

POSTAL REGULATORY COMMISSION
CHIEF FOIA OFFICER'S REPORT
March 15, 2010

The Postal Regulatory Commission (Commission) submits this Freedom of Information Act (FOIA) report at the direction of the United States Department of Justice Office of Information Policy. The report has been prepared by the Secretary of the Commission, Shoshana M. Grove, who is the Chief FOIA Officer.

The Commission is an independent establishment of the Executive Branch that exercises regulatory oversight over the Postal Service. The Commission consists of five Commissioners and a staff of approximately 66: the Commissioners' staff, the Office of Secretary and Administration, the Office of General Counsel, the Office of Public Affairs and Government Relations, the Office of Accountability and Compliance, and the Office of Inspector General. The PRC's mission is to ensure transparency and accountability of the United States Postal Service and foster a vital and efficient universal mail system.

Tasked with providing transparency into the Postal Service's operations, the Commission takes its responsibilities under the FOIA seriously. The Commission takes steps to proactively publish information of interest to the mailing community and general public. The Commission is proud of its record of processing FOIA requests, with minimal use of exemptions. The Commission also invests significant resources to ensure that it always processes requests within the statutory deadline.

The remainder of this report is divided into sections specifically enumerated by the Department of Justice Office of Information Policy.

Shoshana M. Grove
Secretary and Chief FOIA Officer



I. Steps Taken to Apply the Presumption of Openness

1. *Description of specific steps the Commission has taken to ensure the presumption is being applied to all decisions involving the FOIA*

The Commission proposed to amend its rules governing the FOIA as a result of the Openness Promotes Effectiveness in our National Government Act of 2007, Pub. L. No. 110-175, 121 Stat. 2524 (OPEN Government Act), the President's January 21, 2009 Memorandum for the Heads of Executive Departments and Agencies, 74 FR 2683 (January 26, 2009), and the Attorney General's Memorandum for the Heads of Executive Departments and Agencies, March 19, 2009. See PRC Order No. 230 Docket No. RM2009-6, Notice of Proposed Rulemaking to Establish Procedures for the Freedom of Information Act, July 1, 2009. The amendment to the Commission's FOIA rules publicly aligned Commission policy with the express direction from the President and Attorney General. The amendment also specifically updated the Commission's FOIA policies to conform with the OPEN Government Act.

The Commission specifically added rule 39 CFR 3004.2, "Presumption of openness." That rule describes the Commission's responsibility to proactively and systematically, post public records in advance of any request. The rule also announces that the Commission shall administer its duties under the FOIA with a clear presumption of openness.

The Chief FOIA Officer, the Office of General Counsel, and all personnel involved in processing or responding to FOIA requests participated in the rulemaking. Each person was made aware of the memoranda issued by the President and the Attorney General, and staff tasked with drafting initial responses were instructed to apply the presumption of openness.

A concrete example of the Commission applying the presumption of openness to FOIA is the request of Yvette M. Chin from September 15, 2009. Ms. Chin requested all records concerning the implementation of the President Obama memorandum and the Attorney General Holder memorandum on the Freedom of Information Act. The Commission released office of General Counsel memoranda and correspondence records to Ms. Chin which could be categorized as pre-decisional or subject to attorney-client privilege.

In all other instances, the Commission has proactively disclosed, relying on no exemptions during FY 2009. See FY 2009 Freedom of Information Act Annual Report at 5.

2. Report on the change in number of requests where records have been released in full compared to the previous year's Annual FOIA Report

In FY 2008, the Commission received 31 requests, with one carryover from the previous fiscal year. The Commission granted 13 of the requests in full. However, the Commission did not use any exemptions in FY 2008, and was unable to process the remainder of the requests because the agency had no records (3 requests) or the record was not a Commission record (16 requests). See FY 2008 Freedom of Information Act Annual Report.

In FY 2009, the Commission received 22 requests, with one carryover from the previous fiscal year. The Commission granted 6 of the requests in full. However, the Commission did not use any exemptions in FY 2009, and was unable to process the remainder of the requests because the agency had no records (3 requests), the request was referred to another agency (2 requests) or the record was not a Commission record (11 requests). See FY 2009 Freedom of Information Act Annual Report.

Each year, there are several cases in which requests sought records belonging to the Postal Service and not the Commission. In these cases, the request is forwarded to the Postal Service.

The Commission had fewer full grants in FY 2009 than it did in FY 2008. Several factors influenced that decrease. The Commission received fewer FOIA requests in FY 2009 (in part due to the increase in information posted on the Commission's website). In both FY 2008 and FY 2009, the Commission responded in full to 100 percent of the requests that it was able to process. The remainder were requests for records that were not Commission records, e.g., forwarding addresses for postal patrons, or where the Commission conducted a search and discovered no records.

When members of the public contact the Commission seeking information or records, the staff makes an affirmative effort to assist them with their inquiries. Ordinarily, this involves directing them to the proper documents or files on the Commission's website. As a result, the need for the filing of a FOIA request is minimized.

II. Steps Taken to Ensure that the Commission has an Effective System for Responding to Requests

The Commission has allocated staff resources and administrative time to ensure that it provides accurate, timely responses to all FOIA requests. In FY 2009, the average number of days to process a request was 7 days. The highest number of days was 20.

The Chief FOIA Officer has ensured that the electronic, faxed, and mailed FOIA requests are logged and read on the day they are received. Administrative staff is responsible for assigning a tracking number to each request, and posting that tracking number, along with a summary of the request, on the Commission's website.

When a request is made, the Chief FOIA Officer responds (with any responsive documents) expeditiously. If the request is complicated or voluminous, the Chief FOIA Officer conducts a search for records; may contact the requester for additional information clarifying the request and may refer the request to the Office of General Counsel for a legal opinion of the Commission's response.

Effective communication among offices at the Commission and timely response by Commission employees to requests for records ensure that the Commission responds to all requests in an expeditious manner. The Commission consistently responds to requests well before the statutory deadline and in all cases has responded within the statutory deadline.

The Commission also maintains a FOIA case log on its website that provides visibility into the types of records requested under FOIA as well as the number of days required to respond to each request.

III. Steps Taken to Increase Proactive Disclosures

The Commission updated several policies and rules in the last year which increase the number of proactive disclosures that it makes.

The Commission added rule 39 CFR 3004.2(a), which states “[t]he Commission shall be proactive, and systematically, in a timely manner, post public records online in advance of any public request.” The Commission has posted information on its website, including before the Commission, Commission Reports and Orders, Postal Service initiatives and reports, Commission meetings, and details of all inquiries to the Commission’s Office of Public Affairs and Government Relations.

In April 2009, the Commission issued an order prescribing the types of data and information the Postal Service must file on a regular basis. See PRC Order No. 203, Docket RM2008-4, Notice of Final Rule Prescribing Form and Content of Periodic Reports, April 16, 2009. That Order gave the Postal Service and interested parties notice as to the types of records the Commission maintains, and the types of Postal Service records the Commission has in its custody and control. In Order No. 203, the Commission also signals its intent to initiate a series of strategic rulemakings on the types of periodic reports that are commercially sensitive (and may be filed under seal) and those that are public (available on the Commission’s website). *Id.* at 9. This rule gives interested members of the public a clear indication of the types of records the Commission may release freely, and those which the Postal Service or the Commission may be required to claim an exemption.

In June 2009, the Commission issued an order establishing a Final Rule Establishing Appropriate Confidentiality Procedures for nonpublic materials submitted to the Commission by the Postal Service or a third party. The rule implements a statutory balancing test established in the Postal Accountability and Enhancement Act that balances the public’s right to know with the need to ensure appropriate protection for commercially sensitive information. The rule provides a mechanism for seeking access to nonpublic information, as well as a mechanism for challenging the nonpublic designation. Notably, the rule establishes a sunset rule that removes the nonpublic status ten years after protection is granted, unless the Commission issues an order extending the nonpublic status. The Existence of these mechanisms provides the public with an additional means of challenging the validity of nonpublic status where nonpublic status is at issue, and thus serves to maximize proactive disclosure at the outset.

On several occasions during FY 2009, the Commission's Public Representatives (an officer of the Commission assigned to each PRC docket to represent the interests of the general public) filed comments regarding the extent and form of redactions made by the Postal Service in its various submissions. As a result of these comments, and Commission Orders concurring with certain of these comments, the Postal Service has taken steps to release more portions and to remove only portions of documents that are actually commercially sensitive.

The Commission has also altered the way that it provides information on its website. The Commission's home webpage now contains direct links to records in ongoing dockets that may be of interest to the general public. For example, during the N2009-1 docket, where the Postal Service proposed to close or consolidate some or all of 3,300 station and branch post offices, the Postal Service periodically updated the list of facilities under consideration for closure or consolidation. The Commission recognized the public interest in each updated list of possible closures, and promptly posted the updated lists on the Commission's home page in advance of any request.

The Commission's Office of Public Affairs and Government Relations receives numerous public inquiries. Such inquiries range from questions about Postal Service employee conduct to consolidation of mail processing facilities. The Commission maintains and publishes a log of these public inquiries, together with a description of the action taken by the Commission to resolve the inquiry. Given the nature of such requests, and the valuable insight the resolution may provide to the public, this log is another example of the Commission's ongoing commitment to posting records in advance of any public request.

IV. Steps Taken to Greater Utilize Technology

1. Commission electronic receipt of FOIA requests

The Commission utilizes a web-based email form on its FOIA page to accept FOIA requests. In FY 2009, nine of 22 FOIA requests received by the Commission were received electronically.

2. Impediments to Commission electronic receipt of FOIA requests

N/A

3. Commission tracking of requests electronically

The OPEN Government Act requires the use of tracking numbers for all FOIA requests. As a result, upon updating its rules, the Commission began utilizing an electronic tracking number system to track all FOIA requests.

Each FOIA request is assigned a tracking number, and that tracking number is provided on the Commission's website along with a description of the request. The Commission's rules at 39 CFR 3004.42 describe the Commission's tracking number policy, and provide information on how to track a request. Information about the tracking numbers is also provided on the Commission's FOIA online request form.

4. Impediments to Commission tracking of requests electronically

N/A

5. Commission use of technology to process requests

The Commission uses technology, when appropriate, to process and respond to FOIA requests. The Commission utilizes email to receive requests, search for responsive records and track internal decision-making for each request. The Commission also utilizes web-based technology to receive, track and report on FOIA requests. The Commission utilizes computer searches to process all requests that seek records that the Commission stores electronically.

6. Impediments to Commission use of technology to process requests



Some Commission records are only available in hard-copy format. Therefore, while the Commission uses technology to track and coordinate its response to a request for such a record, any search for responsive records or response is constrained by the limitation that the underlying records are only available in hard-copy format.

The Commission has endeavored to transfer many of its older archived paper files to electronic format, and has made those archived documents available via its website. The archive section of the Commission website now contains a complete record of web-based "laser-fiche" documents from the Commission's precursor, the Postal Rate Commission, which includes notices, orders, advisory opinions, and decisions. The Commission plans to begin converting these legacy records into a more user-friendly database in FY2010.

7. Commission use of technology to prepare its Annual FOIA Report

The Commission uses technology to generate all the data and tables included in its Annual FOIA Report. The Commission is able to utilize the same database and spreadsheet applications that it uses to track and process FOIA requests to prepare the report. Using the same technology reduces the burden on Commission administrative staff by avoiding numerous calculations and tabulations. Use of this technology also makes the quantitative analysis more accurate.

8. Impediments to Commission use of technology to prepare its Annual FOIA Report

N/A

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

1. Backlog of requests increase or reduction year over year

The Commission has no backlog of requests; the only requests pending at the end of the last two fiscal years were carried over and processed within the statutory deadline.

2. Explanation of lack of reduction

N/A

3. Commission action to improve timeliness in responding to requests and to administrative appeals

The Commission attempts to continually improve its timeliness and efficiency in responding to FOIA requests and administrative appeals. One improvement made during FY 2009 was the speed at which requests are disseminated to responding staff.

The Commission also found that through proactively posting more of its records online, and accurately describing the records, over which the Commission has custody and control, the Commission significantly reduced the overall volume of FOIA requests and specifically reduced requests for which the Commission has no records.

This final report was submitted via email to the Department of Justice, Office of Information Policy, for review on March 15, 2010. It was sent to DOJ.OIP.FOIA@usdoj.gov as required by the Department of Justice, Office of Information Policy guidelines for the preparation of this report. A copy of this report will be posted on the Postal Regulatory Commission's website on or around March 15, 2010.