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**FEDERAL LABOR RELATIONS AUTHORITY
OFFICE OF THE INSPECTOR GENERAL**

**INTERNAL REVIEW
OF THE
FEDERAL LABOR RELATIONS AUTHORITY
FREEDOM OF INFORMATION ACT
(FOIA)**

Date Issued: July 22, 2009



UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
OFFICE OF THE INSPECTOR GENERAL

WASHINGTON, D.C. 20424-0001

SUBJECT: Federal Labor Relations Authority (FLRA) Office of Inspector General Internal Review of FLRA's Adherence to the Freedom of Information Act (FOIA)

METHODOLOGY: This Federal Labor Relations Authority Inspector General Internal Review of FOIA was conducted in accordance with the Inspector General Reform Act of 2008, the Inspector General Act of 1978, as amended, and in compliance with the Inspector General Counsel of Integrity and Efficiency and the Federal Labor Relations Authority Inspector General's updated (2009) related policies.

This internal review related to the FLRA's handling of FOIA requests and appeals. The FLRA's Chief FOIA Officer is the Solicitor. The FLRA Authority, Office of the General Counsel (OGC) and its Regional Offices, Federal Service Impasses Panel (FSIP), and Inspector General handles FOIA requests.

OBJECTIVE: The objective of this FLRA Inspector General Internal Review of the FLRA's adherence to FOIA is to check on the efficiency and effectiveness of this program and to make sure there is no fraud, waste, abuse, or mismanagement.

STATUTES AND REGULATIONS:

- United States Code, 5 U.S.C. § 552
- Electronic Freedom of Information Act Amendments of 1996
- The Privacy Act, 5 U.S.C. § 552a
- The Federal Service Labor-Management Relations Statute
- 5 C.F.R. Part 2411

BACKGROUND:

The Freedom of Information Act (FOIA) is a Federal law that requires all Federal agencies to provide agency records except those that are protected from disclosure by one of the FOIA exemptions. FOIA requests may be granted in full, denied in full or granted in part.

FOIA requests must be sent in writing and clarified by the requester. FOIA requests are required to be responded to within 20 business days. If a request is denied, the requester has 30 days from the date of receipt of notification of the denial to request an appeal. If the FOIA request receiver needs clarification of the request, the receiver should immediately contact the requester to clarify the issue. FOIA states that in unusual circumstances, an agency can extend the 20 day time limit for processing a request or appeal if it notifies the requester why the extension is needed and when a determination will be made. The FOIA also states that each year, each agency shall submit to the Attorney General of the United States a report which covers the preceding fiscal year. This report includes the median number of days taken by the agency to process different types of requests.

The FLRA is an adjudicatory agency which handles its filed cases under the Federal Service Labor-Management Relations Statute. The FLRA has 3 components, the Authority, Office of General Counsel and Federal Services Impasses Panel (FSIP). The Authority adjudicates disputes relating to the negotiability of collective bargaining proposals, unfair labor practice allegations and representation petitions, and grievance arbitration awards. The Office of General Counsel investigates unfair labor practice charges, prosecutes unfair labor practice charge complaints and has the authority to handle representation cases. FSIP handles bargaining impasses that arise from negotiations over conditions of employment.

Some of the information in the FLRA case handling files may be covered by FOIA Exemptions 5, 6, 7 as well as other FOIA exemptions and the Privacy Act:

- Exemption 1 pertains to classified national defense and foreign relations.
- Exemption 2 pertains to internal agency rules and practices.
- Exemption 3 relates to information that is prohibited from disclosure by a federal law.
- Exemption 4 pertains to trade secrets and confidential business information.

- Exemption 5 allows agencies to withhold inter or intra agency memorandums and letters which would not be available to a party other than an agency in litigation with the Agency.
- Exemption 6 allows the withholding of personal information about individuals in personnel and medical files when the disclosure of such information would constitute a clearly unwarranted invasion of personal privacy.
- Exemption 7 relates to information that could/is expect to interfere with enforcement proceedings and could be expected to identify a confidential source and could endanger the life or physical safety of a person's life.
- Exemption 8 relates to the supervision of financial institutions.
- Exemption 9 pertains to geological information on wells.

The Privacy Act relates to Agency records about individuals. The individuals don't have to be employees. They can be applicants, complainants or anyone who has contacted the agency. This act guarantees the right for individuals to see records about themselves unless the information is subject to a Privacy Act exemption, the right to request the amendment of records that are not accurate, timely or complete and to be protected against invasion of their personal privacy.

The Department of Justice FOIA Guide states that agency library/reading rooms should maintain records processed and disclosed in response to a FOIA request that the agency determines have become or may become the subject of additional requests for the same records.

FACTS:

FOIA provides the public the right to request and access any FLRA records unless these records are protected by one or more of the nine exemptions of the FOIA. The FLRA's FOIA Reading Room which contains FLRA information files and a computer terminal, which is currently being created, is located in the FLRA headquarters library and requests

to use this needs to be submitted to the FLRA's Office of the Solicitor. A lot of general information relating to the FLRA and FOIA requests for FLRA related information is on the FLRA'S home page. The FLRA has also provided information on its home page on how to submit a written FOIA request in an envelope marked with "FOIA Request". The FOIA requires Federal agencies to respond to requests within 20 business days. If the processing office cannot process the case within 20 business days, and a 10 business day extension, the requester should be immediately contacted and an alternative time frame for processing the original (or requester's modified request) should be affirmed by the requester.

The FLRA Solicitor is the FLRA FOIA Officer in the FLRA Office of Solicitor; however, the FLRA has a decentralized component system for handling FOIA requests. All FOIA requests should be addressed directly to the component that maintains the records being requested although they sometimes are sent to the wrong component and need to be properly referred to the right component. In addition to the Office of the Solicitor, the FLRA components that handle FLRA FOIA requests include the Office of the Chairman of the FLRA, Federal Service Impasses Panel, the Office of General Counsel's, Atlanta, Boston, Chicago, Dallas, Denver, San Francisco, Washington Regional Offices, the Office of the Solicitor, and Office of Inspector General. If requesters are not sure who has the records, they should send the request to the Office of the Solicitor who will forward it to the proper component. There were 26 employees in total that handled the FLRA FOIA requests; however, no one is a full time FOIA employee. If requests are sent to the wrong office, they will be forwarded to the appropriate office by the receiving component. The time for FLRA's response will not begin until the request reaches the appropriate FLRA office.

FOIA appeals to the FLRA can be specifically issued to the FLRA Solicitor/FOIA Officer, Chairman of the Authority the Executive Director of FSIP or Office of General Counsel. FLRA appeals are required to be resolved within 20 business days. If the Chairman of the Authority, General Counsel or Chairman of FSIP denies the appeal in full or partially, the requester has the authority to request a judicial review with a United States District Court.

The FLRA has the authority to charge for research and reproduction services. FOIA requests should specify the amount of fees the requester is willing to pay. Fees specifically apply to requests for commercial use, requests for news media, educational institutions,

non-commercial science institutions and all other requesters to cover reasonable costs for searching and reproducing records relating to the request. The first 100 pages of reproduction and the first two hours of search are free of charge.

The reasons why the FLRA does not grant certain requests relate to Exemption 5, 6, and 7 of the FOIA or the Privacy Act. FLRA FOIA requests are either fully granted or denied or partially granted and partially denied or forwarded to another federal agency that is responsible for the request. The FLRA did not receive consultations from other agencies during FY 2008 or so far in 2009.

In FY 2008, the FLRA received 77 FOIA request cases and had 13 cases pending from the Authority. There were 43 of these requests granted, 8 were granted in part and there were 20 full denials based on lack of responsive records, an exemption, or because the request was referred to another component or agency. There were 5 denials from the Regional Offices because the requests were not sent to the proper place. In FY 2009, so far, the FLRA has had 53 initial FOIA requests. Of these, the Office of the Solicitor has received 27. There were 5 appeals processed in 2008 (2 were filed with the Authority and 3 with the Office of the General Counsel.) Two appeals were denied and 3 were closed. So far in FY 2009, there have been 18 full denials, 4 partial denials and 2 appeals filed with the Authority. One of these appeals was denied because there were no records and the other was granted in part and partially denied.

In FY 2008, all FOIA requests that took more than 20 working days to handle were processed by the Solicitor's Office. The average number of days for all components of the FLRA to respond to FOIA requests in FY 2008 was 23 days and the highest average among the components was 34 days. In FY 2008, after responding to the requester, the average number of days to process FOIA requests was 28 days. The highest number of days was 325 days for a FOIA request handled by the Authority. When it is anticipated that it will take more than 20 working days to process a case, the handler writes to the requester and states that additional time will be needed to respond. So far in 2009 all FLRA FOIA requests have been handled within 20 days. No FOIA appeals filed in FY 2008 or FY 2009 have taken more than 20 days to process.

In 2008, the Solicitor's Office was the only office in the FLRA handling FOIA request that did not always respond to the requesters within 20 days. Some of the reasons for this were that some of the requests required the collection, review, and redaction on of a large amount of documents and the Office of Solicitor had difficulties obtaining responses from the prior administration Authority leadership pertaining to the requests for documents. In FY 2009, no FOIA requests have taken more than 20 days to handle.

The 2008 FLRA FOIA request processing costs for personnel handling the request (initial and appeal) was \$12,810.18. The only amount collected from a requester was \$238.87. FOIA and FLRA's FOIA regulations state that charged fees should be waived or reduced if disclosure is in the public interest because this contributes significantly to public awareness and understanding of activities and operations of the Federal government. Also, as previously stated there is no charge for the first 2 hours of work or preparing the first 100 pages produced. Costs are determined from the information maintained in logs on time spent and the pay grade of employees who work on the request. The amount for 2009 will be calculated by the Office of Solicitor at the end of 2009 after all FOIA respondents provide this information.

Although the FLRA Regional Offices did not receive many FOIA requests in 2008 or 2009 FOIA requests were handled properly and on time, the Regional Offices do not have an adequate capability to scan or e-mail responsive information to requesters. FLRA Headquarters does not have this problem.

In 2009, the Chief FOIA Officer has updated the FLRA regulations on the Freedom of Information Act so that all FLRA employees will have the proper federal requirements and information regarding FOIA requests from the private sector. The Chief FOIA Officer is currently seeking public comments on the proposed regulations to ensure that the public has a clear understanding of FLRA's FOIA policy. The Chief FOIA Officer will continue to submit relevant FOIA updates to the FOIA Officers when they become available. FLRA also has a FOIA home page which includes Frequently Asked Questions, FOIA contacts, information on the Freedom of Information Act Program and the FLRA's Electronic Reading Room for FLRA employees as well as private citizens.

The Office of the Solicitor prepares the FLRA's FOIA Annual report which is listed in the FLRA's electronic reading room and is also maintained by the internet home page of the

Department of Justice. The FLRA's library/electronic system are available on the FLRA website. Although the Electronic FOIA Amendment of 1996 required all reading room materials created after November 1, 1996, to be placed on-line, not all are yet available.

The Office of the Solicitor handles the initial FOIA requests for the Authority, Administrative Law Judges Office, Case Intake and Publication, Executive Office and Administrative Office's FOIA requests. If an appeal is filed, the Office of Solicitor prepares a draft response for the Chairman, FLRA to handle. The Office of Solicitor handled 33 FOIA requests in FY 2008 and 35 FOIA requests including an appeal of the Solicitors "no records" and an appeal of the Inspector General's determination regarding investigated information requested so far in FY 2009. In FY 2008, 4 FOIA requests were administratively closed and 11 cases were closed because there were no records regarding the requests, and 5 appeals were received and processed. So far in FY 2009, 2 FOIA requests were denied because the FLRA arbitration decisions requested are processed by Case Intake and Publication (CIP).

In 2009, 3 FOIA cases were referred to the Office of Inspector General by the Office of the Solicitor, 1 request was forwarded to the National Labor Relations Board, and 1 request was closed because the requester's company no longer was interested in the request.

The Office of General Counsel Headquarters handled 7 FOIA requests in FY 2008 and 2 FOIA requests in 2009. Three were denied because there were no records and 3 were forwarded to the Office of the Solicitor in 2008. The 2 FOIA requests received were denied because there were no records relating to the requests. All requests were handled on time within 20 days. No fees were charged for handling the cases.

The Atlanta Regional Office received 8 FOIA requests in FY 2008 and handled all within 20 days, 2 of these cases were denied, 1 was withdrawn, 2 were forwarded to the Solicitor's Office, and 2 have been received so far in FY 2009. No fees were charged in FY 2009. So far in FY 2009, \$32.75 is due for one case. All cases were handled on time in FY 2008, and so far in FY 2009.

The Boston Regional Office received 9 FOIA requests in FY 2008 and 4 FOIA requests so far in FY 2009. All FY 2008 cases were handled on time although 2 were partially denied.

So far in FY 2009, 1 FOIA request was totally denied and 3 were partially denied and handled in a timely manner. No fees were charged for handling the cases.

The Chicago Regional Office received 4 FOIA requests in FY 2008, and handled all immediately. So far in FY 2009, 1 FOIA request has been received and was processed within one day. No fees were charged for handling the FOIA requests.

The Dallas Regional Office received 2 FOIA requests in FY 2008 and forwarded 1 to the Office of General Counsel for handling. The 1 request was handled properly and no fees were charged. No FOIA requests have been received in 2009.

In FY 2008, the Denver Regional Office received 2 FOIA requests, 1 request was denied because records did not exist and the 2nd was forwarded to Headquarters. So far in FY 2009, 1 FOIA request was received, granted in part and denied in part, and was handled properly in less than 1 day. No fees were charged for handling the FOIA requests.

In FY 2008, San Francisco Regional Office received 3 FOIA requests, 1 request was referred and 2 were handled in FY 2009. In FY 2009, 4 FOIA requests were received, 2 were denied, 1 was granted, and 1 was forwarded to the Office of Solicitor. All cases were handled properly and in less than 20 days. No fees were charged for handling the FOIA requests.

The Washington Regional Office handled two FOIA requests properly in FY 2008. So far in FY 2009, they handled 1 request within 20 days which was granted. No fees were charged for handling the cases.

The Federal Service Impasses Panel (FSIP) properly handled 14 FOIA requests in FY 2008, and 11 FOIA requests, so far, in FY 2009. The average response time in FY 2008 was 5.77 calendar days. The average response time in FY 2009 was 10.33 calendar days. Because no requested records existed, 1 FOIA request was denied in FY 2008, and 4 were denied in FY 2009, so far. No charges were made by FSIP for handling the FOIA requests.

The Office of the Inspector General had no requests in FY 2008 but handled 3 requests in FY 2009, 2 were granted and 1 was denied. The requester filed an appeal with the

Chairman, who granted the request in part and denied it in part. All 3 initial requests were handled in less than 5 days and no fees were charged for handling the cases.

CONCLUSIONS:

Currently, the FLRA Chief FOIA Officer and FOIA offices are handling FOIA requests and appeals properly and predominantly within 20 days. Since most cases are now handled in less than 2 hours and reproduced responsive records are usually not more than 100 pages, there have been no charges for the requesters except once in FY 2008.

The FLRA adheres to the Freedom of Information Act and provides public information requests in accordance with FOIA even though the FLRA's electronic FOIA tracking system has not yet been fully installed. The FLRA provides an extensive amount of FOIA information on its homepage website for current and future requesters who have the right to access FLRA related information.

The FLRA is now handling its FOIA requests properly and on time. This internal review did not provide any negative or improper handling of FLRA FOIA requests and/or appeals. The current Chief FOIA Officer and all FOIA offices are performing their FOIA duties effectively.

FINDINGS AND RECOMMENDATIONS:

Finding 1:

The FLRA Library Room was diminished during the last administration. Although it receives current files, a lot of information needs to be updated and/or removed and the public website which is being developed to contain FLRA information (including FOIA information) will need to be updated.

Recommendation 1:

The FLRA should plan to hire an employee (full or part time) to manage the FLRA Library and update its FLRA records properly to provide easy access to FLRA records as well as making them available on the electronic website.

Finding 2:

The FLRA Regional Offices do not have proper scanning machines or computers to handle FOIA requests (as well as cases) properly.

Recommendation 2:

FLRA management needs to focus on immediately improving FLRA Regional Office computers as well as providing new scan machines for Regional Offices to handle FOIA (and other cases) properly.

Finding 3:

The FLRA's "Frequently Asked FOIA Questions" does not, on page 2, include the Office of Inspector General as an FLRA office that receives FOIA requests.

Recommendation 3:

The Chief FOIA Officer should revise the FLRA's Frequently Asked FOIA Questions on Page 2 to include the Office of the Inspector General as the office that receives FOIA requests for access to records of the Inspector General.

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