



# United States Department of Energy

## Office of Hearings & Appeals

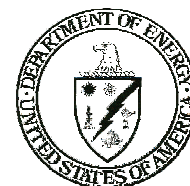


Annual Report  
FY 2014



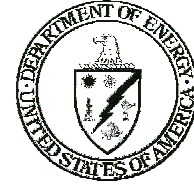
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# TABLE OF CONTENTS



MESSAGE FROM THE DIRECTOR.....	1
INTRODUCTION.....	3
I. AREAS OF JURISDICTION.....	5
A. Personnel Security .....	5
B. Whistleblower .....	8
C. Alternative Dispute Resolution .....	10
D. Freedom of Information and Privacy Acts.....	12
E. Exceptions and Special Redress.....	14
II. WORKING WITH OTHERS .....	16
III. SERVING OUR COMMUNITY .....	16
IV. INFORMATION TECHNOLOGY .....	16
V. GENERAL INFORMATION.....	17
APPENDIX .....	19

## MESSAGE FROM THE DIRECTOR...



I am pleased to report on the FY 2014 operations of the Office of Hearings and Appeals (OHA).

OHA's mission is to conduct fair and efficient hearings, and to issue decisions of the Department of Energy (DOE) with respect to any adjudicative proceedings which the Secretary may delegate. OHA's jurisdiction is broad and varied. It has included matters affecting the oil industry, consumers, appliance manufacturers, nuclear licensees, governmental entities, the public in general, and DOE and DOE-contractor employees. Each area of jurisdiction supports one or more of DOE's Strategic Goals.

Here are highlights for the past year:

**Personnel security hearings.** Under DOE's personnel security program, OHA conducts administrative hearings concerning individuals' eligibility for access to classified information or special nuclear material. By the end of FY 2014, our average time for issuing a decision after the receipt of the hearing transcript stood at 19 days, its lowest level in any of the last ten years, over 22 percent below our average over the last five years, and over 61 percent below our average for the last ten years. For the fifth year in a row, we had no cases older than 180 days in our end-of-year inventory.

**Whistleblower cases.** Under the DOE Contractor Employee Protection Program, OHA conducts investigations and hearings, and considers appeals concerning whistleblower claims filed by DOE contractor employees. We continued processing these cases in a timely fashion in FY 2014. Average processing time was over 31 percent below the average for the last ten years and over 3 percent below our average for fiscal years 2010 through 2014, and no case in our end-of-year inventory was older than 180 days.

**Freedom of Information Act (FOIA) and Privacy Act Appeals.** OHA considers appeals of agency denials of requests for information under the FOIA and Privacy Act and issues final agency decisions. In FY 2014, our FOIA and Privacy Act average case-processing time was 12 days, a figure below our most recent five-year average and less than half that of our average for the last ten years.

**Exceptions and Special Redress.** OHA considers petitions for special redress, as well as requests for relief from certain regulatory requirements. In the exceptions area, average case-processing time remained at historically low levels.

**Alternative Dispute Resolution.** OHA's Office of Conflict Prevention and Resolution (OCPR) serves as a resource to all DOE components and contractors to explore efficient and cost-effective means of preventing conflicts and resolving disputes, without the formalities and costs of litigation. OCPR directs the DOE Headquarters Mediation Program. In FY 2014, OCPR received 38 referrals, and parties reached a settlement in 50% of the cases mediated.

Over the last five years, OHA has reduced its average case-processing time by over 20%, while maintaining the professionalism, fairness, due process, and quality of decision-making that has always been a hallmark of our office. Throughout this report, we have highlighted examples of decisions that OHA issued during FY 2014.

In FY 2014, we continued using information technology to more efficiently provide the services we offer. Over 87 percent of the hearings we held in FY 2014 were conducted via video teleconferencing, compared to 85 percent in FY 2013, and 78 percent in FY 2012, further reducing OHA's carbon footprint, achieving significant cost savings to the taxpayer in both the time and expense associated with travel, and providing greater flexibility in scheduling hearings, trainings, and other events. We have saved even more resources by converting our paper record archives to electronic format, and avoiding, where possible, the creation of paper records.

As we begin FY 2015, we are committed to continued improvement and to meeting any new Departmental needs for adjudicative services. To these ends, we will continue to perform a comprehensive review our operations to identify opportunities for increased efficiency and productivity.

We hope that this report is informative. If you have any comments or suggestions for future improvements, please contact Fred Brown at [fred.brown@hq.doe.gov](mailto:fred.brown@hq.doe.gov) or 202-287-1545.

Sincerely,

Poli A. Marmolejos

## INTRODUCTION

The Office of Hearings and Appeals is the central adjudicative forum for the Department of Energy. The Secretary of Energy has delegated to the OHA Director the authority to act for him in many different areas. The OHA Director's decision typically serves as final agency action.

During its over 30-year history, OHA has had broad-ranging subject matter jurisdiction. Originally, OHA's primary function was to consider exceptions and other petitions related to the economic oil regulations, as well as Freedom of Information Act (FOIA) and Privacy Act appeals. From that point onward, OHA's jurisdiction has evolved to meet the needs of DOE's programs.

Over the years, OHA has heard appeals from a variety of DOE determinations, including those related to the Department's Alternative Fuel Transportation Program, physician panel reviews of DOE worker occupational illness claims, payment-equal-to-taxes claims under the Nuclear Waste Policy Act of 1982, civil penalties imposed for violations of DOE's worker safety and health rule, and the equity interests in production from Elk Hills Oil Field, formerly Naval Petroleum Reserve No. 1.

In FY 2014, OHA continued to conduct personnel security and whistleblower proceedings, consider FOIA and Privacy Act Appeals, rule on requests for exceptions from energy efficiency regulations, and promote the understanding and facilitate the use of Alternative Dispute Resolution (ADR) throughout the Department.

The procedures that OHA uses vary, depending on the type of case involved. OHA procedures are flexible and easily adaptable to new situations, allowing OHA to minimize "start-up" times and to produce high-quality work in new areas. OHA's general procedures and those used for specific proceedings can be found on our web site at <http://energy.gov/oha> under "Services."

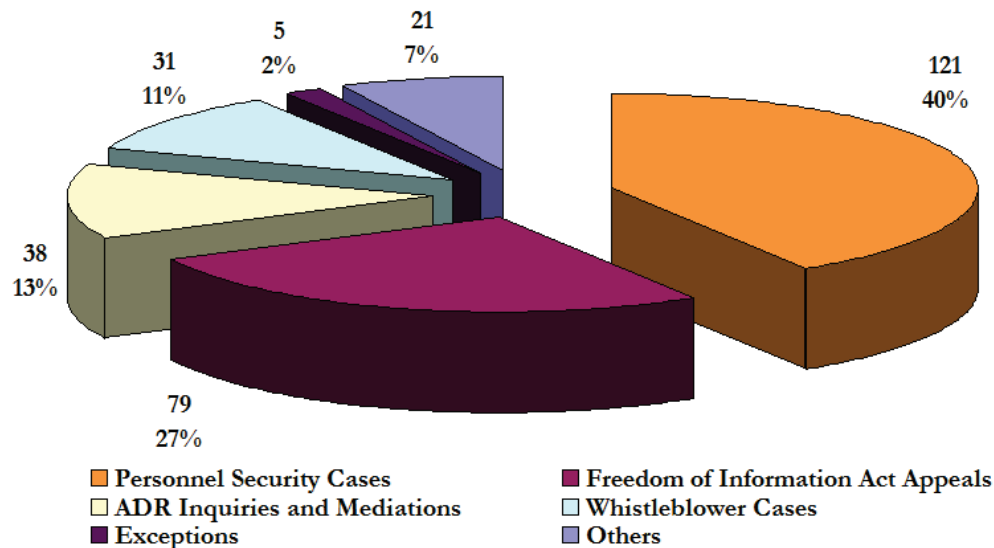
In the end, OHA's work involves more than resolving disputes. It also serves to inform affected parties and the public about the Department's programs. The decisions reflect the balancing of important and varied interests, including those of the public, the Department, state and local governments, and individual litigants.



## OVERVIEW OF OHA WORKLOAD

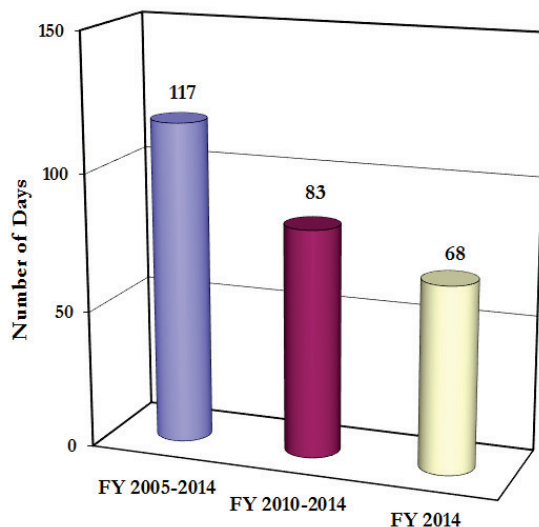
In FY 2014, OHA received a total of 295 cases. The greatest number of these were personnel security hearings, followed by FOIA and Privacy Act appeals, ADR inquiries and mediations, whistleblower cases (investigations, hearings, and appeals), and exception applications. The following chart shows the volume of cases, by type (full data at Appendix, Table 1).

**Cases Received by Type - FY 2014**

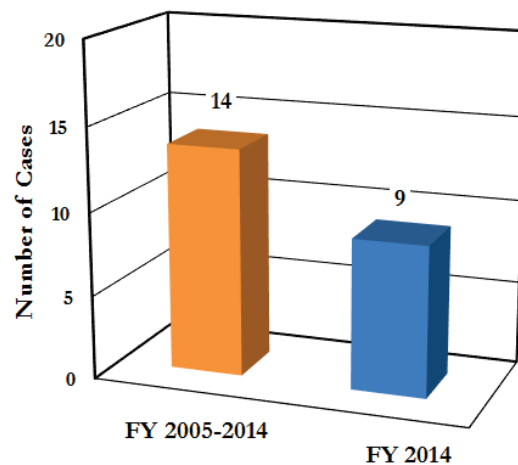


In FY 2014, OHA closed a total of 255 cases. The chart on the left below shows the average case-processing time for cases closed in FY 2014, and over the last five and ten fiscal years (full data at Appendix, Table 2). Our average case-processing time was over 18 percent below our most recent five-year averages and 41 percent less than our 10-year average. In addition, our inventory of older cases stands at 35 percent below our average over the last ten years (full data at Appendix, Table 3). We attribute these results to a continued emphasis on timeliness, without sacrificing the quality of our adjudicative work.

**Average Case Processing Time**



**End of Year Case Inventory  
Older Than 180 Days**



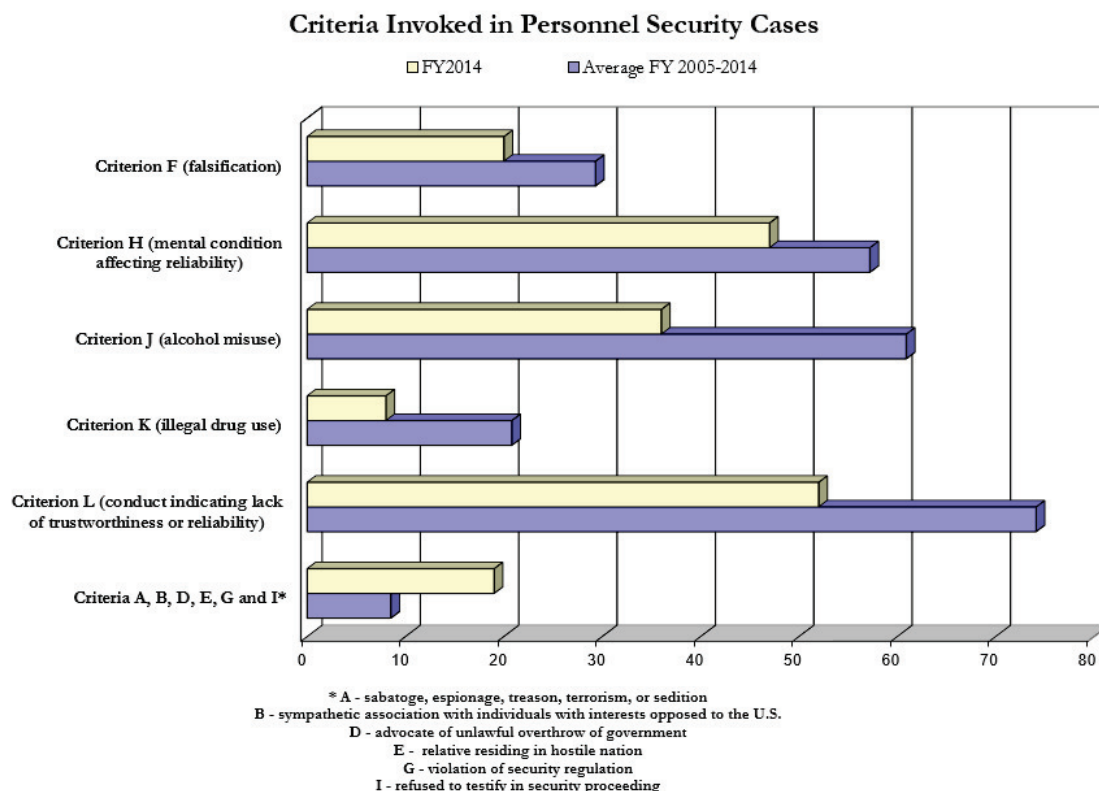
## I. AREAS OF JURISDICTION

### A. PERSONNEL SECURITY

In FY 2014, 121 cases, over 40 percent of those received by OHA, concerned a federal or contractor employee's eligibility for a DOE security clearance. OHA also conducts hearings involving eligibility for the Human Reliability Program, a security and safety reliability program for individuals who may have access to certain material, nuclear devices, or facilities. The governing regulations are set forth at 10 C.F.R. Parts 710 and 712, respectively. OHA's web site contains a "Frequently Asked Questions" page to assist individuals in understanding the personnel security hearing process.

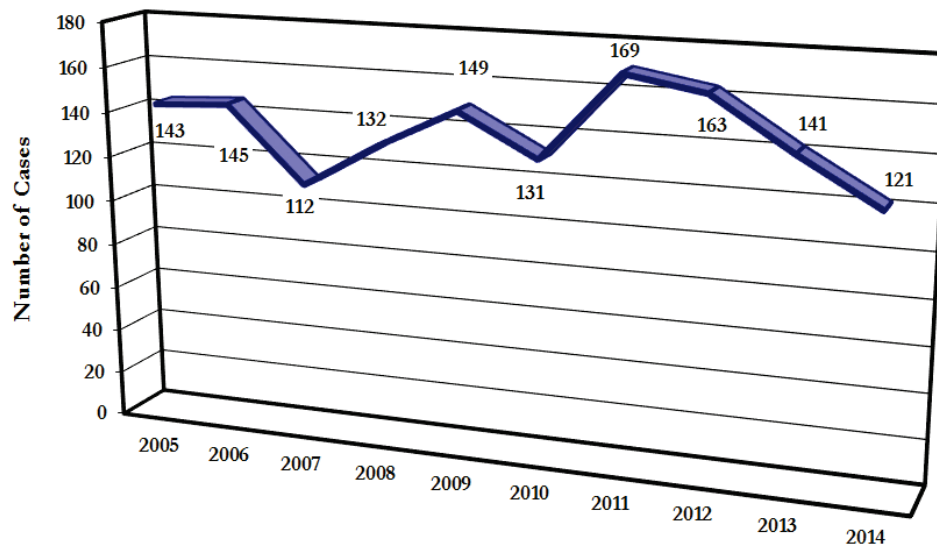
Personnel security hearings typically involve concerns about excessive alcohol use, substance abuse, mental illness, financial irresponsibility, or conduct raising doubt about an individual's honesty and reliability, among other issues. Evidence and testimony may include expert medical opinion. The OHA Administrative Judge assigned to the case analyzes the evidence and renders a decision, which may be appealed to an Appeal Panel within the DOE.

The following chart (full data at Appendix, Table 4) shows the number of cases in which various types of concerns - also referred to as criteria - were raised. Some cases involve multiple criteria. For example, a case may involve a concern about excessive alcohol use (Criterion J) and related or different concerns about honesty and trustworthiness (Criterion L). Notable in FY 2014 were the relatively lower number, compared to our ten-year average, of cases involving concerns raised by falsification, mental conditions, use of illegal drugs, problematic use of alcohol, and conduct indicating lack of trustworthiness or reliability. In contrast, the number of cases raised under other, less typical, criteria in FY 2014 was over double the average of the last ten years, including six cases involving violation of security regulations (Criterion G).



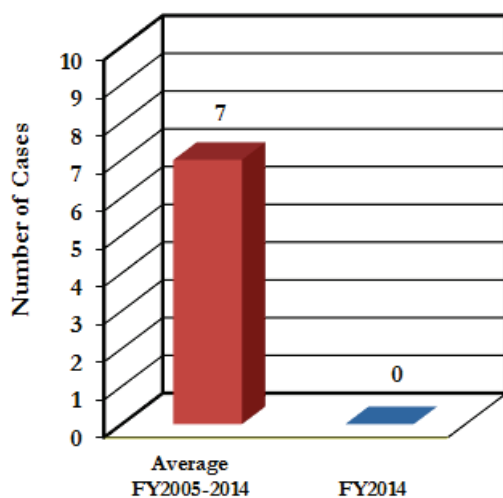
The following chart (full data at Appendix, Table 5) shows the number of personnel security cases received during each of the last ten years. OHA received 121 personnel security cases in FY 2014, fewer than FY 2013, but a number not far below our 10 year average.

**Personnel Security Cases Received  
FY 2005-2014**

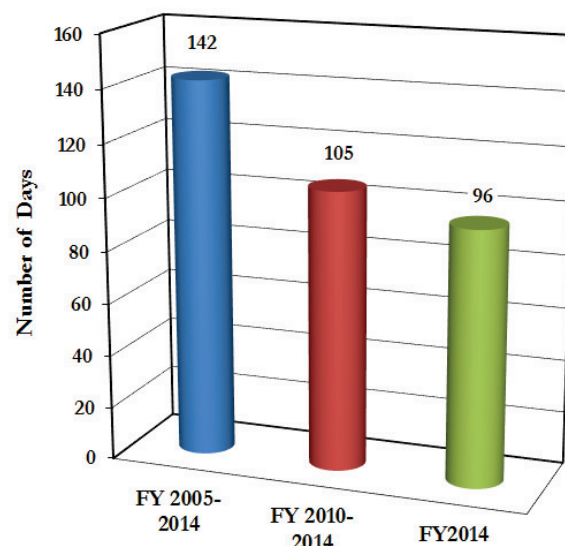


Consistent with our historical trend, in FY 2014, we continued to process personnel security cases in a more timely manner. Average case processing time was nearly 9 percent below our average over the last five years, and nearly 33 percent below our average for FY 2005-2014. At the end of the fiscal year, as has been the case since FY 2009, we had no cases in our inventory older than 180 days (full data for charts below can be found at Appendix, Tables 6 and 7). Data for FY 2014 reveals that in 72 (59%) of the total cases decided by OHA, the Administrative Judge determined that the individual should not be provided or retain a security clearance. This metric (59%) is somewhat less than the ratio of denial/revocations to grant/restorations that OHA has seen in its adjudication of personnel security cases in past years.

**Personnel Security Cases  
End-of-Year Inventory  
Older Than 180 Days**



**Personnel Security Cases  
Average Case Processing Time**





## PERSONNEL SECURITY CASE DECISION SUMMARY

### Case No. PSH-14-0011 - Personnel Security Hearing

On June 19, 2014, an OHA Administrative Judge issued a decision finding that the DOE should restore the individual's security clearance after she determined that the individual had mitigated the security concerns associated with his wife's close and continuing contact with family members in a foreign country, his connections to foreign nationals, and some allegiance issues relating to him.

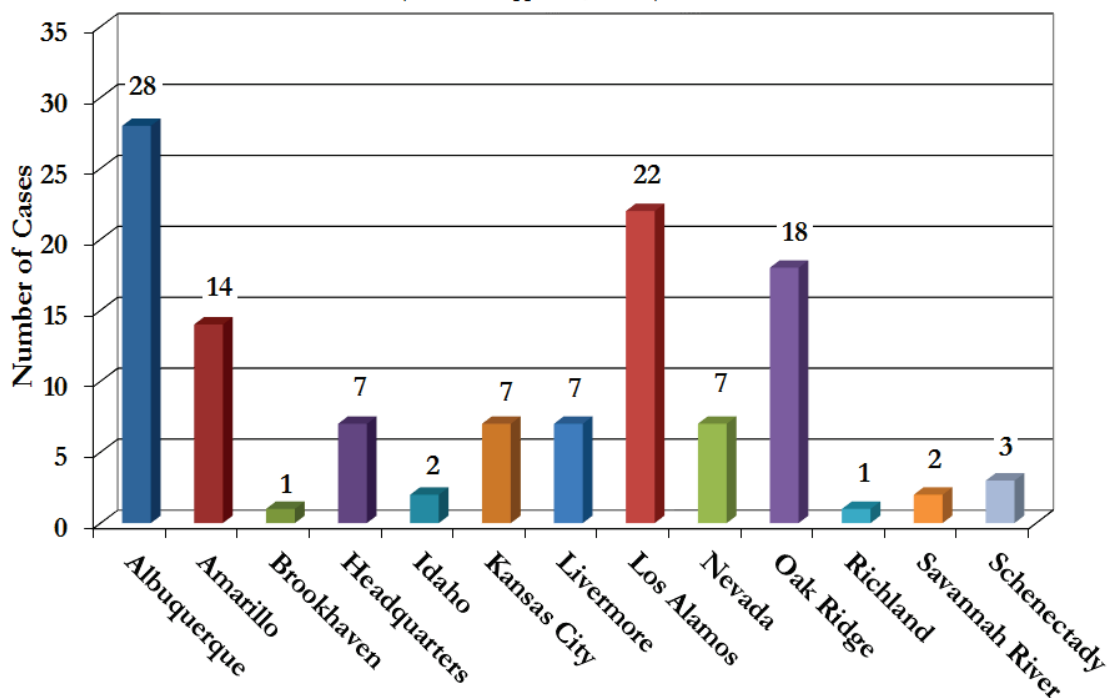
The Administrative Judge found that the individual's wife would not put the interests of her parents and brother residing in the foreign country above the interests of the U.S. Further, she found credible the individual's testimony that if anyone, including his wife, asked him for protected U.S. information, he would immediately report the request to the DOE contractor. The Administrative Judge concluded that the individual was compelled by virtue of his then citizenship in the foreign country to serve in the military of that country, or to be educated to do so.

The Administrative Judge also determined, based on her evaluation of the individual and his witnesses' demeanor and credibility, that the individual's "heart and mind" are allied with the U.S. and that if he is ever faced with the choice of deciding between the interests of the U.S. and that of his foreign national family or his place of birth, he will choose the U.S. interests. Accordingly, the Administrative Judge concluded that the Individual had resolved all the security concerns at issue.

*The full text of this decision can be found at <http://energy.gov/sites/prod/files/2014/06/f16/PSH-14-0011.pdf>.*

### Location of Personnel Security Cases Received in FY 2014

(full data at Appendix, Table 8)



In the area of personnel security, OHA also serves its DOE customers by regularly taking part in the training of those involved in the Administrative Review process and in educating its Administrative Judges on recent developments in national security law. For example, in July 2014, the Chief of the Personnel and Security and Appeals Division spoke at the Personnel Security Workshop, in Las Vegas, Nevada, on “Administrative Review Best Practices.”

## B. WHISTLEBLOWER

OHA investigates complaints, conducts hearings, and considers appeals under DOE's Contractor Employee Protection Program. The program provides an avenue of relief for DOE contractor employees who suffer reprisal as the result of making protected disclosures or engaging in other types of protected activity. The governing regulations are set forth at 10 C.F.R. Part 708. OHA's web site (<http://energy.gov/oha>) contains two “Frequently Asked Questions” pages to assist DOE field personnel and contractor employees in understanding the process for considering contractor employee reprisal complaints.

The main issues in these cases are whether an employee engaged in protected activity and, if so, whether the contractor would have taken an adverse action against the employee in the absence of the employee's involvement in that activity. During the investigation, an OHA Investigator conducts interviews, examines documentary evidence, and issues a report. Following the issuance of the report, an OHA Administrative Judge is assigned to the case. The Administrative Judge rules on pre-hearing motions, conducts a hearing, and issues an initial agency decision, which may be appealed to the OHA Director. The OHA Director also hears appeals from dismissals of complaints. His decisions in both types of appeals serve to increase understanding of the program's purpose and implementation. A finding of reprisal for certain types of disclosures may result in civil penalties pursuant to the DOE enforcement programs under the Price-Anderson Act and the DOE Worker Safety and Health Rule (10 C.F.R. Part 851).

The DOE Contractor Employee Protection Program is part of a larger DOE program - the DOE Employee Concerns Program (ECP). The latter is managed by the Office of Civil Rights, an office within the DOE's Office of Economic Impact and Diversity. As an adjunct to its involvement in the Employee Concerns Program, OHA is active in related Departmental initiatives.

During FY 2014, OHA supported an ongoing dialogue among Departmental organizations concerning the processes for employees to raise concerns, and OHA continued a close interface with the Employee Concerns Program. These activities are well aligned with the Department's efforts to achieve greater collaboration among DOE offices.

OHA received 31 whistleblower cases in FY 2014 and, as with our other areas of jurisdiction, we continued to focus on timeliness in the processing of these cases. We are pleased with the results of those efforts in the past year. Average case-processing time in FY 2014 was 87 days, over 30 percent below our average over the last ten years and below our average for fiscal years 2010 through 2014. In addition, no case in our end-of-year inventory was older than 180 days.

## WHISTLEBLOWER CASE DECISION SUMMARY

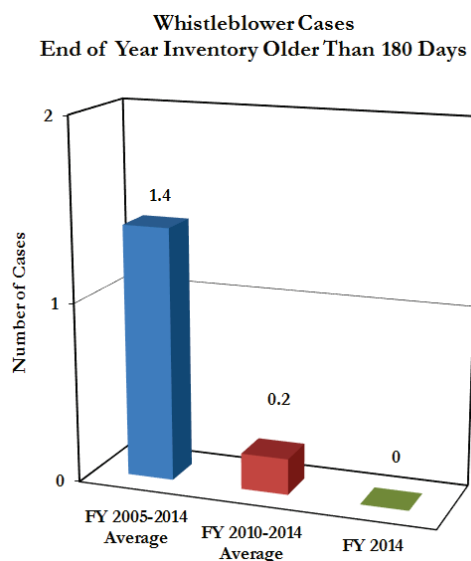
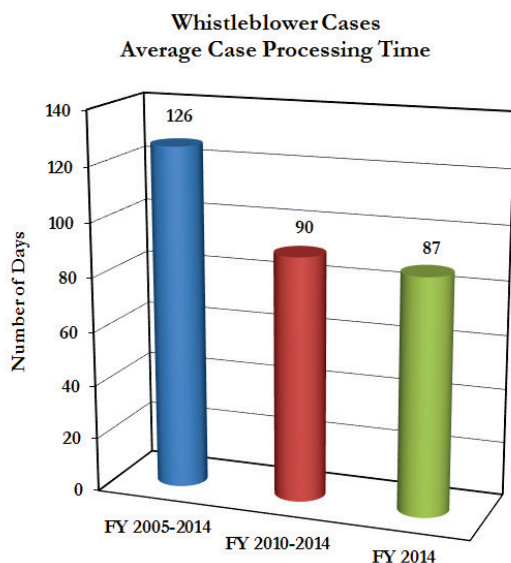
### Case No. WBA-13-0017 - In the Matter of Edward G. Gallrein, III

On August 20, 2014, the Office of Hearings and Appeals (OHA) denied an appeal of an Initial Agency Decision (IAD) that an OHA Administrative Judge issued on April 10, 2014, regarding a complaint of retaliation that Edward G. Gallrein, III (the Complainant) filed under the DOE's Contractor Employee Protection Program, 10 C.F.R. Part 708, against Babcock and Wilcox Technical Services Y-12, LLC (B&W), the managing and operating contractor for the DOE's Y-12 National Security Complex in Oak Ridge, Tennessee, and GemTech Y-12, LLC, a subcontractor to B&W. The Complainant had alleged that he was terminated from his employment in retaliation for disclosures protected under Part 708.

In the IAD, the Administrative Judge dismissed certain of the Complainant's disclosures on procedural grounds and, with respect to the remaining disclosures, determined that none of the alleged disclosures fell within the ambit of Part 708. In making this determination, the Administrative Judge concluded that the alleged disclosures did not, as a matter of law, reveal information that the Complainant could have reasonably believed was "a substantial violation of a law, rule, or regulation;" "a substantial and specific danger to employees or to public health or safety;" or "fraud, gross mismanagement, gross waste of funds, or abuse of authority," as specified at 10 C.F.R. § 708.5(a). Therefore, having concluded that the Complainant could not meet his evidentiary burden under Part 708, the Administrative Judge granted the Respondents' motions to dismiss the complaint.

After reviewing the Complainant's various procedural and substantive arguments on appeal, the OHA Director affirmed the Administrative Judge's determination that the Complainant could not establish that he made protected disclosures or engaged in protected activity covered under Part 708, and concluded that the Complainant did not identify error warranting reversal of the IAD. Therefore, the OHA Director denied the Complainant's appeal.

*The full text of this decision can be found at <http://energy.gov/sites/prod/files/2014/08/f18/WBA-13-0017.pdf>*

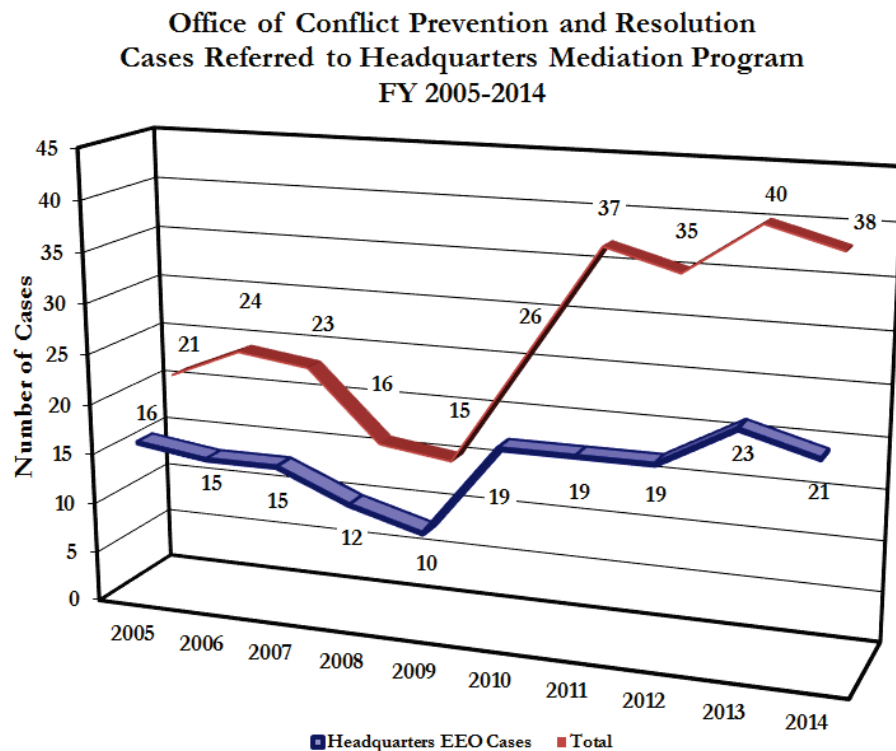


## C. ALTERNATIVE DISPUTE RESOLUTION

OHA's Office of Conflict Prevention and Resolution (OCPR) serves as a resource to all DOE components and contractors to explore efficient and cost-effective means of preventing conflicts and resolving disputes, without the formalities and costs of litigation.

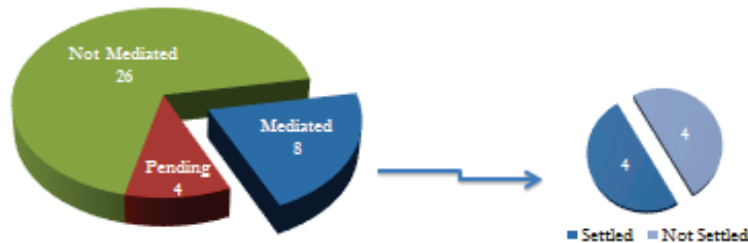
OCPR was created as a result of the Administrative Dispute Resolution Act of 1996 (ADRA), with the mandate to promote and increase the understanding and use of alternative dispute resolution (ADR) within the Department. While ADRA focuses on issues already in controversy, OCPR's mandate was expanded to encourage the identification and prevention of potential conflicts throughout the DOE complex. ADR includes a variety of dispute resolution processes (including, but not limited to, conciliation, facilitation, mediation, mini-trials, arbitration, use of ombuds, or any combination thereof) that assist people in avoiding more polarizing (and, potentially, more costly) forums such as litigation. Mediation is the ADR method that is most often utilized at DOE.

OCPR directs the DOE Headquarters Mediation Program. During FY 2014, the OCPR staff and OHA staff attorney mediators conducted 87 percent of the mediations referred to OCPR. The Headquarters Mediation Program processed 38 cases in FY 2014. Historically, the majority of the cases referred to the program have been equal employment opportunity cases (most frequently referred from DOE's Office of Civil Rights).



Mediations were conducted in 8 of the 38 cases referred to OCPR in FY 2014, and a settlement rate of 50% was achieved in those cases, as shown in the following chart. Twenty-six cases were not mediated, typically because one party did not wish to proceed to mediation or because the matter was resolved prior to mediation. Four cases remained pending at the end of FY 2014.

**Office of Conflict Prevention and Resolution**  
**Disposition of Cases Referred to the Headquarters Mediation Program**  
**FY 2014**



OCPR works closely with ADR Points of Contact (POCs) in each Departmental Element to address their unique ADR needs, including convening quarterly meetings with the ADR POCs. It has also convened live and video teleconferencing quarterly meetings to provide ADR discussion forums and share conflict prevention best practices employed by the various Departmental Elements.

OCPR also supports the DOE Technology Transfer Coordinator office and the 22 technology transfer ombudsmen (TTOs) located at various sites throughout the DOE complex. The role of the TTO is to assist the public and industry in resolving complaints and disputes with the National Laboratories or research facilities regarding technology partnerships, patents, and technology licensing. In FY 2014, OCPR collected data on ombudsman activity as required by the Technology Transfer Commercialization Act of 2000 and provided conflict prevention and resolution consultations to the TTOs.

In addition to consulting and providing services that employ alternative means of conflict prevention and dispute resolution, OCPR provides training in communication and the headquarters mediation process. In FY 2014, OCPR training and outreach activities included:

- ✓ Two Day Mediation Training conducted at Oak Ridge, Tennessee for Oak Ridge and other DOE Field Employees in July 2014;
- ✓ ADR and Mediation Training for EEO Counselors conducted via video teleconferencing for Western Area Power Administration in July 2014;
- ✓ “Supervisory Essentials” Classes – OCPR gave a presentation about ADR and the HQ Mediation Program to new supervisors in February, March, June and August 2014;
- ✓ ADR and Mediation Awareness training for lunch and learn programs for the Office of Chief Financial Officer in January 2014 and the Office of Fossil Energy in February 2014;
- ✓ ADR and Mediation Training for Employee Concerns Program Managers – September 2014
- ✓ “Facilitating Conflict Resolution” Course - Collaborated with the Office of Acquisition & Project Management Professional Development Division to launch a course in October 2014 using interactive webinar sessions.
- ✓ ADR Lunchtime Series - OCPR sponsored, in conjunction with the Interagency ADR Working group, four presentations at DOE Headquarters, featuring various ADR topics. This program is



designed for ADR practitioners and conflict resolution managers located in the Washington, DC metropolitan area. If participants are unable to attend in person, they may join the program through WebEx conferencing. Also, each ADR program is recorded, converted to a YouTube video and posted on the OCPR website at <http://www.energy.gov/oha/services/applications-exceptions/alternative-dispute-resolution/interagency-adr-workplace> and at Department of Justice's [www.adr.gov](http://www.adr.gov) website. Due to the success of the program, it is one of the best known free educational ADR programs in the federal government administered to nationwide audiences throughout the federal government and to ADR practitioners in the private sector.



*OHA, in collaboration with the Office of Science Integrated Support Center (ISC) hosted a two-day mediation introduction course on July 23-24, 2014 in Oak Ridge, Tennessee*

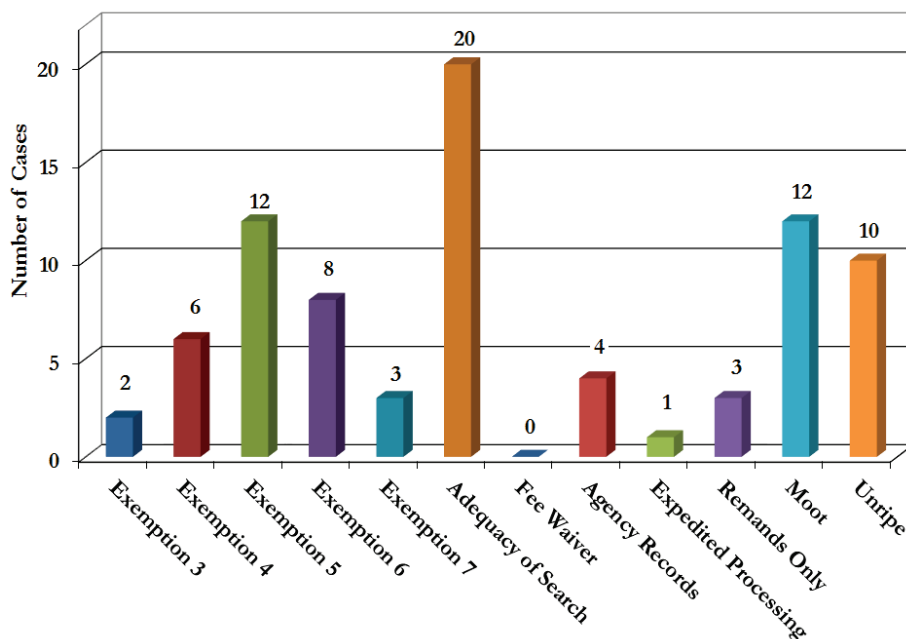
## D. FREEDOM OF INFORMATION AND PRIVACY ACTS

OHA considers appeals of agency determinations under the Freedom of Information Act (FOIA) and Privacy Act. The governing regulations are set forth at 10 C.F.R. Parts 1004 and 1008, respectively.

These appeals arise from determinations across the DOE complex and involve diverse subject matter areas. OHA facilitates communication between the requester and the agency, which in some cases permits the resolution of the issues without adjudication. OHA works closely with the DOE's FOIA and Privacy Act offices, and participates in complex-wide training.

OHA receives a large number of FOIA appeals from varied entities, most commonly labor unions, seeking data that would demonstrate whether DOE contractors are complying with federal wage and hour laws. These cases involve a balancing of the people's need to know whether federal law is being followed against individual workers' rights of privacy.

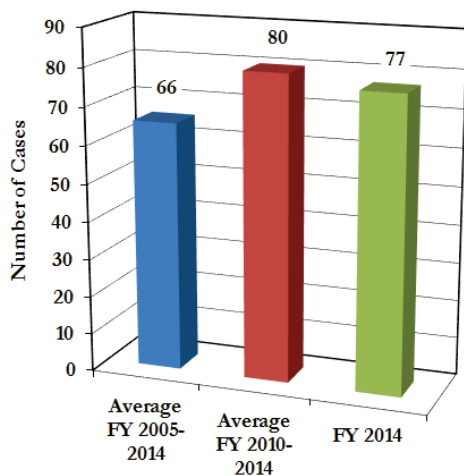
### FOIA Cases By Subject - FY 2014



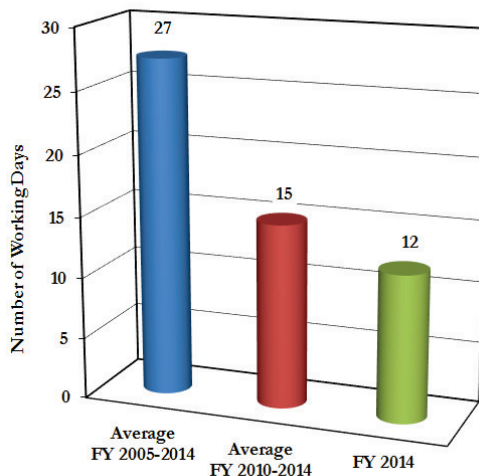
As shown in the chart below, during FY 2014 we received 77 FOIA and Privacy Act Appeals, a number roughly consistent with our average over the last five fiscal years and significantly more than our most recent ten-year average (full data at Appendix, Table 13).

Despite the relatively high number of cases received, our case-processing time for FY 2014 was lower than our most recent five-year average and less than half that of our average from FY 2005 through 2014 (full data at Appendix, Table 14).

**Freedom of Information and Privacy Act Appeals Cases Received**



**Freedom of Information and Privacy Act Appeals Average Case Processing Time**



## FREEDOM OF INFORMATION AND PRIVACY ACTS CASE DECISION SUMMARY

### **Case No. FIA-13-0061 - Hanford Atomic Metals Trades Council**

On November 14, 2013, the Director of the Office of Hearings and Appeals (OHA) issued a decision denying an appeal from a Freedom of Information Act determination issued by the Department of Energy's (DOE) Richland Operations Office (ROO). The Hanford Atomic Metals Trades Council sought categories of records concerning communications between DOE employees and DOE-contractor employees at the DOE's Hanford facility regarding collective bargaining, desired changes in wages, terms and conditions of employment, potential strikes, or closures. In its response, ROO withheld portions of a number of documents pursuant to Exemption 4 and 5.

After reviewing the documents, OHA determined that Exemption 4 did not apply to any of the withheld information because the information itself did not consist of commercial or financial information. Nonetheless, OHA found that most of the remaining withheld information was properly withheld under Exemption 5. OHA found that with regard to information originating from non-governmental personnel, such communications could still be considered "intra-agency" communications because of the "common interest" doctrine. Further, most of the information withheld pursuant to Exemption 5 was properly withheld because the information would be protected under the deliberative process privilege. The material consisted of recommendations, opinions, and assessments which were predecisional and deliberative. OHA remanded the matter to ROO to issue a new determination regarding information withheld in three documents where OHA found that the deliberative process privilege and Exemption 5 did not apply.

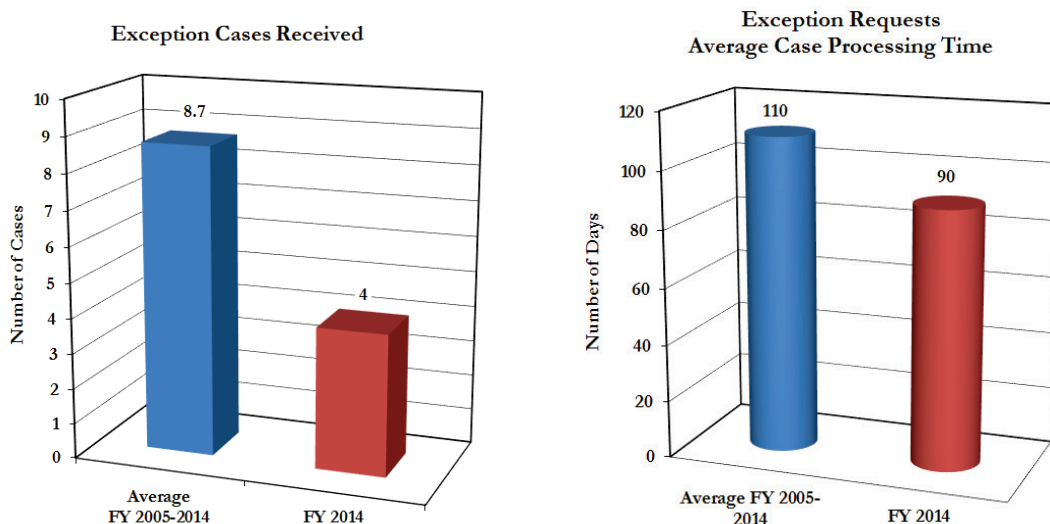
*The full text of this decision can be found at <http://energy.gov/sites/prod/files/2013/11/f5/FLA-13-0061.pdf>*

## E. EXCEPTIONS AND SPECIAL REDRESS

OHA considers petitions for special redress, as well as requests for exceptions from certain DOE regulations and orders. The exception process is a regulatory relief valve. An exception is granted where the application of a rule or order would constitute a gross inequity, serious hardship, or unfair distribution of regulatory burdens. OHA may grant an exception, for example, if applying a rule to a specific firm would be inconsistent with the overall purpose of a program or would impose a burden on the firm that would be grossly disproportionate to the burden imposed on other firms by the rule. In all cases, OHA consults with the affected DOE office.

The nature of relief requested varies depending on the DOE regulations at issue, and the number of requests received tends to increase as the deadline for compliance with a regulation approaches. For example, a number of consumer groups, utilities, and manufacturers of smart grid communication devices are seeking relief from the new standards claiming that their communication devices do not work on "heat pump" water heaters that will be required for large water heaters (over 55 gallons) under revised standards that are effective April 16, 2015. In FY 2015, we anticipate receiving other exception requests from the new water heater standards.

As shown in the chart below, we received a somewhat lower number of exception requests in FY 2014 than the average number of cases received annually during the last ten fiscal years. Our average case-processing was 90 days in FY 2014, over 18 percent below our average from FY 2005 through 2014 (full data at Appendix, Tables 16 and 17).



## EXCEPTIONS AND SPECIAL REDRESS CASE DECISION SUMMARY

### Case No. EXC-14-0001 - In the Matter of Felix Storch, Inc.

On May 2, 2014, OHA issued a decision denying an Application for Exception filed by Felix Storch, Inc. (FSI) for relief from the provisions of 10 C.F.R. Part 430, Energy Conservation Program: Energy Conservation Standards and Test Procedures for Residential Refrigerators, Refrigerator-Freezers, and Freezers (Refrigerator Efficiency Standards). In its exception request, FSI asserted that it will suffer a serious hardship, gross inequity, and an unfair distribution of burdens if required to adhere to the new Refrigerator Efficiency Standards, effective September 15, 2014 (2011 Final Rule), with respect to its Summit Upright Freezer, Model FSM50LESADA. FSI maintained that, although the firm has explored various alternatives, the unit is unable to attain the lower maximum energy usage prescribed by the new standards.

In reviewing FSI's request for exception relief, OHA noted that FSI did not introduce the Summit model FSM50LESADA into the market until December 2011, three months after the promulgation of the 2011 Final Rule which implemented the new Refrigerator Efficiency Standards, and several years after the DOE began the rulemaking process which led to the new standards. Thus, OHA determined that, to the extent that any inequity exists in FSI being unable to market the product at issue, such inequity is attributable to FSI's discretionary business decision to enter the market with a product without first ascertaining that the product would comply with the impending standards. Consequently, OHA concluded that FSI failed to meet its burden of showing that the firm is subject to special hardship, gross inequity, or an unfair distribution of burdens resulting from a DOE-issued rule, regulation, or order, and, therefore, exception relief was not warranted in this case.

*The full text of this decision can be found at <http://energy.gov/sites/prod/files/2014/05/f15/EXC-14-0001.pdf>.*

## II. WORKING WITH OTHERS

Over the years, OHA has collaborated and partnered with other DOE offices and federal agencies, and FY 2014 was no exception.

In June 2014, OHA hosted a “Personnel Security/Intelligence Community Lawyers Meeting” with representatives from the DOE, Department of Defense, Federal Bureau of Investigation, National Geospatial-Intelligence Agency, and Transportation Security Administration in attendance.

OHA's FOIA subject matter expert organized and, with the assistance of the Office of General Counsel (GC), hosted a series of five one-hour discussion sessions in FY 2014 on various topics of current interest. The sessions were conducted by conference call, allowing between 30 and 40 FOIA practitioners and attorneys from throughout the DOE complex to participate in each session. After OHA and GC attorneys delivered a brief presentation on the session's topic, the participants aired their questions, perspectives, and suggestions. We will continue this well-received program in FY 2015.

The Chief of OHA's Personnel Security and Appeals Division continued her collaboration with the Office of Science and the Office of General Counsel on technology transfer in October and November 2013, a period in which the agency's Technology Transfer Coordinator position was vacant, to ensure that Congressional inquiries, OMB requests, internal and external audits, legislative initiatives, and press inquiries were appropriately handled and addressed.

OHA's Employee Protections and Exceptions Division continued to collaborate during FY 2014 with other DOE offices concerning the Department's processes for addressing employee concerns. Staff from our Office of Conflict Prevention and Resolution regularly participates in activities coordinated among federal agencies, including the Interagency Dispute Resolution Working Group and the Interagency Conflict Management Consortium. Also in FY 2014, OHA conducted management inquiries and produced fact-finding reports for several of our sister organizations.

We continue to learn from our colleagues, and hope that those with a better understanding of OHA and what we do can take advantage of the expertise, resources, and services we offer in support of DOE's mission. In this spirit, OHA continued in FY 2014 its series of occasional Brown Bag Lunches. Our distinguished guests in the past year included David M. Klaus, Deputy Under Secretary for Management and Performance; Matthew Moury, Associate Under Secretary of Environment, Health, Safety and Security; Bill Eckroade, Principal Deputy Chief for Mission Support Operations, Office of Health, Safety and Security; Kathleen Peery, Legislative Affairs Specialist, Office of Congressional and Intergovernmental Affairs; and John Cymbalsky, Office of Energy Efficiency and Renewable Energy, Building Technologies Office. We look forward to continuing this series in the coming year.

## III. SERVING OUR COMMUNITY

In FY 2014, OHA employees continued their long tradition of generosity to the Combined Federal Campaign, receiving a President's Award for their support of the 2013 campaign. In addition, for the fifteenth year in a row, OHA staff supported DOE's partnership with the “Everybody Wins!” lunchtime reading program at Amidon-Bowen Elementary School. Over the course of the fiscal year, four OHA employees participated in the weekly reading program. Apart from DOE-sponsored activities, OHA staff members donate their time and skills to their communities in a variety of ways.



## IV. INFORMATION TECHNOLOGY

OHA makes broad use of technology to accomplish its mission. OHA maintains a website where it publishes its decisions and other information. Internally, OHA uses a case management system to maintain case files, track the status of pending cases, produce productivity and case status reports, and assist staff attorneys in the timely resolution of assigned cases.

By the end of FY 2014, OHA had conducted 78 hearings via video teleconference, 87% of all hearings conducted in the fiscal year, a higher percentage than in FY 2013, when 85% of our hearings were conducted via VTC.

## V. GENERAL INFORMATION

- ✍ Extensive information is available on our website at <http://energy.gov/oha>. The website includes information about OHA's jurisdiction, including applicable regulations, Frequently Asked Questions, and OHA decisions.
- ✍ For copies of submissions in OHA proceedings, you may contact our Docket and Publications Branch at [OHAFilings@hq.doe.gov](mailto:OHAFilings@hq.doe.gov). You may also fax your inquiries to (202) 287-1415.
- ✍ For general information, you may contact the Office of the Director at (202) 287-1566 or the Docket Room at the email address listed above.
- ✍ To give us feedback on any aspect of our operations, please email us at [fred.brown@hq.doe.gov](mailto:fred.brown@hq.doe.gov). We truly value your observations and suggestions.

## APPENDIX - TABLES

Table 1 - Cases Received by Type, FY 2014

Personnel Security Cases	121	40%
Freedom of Information Act Appeals	79	27%
ADR Inquiries and Mediations	38	13%
Whistleblower Cases	31	11%
Exceptions	5	2%
Others	21	7%
<b>Total</b>	<b>295</b>	<b>100%</b>

Table 2 - Average Case Processing Time (Days)

FY 2005-2014	117
FY 2010-2014	83
FY 2014	68

Table 3 - End of Year Case Inventory Older Than 180 Days

FY 2005-2014	14
FY 2014	9

Table 4 - Criteria Invoked in Personnel Security Cases

	Average FY 2005-2014	FY2014
Criterion F (falsification)	29.3	20
Criterion H (mental condition affecting reliability)	57.2	47
Criterion J (alcohol misuse)	60.9	36
Criterion K (illegal drug use)	20.8	8
Criterion L (conduct indicating lack of trustworthiness or reliability)	74.1	52
Criteria A, B, D, E, G and I (A - sabotage, espionage, treason, terrorism, or sedition; B - association with person with interests inimical to U.S. or who advocates unlawful overthrow of government; D - advocate of unlawful overthrow of government; E - relative residing in hostile nation; G - violation security regulations; I - refused to testify in security proceeding)	8.5	19

Table 5 - Personnel Security Cases Received, FY 2005-2014

2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
143	145	112	132	149	131	169	163	141	121

Table 6 - Personnel Security Cases, End-of-Year Inventory Older Than 180 Days

Average FY2005-2014	FY2014
7	0

Table 7 - Personnel Security Cases, Average Case Processing Time (Days)

FY 2005-2014	FY 2010-2014	FY2014
142	105	96

Table 8 - Location of Personnel Security Cases Received in FY 2014

Albuquerque	Amarillo	Brookhaven	Headquarters	Idaho	Kansas City	Livermore	Los Alamos	Nevada	Oak Ridge	Richland	Savannah River	Schenectady
28	14	1	7	2	7	7	22	7	18	1	2	3

Table 9 - Whistleblower Cases, Average Case Processing Time (Days)

FY 2005-2014	FY 2010-2014	FY 2014
126	90	87

Table 10 - Whistleblower Cases, End-of-Year Inventory Older Than 180 Days

FY 2005-2014	FY 2010-2014	FY 2014
1.4	0.2	0

Table 11 - Cases Referred to Headquarters Mediation Program

Fiscal Year	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
Total	21	24	23	16	15	26	37	35	40	38
Headquarters EEO Cases	16	15	15	12	10	19	19	19	23	21

Table 12 - Disposition of Cases Referred to Headquarters Mediation Program in FY 2014

	Settled	Not Settled
Mediated	8	4
Not Mediated	26	
Pending	4	
<b>Total</b>	<b>38</b>	

Table 13 - Freedom of Information and Privacy Act Appeals Cases Received

Fiscal Year	Average FY 2005-2014	Average FY 2010-2014	FY 2014
Cases Received	66	80	77

Table 14 - Freedom of Information and Privacy Act Appeals, Average Case Processing Time (Working Days)

FY 2005-2014	FY 2010-2014	FY 2014
27	15	12

Table 15 - FOIA Cases by Subject

Unripe	Moot	Remands Only	Expedited Processing	Agency Records	Fee Waiver	Adequacy of Search	Exemption 7	Exemption 6	Exemption 5	Exemption 4	Exemption 3
10	12	3	1	4	0	20	3	8	12	6	2

Table 16 - Exception Cases Received

Fiscal Year	Average FY 2005-2014	FY 2014
Cases Received	8.7	4

Table 17 - Exception Requests, Average Case Processing Time (Days)

Average FY 2005-2014	FY 2014
110	90

