

NATIONAL LABOR RELATIONS BOARD

Freedom of Information Act Annual Report

Fiscal Year 2012

I. BASIC INFORMATION REGARDING REPORT

1. For questions about this Report contact:

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2. Report may be obtained through the Internet at:

<http://www.nlrb.gov/foia-annual-reports>

3. Report may also be obtained by making a request to the address listed above.

II. MAKING A FOIA REQUEST

1. Information concerning the different agency components that receive FOIA requests is located on the NLRB's FOIA Home Page at:

<http://www.nlrb.gov/foia/where-file-your-foia-request>

2. All federal agencies, including the NLRB, are required under the FOIA to provide records upon receiving a written request, except for those documents that are protected from disclosure by the FOIA's nine exemptions and three exclusions. The most common reasons why some requests are not granted by the NLRB are because requesters seek information protected by the following FOIA exemptions:

- Exemption (b)(5): protects certain inter- and intra-agency memoranda, including those setting forth internal recommendations from staff and those that contain attorney work product.
- Exemptions (b)(6) and (b)(7)(C): protect information concerning other individuals that, if released, would constitute an invasion of their personal privacy.
- Exemptions (b)(7)(A), (b)(7)(D) and (b)(7)(E): protect certain records in law-enforcement investigatory files, including records the release of which would interfere with an ongoing proceeding and records that would reveal confidential sources or enable someone to avoid complying with the law.

III. ACRONYMS, DEFINITIONS, AND EXEMPTIONS

1. Agency-specific acronyms or terms used in this Report:
 - a. NLRB - National Labor Relations Board
 - b. FOIA - Freedom of Information Act (5 U.S.C. § 552)
 - c. FY - Fiscal Year
 - d. P.A. - Privacy Act (5 U.S.C. § 552a)

2. Include the following definitions of terms used in this Report:
 - a. **Administrative Appeal** – a request to a federal agency asking that it review at a higher administrative level a FOIA determination made by the agency at the initial request level.

 - b. **Average Number** – the number obtained by dividing the sum of a group of numbers by the quantity of numbers in the group. For example, of 3, 7, and 14, the average number is 8.

 - c. **Backlog** – the number of requests or administrative appeals that are pending at an agency at the end of the fiscal year that are beyond the statutory time period for a response.

 - d. **Component** – for agencies that process requests on a decentralized basis, a “component” is an entity, also sometimes referred to as an Office, Division, Bureau, Center, or Directorate, within the agency that processes FOIA requests. The FOIA now requires that agencies include in their Annual FOIA Report data for both the agency overall and for each principal component of the agency.

 - e. **Consultation** – the procedure whereby the agency responding to a FOIA request first forwards a record to another agency for its review because that other agency has an interest in the document. Once the agency in receipt of the consultation finishes its review of the record, it responds back to the agency that forwarded it. That agency, in turn, will then respond to the FOIA requester.

 - f. **Exemption 3 Statute** – a federal statute that exempts information from disclosure and which the agency relies on to withhold information under subsection (b)(3) of the FOIA.

 - g. **FOIA Request** – a FOIA request is generally a request to a federal agency for access to records concerning another person (i.e., a “third-party” request), or concerning an organization, or a particular topic of interest. FOIA requests also include requests made by requesters seeking records concerning themselves (i.e., “first-party” requests) when

those requesters are not subject to the Privacy Act, such as non-U.S. citizens. Moreover, because all first-party requesters should be afforded the benefit of both the access provisions of the FOIA as well as those of the Privacy Act, FOIA requests also include any first-party requests where an agency determines that it must search beyond its Privacy Act “systems of records” or where a Privacy Act exemption applies, and the agency looks to FOIA to afford the greatest possible access. All requests which require the agency to utilize the FOIA in responding to the requester are included in this Report.

Additionally, a FOIA request includes records referred to the agency for processing and direct response to the requester. It does not, however, include records for which the agency has received a consultation from another agency. (Consultations are reported separately in Section XII of this Report.)

- h. **Full Grant** – an agency decision to disclose all records in full in response to a FOIA request.
- i. **Full Denial** – an agency decision not to release any records in response to a FOIA request because the records are exempt in their entireties under one or more of the FOIA exemptions, or because of a procedural reason, such as when no records could be located.
- j. **Median Number** – the middle, not average, number. For example, of 3, 7, and 14, the median number is 7.
- k. **Multi-track Processing** – a system in which simple requests requiring relatively minimal review are placed in one processing track and more voluminous and complex requests are placed in one or more other tracks. Requests granted expedited processing are placed in yet another track. Requests in each track are processed on a first in/first out basis.
 - i. **Expedited Processing** – an agency will process a FOIA request on an expedited basis when a requester satisfies the requirements for expedited processing as set forth in the statute and in agency regulations.
 - ii. **Simple Request** – a FOIA request that an agency using multi-track processing places in its fastest (non-expedited) track based on the low volume and/or simplicity of the records requested.
 - iii. **Complex Request** – a FOIA request that an agency using multi-track processing places in a slower track based on the high volume and/or complexity of the records requested.

- l. **Partial Grant/Partial Denial** – in response to a FOIA request, an agency decision to disclose portions of the records and to withhold other portions that are exempt under the FOIA, or to otherwise deny a portion of the request for a procedural reason.
 - m. **Pending Request or Pending Administrative Appeal** – a request or administrative appeal for which an agency has not taken final action in all respects.
 - n. **Perfected Request** – a request that reasonably describes such records and is made accordance with published rules stating the time, place, fees (if any), and procedures to be followed.
 - o. **Processed Request or Processed Administrative Appeal** – a request or administrative appeal for which an agency has taken final action in all respects.
 - p. **Range in Number of Days** – the lowest and highest number of days to process requests or administrative appeals.
 - q. **Time Limits** – the time period in the statute for an agency to respond to a FOIA request (ordinarily twenty working days from receipt of a perfected FOIA request).
3. Following are concise descriptions of the nine FOIA exemptions:
- a. **Exemption 1:** classified national defense and foreign relations information
 - b. **Exemption 2:** internal personnel rules and practices
 - c. **Exemption 3:** information that is prohibited from disclosure by another federal law
 - d. **Exemption 4:** trade secrets and other confidential business information
 - e. **Exemption 5:** inter-agency or intra-agency communications that are protected by legal privileges
 - f. **Exemption 6:** information involving matters of personal privacy
 - g. **Exemption 7:** records or information compiled for law enforcement purposes, to the extent that the production of those records (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions, or (F) could reasonably be expected to endanger the life or physical safety of any individual

- h. **Exemption 8:** information relating to the supervision of financial institutions
- i. **Exemption 9:** geological information on wells

IV. EXEMPTION 3 STATUTES

The NLRB did not rely on any Exemption 3 statutes during the fiscal year covered by this report (FY 2012).

Statute	Type of Information Withheld	Case Citation	Number of Times Relied upon per Component	Total Number of Times Relied upon by Agency
N/A	N/A	N/A	N/A	N/A

V. FOIA REQUESTS

A. Received, Processed and Pending FOIA Requests

	Number of Requests Pending as of Start of Fiscal Year	Number of Requests Received in Fiscal Year	Number of Requests Processed in Fiscal Year	Number of Requests Pending as of End of Fiscal Year
AGENCY OVERALL	95	6305	6276	124

B.(1) Disposition of FOIA Requests - All Processed Requests

	Number of Full Grants	Number of Partial Grants/ Partial Denials	Number of Full Denials Based on Exemptions	Number of Full Denials Based on Reasons Other than Exemptions									
				No Records	All Records Referred to Another Component or Agency	Request Withdrawn	Fee-Related Reason	Records Not Reasonably Described	Improper FOIA Request for Other Reason	Not Agency Record	Duplicate Request	Other *Explain in chart below	TOTAL
AGENCY OVERALL	5215	485	277	20	113	163	0	0	0	3	0	0	6276

B. (2) Disposition of FOIA Requests - "Other" Reasons for "Full Denials Based on Reasons Other than Exemptions" from Section V, B (1) Chart

Description of "Other" Reasons for Denials from Chart B (1) & Number of Times Those Reasons Were Relied Upon	TOTAL
	0

B. (3) Disposition of FOIA Requests - Number of Times Exemptions Applied

	Ex. 1	Ex. 2	Ex. 3	Ex. 4	Ex. 5	Ex. 6	Ex. 7(A)	Ex. 7(B)	Ex. 7(C)	Ex. 7(D)	Ex. 7(E)	Ex. 7(F)	Ex. 8	Ex. 9
AGENCY OVERALL	0	18	0	12	144	253	182	0	239	164	2	2	0	0

VI. ADMINISTRATIVE APPEALS OF INITIAL DETERMINATIONS OF FOIA REQUESTS

A. Received, Processed and Pending Administrative Appeals

Number of Appeals Pending as of Start of Fiscal Year	Number of Appeals Received in Fiscal Year	Number of Appeals Processed in Fiscal Year	Number of Appeals Pending as of End of Fiscal Year
22 ¹	34	54	2

B. Disposition of Administrative Appeals - All Processed Appeals

Number Affirmed on Appeal	Number Partially Affirmed & Partially Reversed/Remanded on Appeal	Number Completely Reversed/Remanded on Appeal	Number of Appeals Closed for Other Reasons	TOTAL
41	10	1	2	54

¹ After reviewing our database, we adjusted this number from 23 to 22.

C.(1) Reasons for Denial on Appeal - Number of Times Exemptions Applied

Ex. 1	Ex. 2	Ex. 3	Ex. 4	Ex. 5	Ex. 6	Ex. 7(A)	Ex. 7(B)	Ex. 7(C)	Ex. 7(D)	Ex. 7(E)	Ex. 7(F)	Ex. 8	Ex. 9
0	0	0	0	10	10	8	0	8	4	0	0	0	0

C.(2) Reasons for Denial on Appeal - Reasons Other than Exemptions

No Records	Records Referred at Initial Request Level	Request Withdrawn	Fee-Related Reason	Records Not Reasonably Described	Improper Request for Other Reasons	Not Agency Record	Duplicate Request or Appeal	Request in Litigation	Appeal Based Solely on Denial of Request for Expedited Processing	Other *Explain in chart below
10	15	0	2	2	0	1	0	0	0	1

C.(3) Reasons for Denial on Appeal - "Other" Reasons from Section VI, C (2) Chart

Description of "Other" Reasons for Denial on Appeal from Chart C (2) & Number of Times Those Reasons Were Relied Upon	TOTAL
Untimely filed appeals	1

C. (4) Response Time for Administrative Appeals

Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days
16	16	3	30

C. (5) Ten Oldest Pending Administrative Appeals

	10th Oldest Appeal	9th	8th	7th	6th	5th	4th	3rd	2nd	Oldest Appeal
Date of Receipt of Ten Oldest Appeals	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	9/24/12	8/23/11
Number of Days Pending	0	0	0	0	0	0	0	0	4	277

VII. FOIA REQUESTS: RESPONSE TIME FOR PROCESSED AND PENDING REQUESTS

A. Processed Requests - Response Time for All Processed Perfected Requests ⁽¹⁾

1. Provide the median, average and range in number of days to process all perfected requests.

					EXPEDITED PROCESSING			
	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days
AGENCY OVERALL	4	6	< 1	157	2	5	< 1	20

b. Processed Requests - Response Time for Perfected Requests in Which Information Was Granted

1. Provide the median, average and range in number of days to process all perfected requests in which information was granted. ("Granted" refers to full grants and partial grants.)

					EXPEDITED PROCESSING			
	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days
AGENCY OVERALL	3	6	< 1	85	3	6	< 1	20

⁽¹⁾ The NLRB does not use multi-track processing for FOIA requests.

C. Processed Requests - Response Time in Day Increments

Requests

	1-20 Days	21-40 Days	41-60 Days	61-80 Days	81-100 Days	101-120 Days	121-140 Days	141-160 Days	161-180 Days	181-200 Days	201-300 Days	301-400 Days	401+ Days	TOTAL
AGENCY OVERALL	5876	368	22	7	1	0	1	1	0	0	0	0	0	6276

Requests Granted Expedited Processing

	1-20 Days	21-40 Days	41-60 Days	61-80 Days	81-100 Days	101-120 Days	121-140 Days	141-160 Days	161-180 Days	181-200 Days	201-300 Days	301-400 Days	401+ Days	TOTAL
AGENCY OVERALL	6	0	0	0	0	0	0	0	0	0	0	0	0	6

D. Pending Requests - All Pending Perfected Requests

				EXPEDITED PROCESSING		
	Number Pending	Median Number of Days	Average Number of Days	Number Pending	Median Number of Days	Average Number of Days
AGENCY OVERALL	124	8	29	0	0	0

E. Pending Requests - Ten Oldest Pending Perfected Requests

Agency Overall	10th Oldest Request and Number of Days	9th	8th	7th	6th	5th	4th	3rd	2nd	Oldest Request and Number of Days Pending
	07/23/12 48 ¹	07/23/12 48 ¹	07/16/12 53 ¹	07/05/12 60 ¹	07/05/12 60 ¹	04/19/12 113 ²	04/19/12 113 ²	01/31/12 169 ¹	12/19/11 197 ³	09/06/11 268 ³

VIII. REQUESTS FOR EXPEDITED PROCESSING AND REQUESTS FOR FEE WAIVER

A. Requests for Expedited Processing

	Number Granted	Number Denied	Median Number of Days to Adjudicate	Average Number of Days to Adjudicate	Number Adjudicated Within Ten Calendar Days
AGENCY OVERALL	6	5	3	4	7

¹ Although pending at the end of Fiscal Year 2012, final responses have been sent to the requesters.

² These requests are being processed by a rolling production.

³ Although pending at the end of Fiscal Year 2012, the NLRB has since closed these requests. These requests were responded to by a rolling production and the final response has been sent to the requester.

B. Requests for Fee Waiver

	Number Granted	Number Denied	Median Number of Days to Adjudicate	Average Number of Days to Adjudicate
AGENCY OVERALL	8	12	10	23

IX. FOIA PERSONNEL AND COSTS

	PERSONNEL			COSTS		
	Number of "Full-Time FOIA Employees"	Number of "Equivalent Full-Time FOIA Employees"	Total Number of "Full-Time FOIA Staff" (The sum of Columns 1 & 2)	Processing Costs (At initial request and appeal levels)	Litigation- Related Costs	Total Costs
AGENCY OVERALL	2	5	7	\$966,901.00	\$91,742.00	\$1,058,643.00

X. FEES COLLECTED FOR PROCESSING REQUESTS

	Total Amount of Fees Collected	Percentage of Total Costs
AGENCY OVERALL	\$41,879.00	4.33%

XI. FOIA REGULATIONS

<http://www.nlr.gov/sites/default/files/documents/254/part102.pdf>

XII. BACKLOGS, CONSULTATIONS AND COMPARISONS

A. Backlogs of FOIA Requests and Administrative Appeals

	Number of Backlogged Requests as of End of Fiscal Year	Number of Backlogged Appeals as of End of Fiscal Year
AGENCY OVERALL	17	1

B. Consultations on FOIA Requests - Received, Processed and Pending Consultations

	Number of Consultations Received from Other Agencies that were Pending at NLRB as of Start of the Fiscal Year	Number of Consultations Received from Other Agencies During the Fiscal Year	Number of Consultations Received from Other Agencies that were Processed by NLRB During the Fiscal Year	Number of Consultations Received from Other Agencies that were Pending at NLRB as of End of the Fiscal Year
AGENCY OVERALL	0	4	4	0

C. Consultations on FOIA Requests - Ten Oldest Consultations Received from Other Agencies and Pending at NLRB

Agency Overall	10th Oldest Consultation and Number of Days Pending	9th	8th	7th	6th	5th	4th	3rd	2nd	Oldest Consultation and Number of Days Pending
	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
0	0	0	0	0	0	0	0	0	0	0

D. (1) Comparison of Numbers of Requests from Previous and Current Annual Report - Requests Received, Processed and Backlogged

	NUMBER OF REQUESTS RECEIVED		NUMBER OF REQUESTS PROCESSED	
	Number Received During Fiscal Year from Last Year's Annual Report	Number Received During Fiscal Year from Current Annual Report	Number Processed During Fiscal Year from Last Year's Annual Report	Number Processed During Fiscal Year from Current Annual Report
AGENCY OVERALL	5875	6305	5857 ¹	6276

D. (2) Comparison of Numbers of Backlogged Requests from Previous and Current Annual Report - Backlogged Requests

	Number of Backlogged Requests as of End of the Fiscal Year from Previous Annual Report	Number of Backlogged Requests as of End of the Fiscal Year from Current Annual Report
AGENCY OVERALL	0	17

E. (1) Comparison of Numbers of Administrative Appeals from Previous and Current Annual Report - Appeals Received, Processed and Backlogged.

	NUMBER OF APPEALS RECEIVED		NUMBER OF APPEALS PROCESSED	
	Number Received During Fiscal Year from Last Year's Annual Report	Number Received During Fiscal Year from Current Annual Report	Number Processed During Fiscal Year from Last Year's Annual Report	Number Processed During Fiscal Year from Current Annual Report
AGENCY OVERALL	78 ²	34	58	54

¹ After reviewing our database, we adjusted this number from 5860 to 5857.

² After reviewing our database, we adjusted this number from 79 to 78.

E. (2) Comparison of Backlogged Appeals from Previous and Current Annual Report

	Number of Backlogged Appeals as of End of the Fiscal Year from Previous Annual Report	Number of Backlogged Appeals as of End of the Fiscal Year from Current Annual Report
AGENCY OVERALL	1	1