regular interaction between CSB personnel with FOIA responsibilities and those working on Open Government, especially on important common initiatives like the web posting of Board voting records.

3. Has your agency assessed whether adequate staffing is being devoted to FOIA administration?

The CSB assesses on an ongoing basis the adequacy of staffing devoted to FOIA administration. Staff time devoted to FOIA processing and administration is tracked. This information is used to estimate staffing required to process requests and to reduce the backlog.

4. Describe any other steps your agency has undertaken to ensure that your FOIA system operates efficiently and effectively, such as conducting self-assessments to find greater efficiencies, improving search processes, streamlining consultations, eliminating redundancy, etc.

One such step the CSB has undertaken is to identify certain investigation records that are highly likely to be the subject of FOIA requests and to review those records in advance of receiving the requests. Because CSB investigations close on a known timeline, the CSB can anticipate that multiple requests will be received for high-profile investigation files shortly after they close. In turn, there are certain records within investigation files that requesters are highly likely to be interested in. By identifying such records and "pre-processing" them, the CSB can begin satisfying requests with records releases sooner and shorten the overall processing time for the requests.

Section III: Steps Taken to Increase Proactive Disclosures

Both the President and Attorney General focused on the need for agencies to work proactively to post information online without waiting for individual requests to be received.

Describe here the steps your agency has taken both to increase the amount of material that is available on your agency website, and the usability of such information, including providing examples of proactive disclosures that have been made during this past reporting period (i.e., from March 2012 to March 2013). In doing so, answer the questions listed below and describe any additional steps taken by your agency to make and improve proactive disclosures of information.

1. Provide examples of material that your agency has posted this past year.

Examples include: new safety videos presenting hazard awareness and prevention information; new investigation reports presenting Board findings and recommendations; ongoing updates on the status of all pending CSB recommendations; and Board voting results and materials for votes occurring during the year.

2. 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, such as soliciting feedback on the content and presentation of the posted material, improving search capabilities on the site, creating mobile applications, providing explanatory material, etc.?

The CSB is nearing completion of a re-design and re-launch of its current web site. This new web site will present important safety information in a more useful manner to regular visitors to the web site. The re-design will include, among other enhancements, an improved search function. Key words will be tagged to improve the accuracy of the web site's search engine. The CSB has collected, and will continue to collect, feedback on the content and presentation of posted material, especially on the agency's widely disseminated safety videos.

3. If so, provide examples of such improvements.

See response to Question 2.

4. Describe any other steps taken to increase proactive disclosures at your agency.

The CSB continues to evaluate steps that could be taken to make routine proactive disclosures of data sets associated with investigation reports. For example, the CSB has disclosed in full in response to several FOIA requests a data set on accidents in academic laboratories. Going forward, the CSB will assess how such data sets can be published proactively on its web site.

Section IV: Steps Taken to Greater Utilize Technology

A key component of the President's FOIA Memorandum was the direction to "use modern technology to inform citizens about what is known and done by their Government." In addition to using the internet to make proactive disclosures, agencies should also be exploring ways to utilize technology in responding to requests. In 2010 and 2011, agencies reported widespread use of technology in receiving and tracking FOIA requests and preparing agency Annual FOIA Reports. For 2013, as we did in 2012, the questions have been further refined and now also address different, more innovative aspects of technology use.

Electronic receipt of FOIA requests:

1. Can FOIA requests be made electronically to your agency?

Yes. The CSB accepts FOIA requests by e-mail.

2. If your agency is decentralized, can FOIA requests be made electronically to *all* components of your agency?

Not applicable. The CSB processes requests on a centralized basis.

Online tracking of FOIA requests:

3. Can a FOIA requester track the status of his/her request electronically?

No.

4. If so, describe the information that is provided to the requester through the tracking system. For example, some tracking systems might tell the requester whether the request is "open" or "closed," while others will provide further details to the requester throughout the course of the processing, such as "search commenced" or "documents currently in review." List the specific types of information that are available through your agency's tracking system.

Not applicable.

5. In particular, does your agency tracking system provide the requester with an estimated date of completion for his or her request?

Not applicable.

6. If your agency does not provide online tracking of requests, is your agency taking steps to establish this capability?

Yes. The CSB is currently assessing new FOIA case management software that may provide the capability to offer some form of on-line request status tracking.

Use of technology to facilitate processing of requests:

7. Beyond using technology to redact documents, is your agency taking steps to utilize more advanced technology to facilitate overall FOIA efficiency, such as improving record search capabilities, utilizing document sharing platforms for consultations and referrals, or employing software that can sort and de-duplicate documents?

Yes.

8. If so, describe the technological improvements being made.

The CSB uses various electronic tools to process FOIA requests. Investigation records (the most commonly requested records) are maintained in an electronic records management system. That system allows for the creation of a working copy of investigation case files for FOIA review purposes. FOIA personnel can thus work freely in their copy of the case file to review records electronically, make redactions using commercial software to, track and record exemption determinations for specific records, and prepare electronic copies of records for release.

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

The President and the Attorney General have emphasized the importance of improving timeliness in responding to requests. This section 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 and appeals. *For the figures required in this Section, please use those contained in the specified sections of your agency's 2012 Annual FOIA Report.*

- 1. 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. If your agency does not utilize a separate track for processing simple requests, answer the question below using the figure provided in your report for your non-expedited requests.**

- a. Does your agency utilize a separate track for simple requests?

Yes.

- b. If so, for your agency overall, for Fiscal Year 2012, was the average number of days to process simple requests twenty working days or fewer?

Yes. For FY 2012, the average number of working days to process simple requests was 17.

- c. If your agency does not track simple requests separately, was the average number of days to process non- expedited requests twenty working days or fewer?

Not applicable. As noted above, the CSB tracks simple requests separately.

- 2. Sections XII.D.(2) and XII.E.(2) of your agency's Annual FOIA Report, entitled "Comparison of Numbers of Requests/Appeals from Previous and Current Annual Report – Backlogged Requests/Appeals," show the numbers of any backlog of pending requests or pending appeals from Fiscal Year 2012 as compared to Fiscal Year 2011. You should refer to those numbers when completing this section of your Chief FOIA Officer Report. In addition, Section VII.E, entitled "Pending Requests – Ten Oldest Pending Requests," and Section VI.C.(5), entitled "Ten Oldest Pending Administrative Appeals," from both Fiscal Year 2011 and Fiscal Year 2012 should be used for this section.**

- a. If your agency had a backlog of requests at the close of Fiscal Year 2012, did that backlog decrease as compared with Fiscal Year 2011?

Yes, as of the close of FY 2012, the CSB's backlog of requests had decreased from 41 requests (end of FY 2011) to 17 requests (end of FY 2012), a nearly 60% reduction.

- b. If your agency had a backlog of administrative appeals in Fiscal Year 2012, did that backlog decrease as compared to Fiscal Year 2011?

The CSB had no backlog of administrative appeals at the end of either FY 2011 or FY 2012.

- c. In Fiscal Year 2012, did your agency close the ten oldest requests that were pending as of the end of Fiscal Year 2011?

In FY 2012, the CSB closed seven of the ten oldest requests that were pending as of the end of FY 2011. The eighth of those requests was officially closed on October 1, 2012.

- d. In Fiscal Year 2012, did your agency close the ten oldest administrative appeals that were pending as of the end of Fiscal Year 2011?

The CSB had no backlogged administrative appeals pending as of the end of FY 2011.

3. If you answered "no" to any of the above questions, describe why that has occurred. In doing so, answer the following questions then include any additional explanation:

Request Backlog:

- a. Was the lack of a reduction in the request backlog a result of an increase in the number of incoming requests?

Not applicable.

- b. Was the lack of a reduction in the request backlog caused by a loss of staff?

Not applicable.

- c. Was the lack of a reduction in the request backlog caused by an increase in the complexity of the requests received?

Not applicable.

- d. What other causes, if any, contributed to the lack of a decrease in the request backlog?

Not applicable.

Administrative Appeal Backlog:

- a. Was the lack of a reduction in the backlog of administrative appeals a result of an increase in the number of incoming appeals?
Not applicable.
- b. Was the lack of a reduction in the appeal backlog caused by a loss of staff?
Not applicable.
- c. Was the lack of a reduction in the appeal backlog caused by an increase in the complexity of the appeals received?
Not applicable.
- d. What other causes, if any, contributed to the lack of a decrease in the appeal backlog?
Not applicable.

4. **OIP has issued guidance encouraging agencies to make interim releases whenever they are working on requests that involve a voluminous amount of material or require searches in multiple locations. By providing rolling releases to requesters agencies facilitate access to the requested information. If your agency had a backlog in Fiscal Year 2012, please provide an estimate of the number of cases in the backlog where a substantive, interim response was provided during the fiscal year, even though the request was not finally closed.**

Of the 17 FOIA requests in the CSB backlog as of the end of FY 2012, six of those requests had received a substantive, interim response including a release (or multiple releases) of records.

Use of FOIA's Law Enforcement "Exclusions"

In order to increase transparency regarding the use of the FOIA's statutory law enforcement exclusions, which authorize agencies under certain exceptional circumstances to "treat the records as not subject to the requirements of [the FOIA]," 5 U.S.C. § 552(c)(1), (2), (3), please answer the following questions:

1. **Did your agency invoke a statutory exclusion during Fiscal Year 2012?**
No.
2. **If so, what was the total number of times exclusions were invoked?**
Not applicable.

Spotlight on Success

Out of all the activities undertaken by your agency since March 2012 to increase transparency and improve FOIA administration, describe here 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.

CSB Success Story: Backlog Reduction

The CSB's success story during this reporting period was achieved in reducing the agency's backlog of pending FOIA requests. As of the end of Fiscal Year (FY) 2012, the CSB had reduced the number of backlogged requests by nearly 60% from the number in the backlog at the end of FY 2011 – from 41 to 17 requests. This constitutes the greatest year-to-year decrease in the CSB FOIA backlog in several years. The total number of backlogged requests now stands at the lowest level in eight years. During FY 2012, the CSB also closed seven of its ten oldest pending requests. The eighth of those requests was officially closed on the first day of FY 2013.

In FY 2012, the CSB took advantage of a cyclic decrease in the number of new requests. The CSB's FOIA request volume tends to increase in years when numerous or significant investigation reports are issued, and decreases in years when more investigations are ongoing but not yet closed. The CSB used this opportunity to focus resources on closing as many backlogged requests as possible. With the issuance of several investigation reports expected in FY 2013, the CSB anticipates that it will again have a higher volume of new requests to process this year. With that in mind, the CSB also worked to improve FOIA processing efficiency during FY 2012. The CSB processed to closure 10% more requests (both new and backlogged) in FY 2012 (54) than it did in FY 2011 (49). For complex requests that were closed with a release of records, the median response time was 30% shorter than it was in FY 2011. The CSB processed to closure five of the six complex requests received during FY 2012, meaning only one new request was added to the backlog for the entire fiscal year. For a small agency such as the CSB, with limited and relatively fixed FOIA resources, one of the keys to reducing and minimizing the backlog over the long term is to prevent requests from becoming part of the year-to-year backlog in the first place.