

U.S. Occupational Safety and Health Review Commission Open Government Plan

Background

The U.S. Occupational Safety and Health Review Commission (Review Commission or OSHRC) is an independent adjudicatory agency created by the Occupational Safety and Health Act of 1970. Its sole statutory mandate is to serve as an administrative court providing just and expeditious resolution of disputes involving the Occupational Safety and Health Administration (OSHA) of the U.S. Department of Labor, employers charged with violations of Federal safety and health standards, and employees and/or their representatives. The Review Commission was created by Congress as an agency completely independent of the Department of Labor to ensure that OSHA's enforcement actions are carried out in accordance with the law and that all parties are treated consistent with due process.

The Review Commission administers two levels of dispute resolution in accordance with its Rules of Procedure. The first level of adjudication is a hearing before an OSHRC Administrative Law Judge (ALJ). The second level of adjudication is a review of the ALJ's decision by the full panel of Commission members (Commissioners), provided that a Commissioner directs review of the ALJ decision. Thus, the Review Commission's procedures include a trial level hearing before an ALJ, and appellate review before the Commission. Decisions of the Review Commission may be appealed to an appropriate U.S. Circuit Court of Appeals.

The Review Commission is classified as a "micro-agency" due to its small size (approximately 65 personnel). Because OSHRC's functions are limited as described above, the agency does not maintain many of the types of "high value" datasets that are of particular interest under the Administration's Open Government initiative. The agency's information technology (IT) staff consists of two full-time employees located in the

National Office, whose primary duties are focused on operations, support, maintenance, and security of the agency's computer and telecommunications infrastructure. The IT staff is also responsible for posting Review Commission web site content.

Public affairs functions at the Review Commission are additional duties performed by a staff member in the Chairman's Office.

Despite its small size and modest resources, the Review Commission is fully committed to the goals of the Open Government Directive, including transparency, participation, and collaboration in our operations and mission, consistent with the need to ensure respect for due process and privacy rights.

Transparency

In accordance with Office of Management and Budget Directives M-10-06, "Open Government," and M-16-16, "2016 Agency Open Government Plans," the Review Commission maintains an Open Government web page that is accessible from and highlighted on our main web page. The Open Government web page for OSHRC may be found at: <http://www.oshrc.gov/open.html>.

As of January 2010, the Review Commission's Open Government web page includes three public disclosure datasets as follows:

1. Commissioners' Monthly Docket Report (updated, since February 2012, to indicate a Commissioner's non-participation in a case);
2. Commissioners' Monthly Case Activity Report; and
3. Commission Briefing Notices.

OSHRC's Open Government web page now also includes a feedback and comment section for public use (opengov@oshrc.gov).

Additionally, the Review Commission's Open Government web page includes:

1. Significant Orders issued by the Commission; and
2. Significant Orders issued by Administrative Law Judges.

These are non-dispositive orders that are of general public interest that would not normally be readily available to the public.

As a part of the Review Commission's goal of promoting even greater transparency, we also now post the following information on the Review Commission's web site:

1. Selected non-merit based (procedural) ALJ decisions (posted under "Final ALJ Decisions");
2. All Commission-level oral arguments and Commission open meetings, using sound recordings, and/or written transcripts (posted under "OSHRC e-FOIA Reading Room"); and
3. A listing on the Open Government page of docketed contests at the ALJ level (posted under "Listing of New Cases Received").

In July 2014, the Review Commission launched an online FOIA request form and dedicated email address for submitting FOIA requests. The form is a downloadable PDF file that requesters can access on our website, fill out on their computers and then submit either by fax, regular mail, or to the FOIA email address. The form may be found at: http://www.oshrc.gov/foia/foia_request_form.html. In 2015, to make our FOIA

program more accessible, the Review Commission translated the instructions for how to download and submit the FOIA request form, as well as the form itself, into Spanish and made both documents available on OSHRC's FOIA web page. The online FOIA request form and dedicated email address have increased the Review Commission's FOIA processing efficiency. Our FOIA Requester Service Center also remains available for requesters seeking information concerning the status of their FOIA request.

After the development of OSHRC's original Open Government Plan, the agency revised its regulations implementing the FOIA, updating them to reflect the amendments to the FOIA from the Openness Promotes Effectiveness in our National Government Act of 2007 (OPEN Government Act). The regulations became effective August 16, 2010. OSHRC also revised its FOIA Reference Guide, incorporating the guiding principle of the presumption of openness underlying the President's FOIA Memorandum and Attorney General's FOIA Guidelines. The Review Commission is currently in the process of revising its FOIA regulations in accordance with the FOIA Improvement Act of 2016 and will be updating the FOIA Reference Guide as well. OSHRC is also participating in the newly-created Chief FOIA Officer Council, which is currently working with the Office of Information Policy (OIP) on implementation of OIP's forthcoming "release to one-release to all" policy.

In our ongoing effort to proactively disclose information, the Review Commission continues to post information and documents filed with the Commission concerning our highest interest cases on the agency website in the FOIA Reading Room. This initiative has reduced the need for the public to file individual FOIA requests on matters of general interest. The released documents may be viewed here: http://www.oshrc.gov/foia/foia_reading_room.html.

Finally, the Review Commission's FOIA program works in tandem with our Privacy Officer to ensure proper handling of all FOIA requests, including first-party requests seeking access to Privacy Act records. The agency's Privacy Policy is posted on our

website: <http://www.oshrc.gov/Privacy/index.html>, and our Privacy Act regulations, as well as a compilation of our Privacy Act notices, are available at: <http://www.oshrc.gov/publications/index.html>.

Enhancing Openness of Decisional Activity at the ALJ Level

Although predating the formal December 2009 announcement of the Administration's Open Government initiative, in March 2009, the Chairman directed that all ALJ decisions pending Commission review be posted to the agency's web site. As a result, the public has greater information about ALJ decisions that are under review by the full Commission.

ALJ decisions pending Commission review may be found under the "Decisions" tab of the Review Commission's website home page, and are available at: http://www.oshrc.gov/decisions/alj_pending.html.

Responding to FOIA Requests

The Review Commission's FOIA Program is administered by the Office of the General Counsel. The General Counsel serves as the Chief FOIA Officer and reports directly to the Chairman. The Chief FOIA Officer works with OGC staff assigned to process FOIA requests, as well as other agency personnel, to obtain and provide requesters with responsive documents in a timely fashion. OSHRC's FOIA Program operates with a presumption in favor of disclosure, and FOIA requests are processed promptly and in a spirit of cooperation. As noted earlier, we have made it easier for members of the public to file FOIA requests. Much of the information relevant to our FOIA program, including our annual reports, is available at: <http://www.oshrc.gov/foia/index.html>.

Records Management

The Review Commission's records management program is managed by the agency's Executive Secretary. The agency does not maintain classified or declassified records or material and thus declassification procedures are unnecessary. Generally, agency records that are scheduled for periodic transfer to the National Archives and Records Administration relate to cases and case filings concerning contests before the Review Commission. The Review Commission plans to manage both permanent and temporary email records in an electronically accessible format by December 31, 2016, as required by the Managing Government Records Directive (OMB M-12-18).

Whistleblower Protection

The Review Commission received the U.S. Office of Special Counsel's (OSC) Certificate of Compliance with 5 U.S.C. 2302(c) on March 1, 2016. In working to achieve this certification, the Review Commission made, and continues to make, many efforts to ensure that its employees are informed of their rights and remedies available to them under the Civil Service Reform Act, the Whistleblower Protection Act (WPA), and the Whistleblower Protection and Enhancement Act. Posters are displayed centrally throughout the agency regarding Prohibited Personnel Practices and Whistleblower Disclosures. We also provide annual notification to all current employees about their rights and remedies under the WPA, in addition to providing employees this information as a part of their orientation process. The Review Commission required all supervisors and managers to complete OSC's Prohibited Personnel Practice and Whistleblower Training Quiz. Furthermore, we have a link to the OSC's website displayed on the Review Commission's website to provide additional information about federal whistleblower rights and protections. See: http://www.oshrc.gov/about/NoFearActPursuant_2014.html

Spending Information

The Review Commission is required to comply with the Digital Accountability and Transparency Act (DATA) of 2014. We are actively working with the Administrative Resource Center, our shared service provider, to implement the DATA Act based on an 8-step Implementation Plan. The Review Commission is in the phase of testing and reviewing data to be reported under the DATA Act beginning in May 2017. The data gathered will be used by management to study current trends and effect decisions on spending funds apportioned to the Agency.

Public Participation and Collaboration

The following individuals have primary responsibility for the Review Commission's Open Government initiatives:

Principal Senior Official – Chief Counsel to the Chairman (202-606-5370)

Alternate Senior Official – John X. Cervený, Executive Secretary, jcerveny@oshrc.gov
(202-606-5400)

FOIA Issues – Nadine N. Mancini, General Counsel, nmancini@oshrc.gov
(202-606-5410)

Web Site Issues – J. David Walter, Chief Information Officer, jwalter@oshrc.gov
(202-606-5383)

For those who wish to contact the Review Commission by U.S. mail, the mailing address is:

U.S. Occupational Safety and Health Review Commission
1120 20th Street, N.W.
9th Floor
Washington, DC 20036-3457

The Review Commission is committed to increasing openness and transparency to the maximum practicable extent. We will examine every reasonable possibility to enhance public transparency, consistent with respect for due process and privacy concerns.

Members of the public who wish to comment on this plan, or who wish to suggest or recommend improvements or changes to the Review Commission's transparency initiatives, may contact us at the addresses or telephone numbers listed above.

The Review Commission will update and revise this plan as necessary in accordance with suggestions made by the public, agency personnel, and our ability to devote the necessary human and technical resources to implement the goals of transparency and open government.