

Time frame for 2014 Chief FOIA Officer Reports

Unless otherwise noted, your 2014 Chief FOIA Officer Report should address agency activities that have occurred since the filing of last year's Report, which was March 11, 2013, up until the filing of the 2014 Report, which will be March 10, 2014. Thus, the general reporting period for the Chief FOIA Officer Reports is March 2013 to March 2014.

Content of 2014 Chief FOIA Officer Reports

Name of agency: Chemical Safety and Hazard Investigation Board

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.

FOIA Training:

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

Answer: 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. Personnel with FOIA duties identify and pursue appropriate external FOIA training opportunities.

- 2. If so, please provide the number of conferences or trainings held, a brief description of the topics covered, and an estimate of the number of participants from your agency who were in attendance.**

Answer: N/A

- 3. Did your FOIA professionals attend any FOIA training during the reporting period such as that provided by the Department of Justice?**

Answer: Yes

- 4. Provide an estimate of the percentage of your FOIA professionals who attended substantive FOIA training during this reporting period.**

Answer: 100%

5. **OIP has issued guidance that every agency should make core, substantive FOIA training available to all their FOIA professionals at least once each year. Provide your agency's plan for ensuring that such training is offered to all agency FOIA professionals by March 2015. Your plan should anticipate an upcoming reporting requirement for your 2015 Chief FOIA Officer Reports that will ask whether all agency FOIA professionals attended substantive FOIA training in the past year.**

Answer: The CSB FOIA employees will attend at least one substantive FOIA training provided by the Department of Justice during FY 2014.

Outreach:

6. **Did your FOIA professionals engage in any outreach and dialogue with the requester community or open government groups regarding your administration of the FOIA? If so, please briefly discuss that engagement.**

Answer: Yes. During community meetings, the CSB Chief FOIA Officer engaged in outreach to interested individuals most likely to request documents from CSB investigations.

Discretionary Disclosures:

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.

7. **Does your agency have a formal process in place to review records for discretionary release? If so, please briefly describe this process. If your agency is decentralized, please specify whether all components at your agency have a process in place for making discretionary releases.**

Answer: Yes. Top management at the Board does review records for discretionary release. However, the Board conducts complex safety investigations of chemical accidents concurrently with state and federal civil and criminal activities. Most company documents are labeled confidential business information. Premature releases of investigatory materials might jeopardize other investigations including on-going criminal investigations.

The CSB internet site contains the relevant board documents investigation updates, board notation votes, board internal orders and procedures as well as board speeches and safety alerts.

8. **During the reporting period did your agency make any discretionary releases of otherwise exempt information?**

Answer: No. The Chief FOIA Officer carried through with the commitment made in last year's report to look for opportunities where discretionary releases would be appropriate.

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

Answer: N/A

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

Answer: N/A

11. If your agency was not able to make any discretionary releases of information, please explain why.

Answer: The Board conducts complex safety investigations of chemical accidents concurrently with state and federal civil and criminal activities. Most company documents are labeled confidential business information. Premature releases of investigatory materials might jeopardize other investigations including on-going criminal investigations.

Other Initiatives:

12. Did your agency post all of the required quarterly FOIA reports for Fiscal Year 2013? If not, please explain why not and what your plan is for ensuring that such reporting is successfully accomplished for Fiscal Year 2014.

Answer: No; the quarterly reports for Fiscal Year 2013 were not posted on time. Due to the loss of the FOIA officer responsible for posting updates, some timeframes were missed. New personnel have been trained and a new alert system is in place to ensure timely updates. All required quarterly reports have been posted.

13. Describe any other initiatives undertaken by your agency to ensure that the presumption of openness is being applied. If any of these initiatives are online, please provide links in your description.

Answer: The CSB continues to evaluate steps that could be taken to make routine proactive disclosures of data sets associated with investigation reports. In some instances the agency has published draft reports to ensure that critical information is received by the public during the Board's formal review period. Moreover, given new resources, large investigative files are being reviewed during the investigation process to speed future FOIA responses. In addition, in some instances, the exact document(s) and data requested did not exist. Rather than respond in a negative fashion, the agency drafted a document to disclose the information that the requester sought.

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." It is essential that agencies effectively manage their FOIA program.

Describe here the steps your agency has taken to ensure that your management of your FOIA program 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.

Personnel:

During Sunshine Week 2012 OPM announced the creation of a new job series entitled the Government Information Series, to address the work performed by FOIA and Privacy Act

professionals. Creation of this distinct job series was a key element in recognizing the professional nature of their work.

1. Has your agency converted all of its FOIA professionals to the new Government Information Specialist job series?

Answer: As a micro-agency (approximately 40 employees), the CSB is not large enough to require a full time FOIA staff. To ensure timely FOIA responses and proper administration of the FOIA program, the agency created a new position (Senior Counselor to the Chairman) that includes oversight of the FOIA program.

2. If not, what proportion of personnel has been converted to the new job series?

Answer: See response above.

3. If not, what is your plan to ensure that all FOIA professionals' position descriptions are converted?

Answer: The CSB will continue to closely monitor the administration of the FOIA program. Under the new format, however, the Chief FOIA Officer has been able to eliminate all backlogged cases for the first time in the agency's history while making sure that all new requests were timely met.

Processing Procedures:

4. For Fiscal Year 2013 did your agency maintain an average of ten or less calendar days to adjudicate requests for expedited processing? If not, describe the steps your agency will take to ensure that requests for expedited processing are adjudicated within ten calendar days or less.

Answer: N/A

5. Has your agency taken any steps to make the handling of consultations and referrals more efficient and effective, such as entering into agreements with other agencies or components on how to handle certain categories or types of records involving shared equities so as to avoid the need for a consultation or referral altogether, or otherwise implementing procedures that speed up or eliminate the need for consultations. If so, please describe those steps.

Answer: No. This has not been a problem for the CSB.

Requester Services:

6. Do you use e-mail or other electronic means to communicate with requesters when feasible?

Answer: Yes

7. Does your agency notify requesters of the mediation services offered by the Office of Government Information Services (OGIS) at NARA?

Answer: The agency processed an appeal in FY 2014 that did not have this provision. Prior appeal letters did have it however. The FY 2014 oversight has been brought to the attention of the General Counsel.

- 8. 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, eliminating redundancy, etc.**

Answer: With the change of FOIA personnel this year, the agency was able to initiate new procedures that have resulted in the elimination of all backlogged cases and timely responses for all new 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 2013 to March 2014). 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.

Posting Material:

- 1. Do your FOIA professionals have a system in place to identify records for proactive disclosures?**

Answer: No formal process is in place. The Chief FOIA Officer continues to look for opportunities where discretionary releases would be appropriate. 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, on-going criminal investigation). The CSB will continue to look for opportunities where discretionary releases may be appropriate.

- 2. If so, describe the system that is in place.**

Answer: The Chief FOIA Officer meets periodically with the General Counsel to discuss opportunities for proactive disclosures. This year the agency has published a draft investigative report for public review and held numerous public meetings where critical information is released to the public rather than waiting for the actual completion of the investigative report. Normally, such information is not released by the Board until there is a final vote by the Board.

- 3. Provide examples of material that your agency has posted this past reporting period, including links to where this material can be found online.**

Answer:

- 1) Draft Investigative report: <http://www.csb.gov/chevron-regulatory-report-draft-for-public-comment/>

- 2) Safety letter to DOT regarding emergency shutdown systems for chlorine railcars. <http://www.csb.gov/csb-follow-up-letter-to-dot-regarding-emergency-shutdown-systems-for-chlorine-railcars/>.
- 3) Statement of regarding EO 13650 Improving Chemical Facility Safety and Security <http://www.csb.gov/statement-from-chairperson-rafael-moure-eraso-on-executive-order-improving-chemical-facility-safety-and-security/?pg=2>.
<http://www.csb.gov/statement-of-christina-morgan-mph-recommendations-specialist-on-behalf-of-the-us-chemical-safety-board-eo-13650-improving-chemical-facility-safety-and-security-listening-session-november-15-2013/?pg=1>.
- 4) Safety Message from the Chairman calling for regulatory coverage of reactive chemicals. <http://www.csb.gov/in-safety-message-csb-chairperson-rafael-moure-eraso-calls-for-regulatory-coverage-of-reactive-chemicals-following-the-west-fertilizer-explosion-and-fire-/?pg=2>.
- 5) Testimony of the Chairman before the Environment and Public Works Committee regarding explosions in West, Texas and Geismar, LA. <http://www.csb.gov/testimony-of-rafael-moure-eraso-phd-chairperson-us-chemical-safety-board-before-the-us-senate-committee-on-environment-and-public-works-june-27-2013/?pg=3>.
- 6) Periodic updates to the public regarding on-going investigations. For example: <http://www.csb.gov/csb-releases-video-documenting-the-blast-damage-in-west-texas/?pg=3>.
<https://www.facebook.com/photo.php?v=4187452979450&set=vb.443127392443798&type=2&theater>.
- 7) Release of technical report on corrosion found in the Chevron El Segundo refinery crude unit piping. <https://www.facebook.com/photo.php?v=4187452979450&set=vb.443127392443798&type=2&theater>.
- 8) Release of draft interim report on the 2012 Chevron fire. <http://www.csb.gov/csb-draft-interim-report-on-2012-chevron-fire-notes-company-failed-to-apply-inherently-safer-design/?pg=4>.

Making Posted Material More Useful:

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, such as soliciting feedback on the content and presentation of posted material, improving search capabilities on the site, posting material in open formats, making information available through mobile applications, providing explanatory material, etc.?**

Answer: Yes

5. **If so, provide examples of such improvements.**

Answer: The CSB posts all of its investigative report findings and recommendations on its website. All reports are available for download and easily accessible through the website's investigation information page. Additionally the CSB updates its twitter feed and Facebook page with related articles and videos in an effort to spread information on its safety findings. An important part of the CSB's mission is to share its safety information with industry in an effort to prevent similar accidents from occurring. In addition, the CSB uses its publicly available website to solicit comments from members of the public on its draft investigation report as well as other CSB documents.

The CSB has continued to reach out to communities impacted by chemical accidents by creating Facebook groups for specific accident investigations, regularly tweeting related news stories and accident updates and enhancing its website's mobile interface. In the past year the CSB has also provided major reports to

stakeholders for a public comment period prior to holding a public meeting to vote on a final report. Comments are received by CSB investigators and made public on the CSB's website.

- 6. Did your agency use any means to publicize or highlight important proactive disclosures for public awareness? If so, was social media utilized?**

Answer: Yes

- 7. Has your agency encountered challenges that make it difficult to post records you otherwise would like to post? If so, please briefly explain what those challenges are.**

Answer: No

- 8. Describe any other steps taken to increase proactive disclosures at your agency.**

Answer: See answer #5.

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. Over the past several years agencies have reported widespread use of technology in receiving and tracking FOIA requests and preparing agency Annual FOIA Reports. For 2014, as we have done over the past years, the questions have been further refined and now also address different, more innovative aspects of technology use.

Online tracking of FOIA requests:

- 1. Can a FOIA requester track the status of his/her request electronically?**

Answer: No

- 2. If yes, how is this tracking function provided to the public? For example, is it being done through regularly updated FOIA logs, online portals, or other mediums?**

Answer: N/A

- 3. 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.**

Answer: N/A

- 4. In particular, does your agency tracking system provide the requester with an estimated date of completion for his/her request?**

Answer: N/A

- 5. If your agency does not provide online tracking of requests, is your agency taking steps to establish this capability? If not, please explain why.**

Answer: Yes

Use of technology to facilitate processing of requests:

- 6. 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?**

Answer: The IT department has now provided the Chief FOIA Officer direct access to agency investigative files. This has eliminated the need to request access files and documents from the IT office thereby ensuring more timely FOIA responses.

- 7. If so, describe the technological improvements being made.**

Answer: See answer to 6 above.

- 8. Are there additional technological tools that would be helpful to achieving further efficiencies in your agency's FOIA program?**

Answer: No

Section V: Steps Taken to Improve Timeliness in Responding to Requests and Reducing 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, appeals, and consultations. *For the figures required in this Section, please use those contained in the specified sections of your agency's 2013 Annual FOIA Report and, when applicable, your agency's 2012 Annual FOIA Report.*

Simple Track Requests:

- 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.**

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

Answer: Yes

- b. If so, for your agency overall, for Fiscal Year 2013, was the average number of days to process simple requests twenty working days or fewer?**

Answer: Yes

- 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?**

Answer: N/A

Backlogs and "Ten Oldest" Requests, Appeals and Consultations:

2. Section XII.A of your agency's Annual FOIA Report, entitled "Backlogs of FOIA Requests and Administrative Appeals" shows the numbers of any backlogged requests or appeals from the fiscal year. 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 2012 and Fiscal Year 2013 when completing this section of your Chief FOIA Officer Report.

Backlogs

- a. If your agency had a backlog of requests at the close of Fiscal Year 2013, did that backlog decrease as compared with Fiscal Year 2012?**

Answer: All backlogged cases were eliminated by the close of FY 2013.

- b. If your agency had a backlog of administrative appeals in Fiscal Year 2013, did that backlog decrease as compared to Fiscal Year 2012?**

Answer: No backlogged appeals

Ten Oldest Requests

- c. In Fiscal Year 2013, did your agency close the ten oldest requests that were pending as of the end of Fiscal Year 2012?**

Answer: Yes

- d. 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 2012 Annual FOIA Report. If you had less than ten total oldest requests to close, please indicate that. For example, if you only had seven requests listed as part of your "ten oldest" in Section VII.E. and you closed two of them, you should note that you closed two out of seven "oldest" requests.**

Answer: N/A

Ten Oldest Appeals

- e. In Fiscal Year 2013, did your agency close the ten oldest administrative appeals that were pending as of the end of Fiscal Year 2012?**

Answer: N/A – no administrative appeals

- f. If no, please provide the number of these appeals your agency was able to close, as well as the number of appeals your agency had in Section VI.C.(5) of your Fiscal Year 2012 Annual FOIA Report.**

Answer: N/A – No administrative appeals

Ten Oldest Consultations

- g. In Fiscal Year 2013, did your agency close the ten oldest consultations received by your agency and pending as of the end of Fiscal Year 2012?**

Answer: No consultations received

- h. If no, please provide the number of these consultations your agency did close, as well as the number of pending consultations your agency listed in Section XII.C. of your Fiscal Year 2012 Annual FOIA Report.**

Answer: N/A

Reasons for Any Backlogs:

- 3. If you answered “no” to any of the questions in item 2 above, describe why your agency was not able to reduce backlogs and/or close the ten oldest pending requests, appeals, and consultations. In doing so, answer the following questions then include any additional explanation:**

Request and/or Appeal Backlog

- a. Was the lack of a reduction in the request and/or appeal backlog a result of an increase in the number of incoming requests or appeals?**

Answer: N/A

- b. Was the lack of a reduction in the request and/or appeal backlog caused by a loss of staff?**

Answer: N/A

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

Answer: N/A

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

Answer: N/A

“Ten oldest” Not Closed

- e. Briefly explain the obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2012.**

Answer: All backlogged cases closed.

- f. If your agency was unable to close any of its ten oldest requests or appeals 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: N/A

Plans for Closing of Ten Oldest Pending Requests, Appeals, and Consultations and Reducing Backlogs:

Given the importance of these milestones, it is critical that Chief FOIA Officers assess the causes for not achieving success and create plans to address them.

- 4. If your agency did not close its ten oldest pending requests, appeals, and consultations, please provide a plan describing how your agency intends to close those “ten oldest” requests, appeals, and consultations during Fiscal Year 2014.**

Answer: N/A

- 5. If your agency had a backlog of more than 1000 pending requests and did not reduce that backlog in Fiscal Year 2013, provide your agency’s plan for achieving backlog reduction in the year ahead.**

Answer: N/A

Interim Responses:

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.

- 6. Does your agency have a system in place to provide interim responses to requesters when appropriate?**

Answer: Yes

- 7. If your agency had a backlog in Fiscal Year 2013, please provide an estimate of the number or percentage of cases in the backlog where a substantive, interim response was provided during the fiscal year, even though the request was not finally closed.**

Answer: Backlogged eliminated in FY 2013. Many of those cases involved interim responses.

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 2013?**

Answer: No

2. If so, what was the total number of times exclusions were invoked?

Answer: N/A

Spotlight on Success

Out of all the activities undertaken by your agency since March 2013 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, these agency **success stories** will be highlighted during Sunshine Week by OIP. 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 a key achievement. A complete description of all your efforts will be contained in the body of your Chief FOIA Officer Report.

Answer: The CSB has two success stories. The first success story during this reporting period was achieved by eliminating the agency's backlog of pending FOIA requests for the first time in its history. As of the end of Fiscal Year (FY) 2013, the CSB had not only been able to eliminate the entire case load of backlogged FOIA requests, it was also able to make timely responses to current requests received during the fiscal year.

The second story concerns the publication of an article that should enhance public safety while at the same time protecting CBI material submitted to the agency. Due to the nature of CSB investigations into chemical accidents, many of the documents obtained by the CSB from companies are labeled confidential business information and are not releasable to the public. Earlier this year, the CSB received a FOIA request for several such documents from a researcher. Since the materials constituted confidential business information, the CSB FOIA officer was unable to release these particular documents. However, given the nature of the request, the FOIA officer discussed the matter with the President of the company. Through these discussions, the FOIA Officer was able to engage the requester and the President in a mutual dialogue that resulted in the researcher obtaining other technical information directly from the company that would allow him to complete his research.