

National Labor Relations Board

2021 Chief FOIA Officer Report

Section 1: Steps Taken to Apply the Presumption of Openness

The guiding principle underlying DOJ's [FOIA Guidelines](#) is the presumption of openness. Please answer the following questions in order to describe the steps your agency has taken to ensure that the presumption of openness is being applied to all decisions involving the FOIA. You may also include any additional information that illustrates how your agency is working to apply the presumption of openness.

A. FOIA Leadership

1. The FOIA requires each agency to designate a Chief FOIA Officer who is a senior official at the Assistant Secretary or equivalent level. See 5 U.S.C. § 552(j)(1) (2018). Is your agency's Chief FOIA Officer at this level?

Answer: Yes. Under NLRB Rules and Regulations, 29 C.F.R. § 102.117(a)(2)(ii), the Associate General Counsel for the Division of Legal Counsel is the Agency's designated Chief FOIA Officer.

2. Please provide the name and title of your agency's Chief FOIA Officer.

Answer: Nancy E. Kessler Platt, Associate General Counsel, Division of Legal Counsel

B. FOIA Training

3. The FOIA directs agency Chief FOIA Officers to ensure that FOIA training is offered to agency personnel. See 5 U.S.C. § 552(a)(j)(2)(F). Please describe the efforts your agency has undertaken to ensure proper FOIA training is made available and used by agency in personnel.

Answer: Since 2015, the NLRB FOIA Branch has promoted and encouraged the use of the DOJ training tools such as the FOIA Professional e-Learning Module and the Federal Employee e-Learning Module for Agency employees, which is located on the Agency's eLearning platform. Throughout the year, the FOIA Officer conducts FOIA trainings for newly hired Agency employees.

During the 2021 Sunshine week, at the request of the Chief FOIA Officer and the FOIA Officer, the General Counsel and the Chairman sent an Agency-wide Memorandum reminding employees of their responsibilities under the FOIA and the existence of these DOJ FOIA training modules, and to contact the FOIA Branch if they have any questions regarding the FOIA. The memorandum was consistent with the 2018-2020 FOIA Federal Advisory Committee Recommendation 17 which encourages "agency leadership annually issue a memorandum

reminding the workforce of its responsibilities and obligations under FOIA and encouraging the workforce to contact the agency's FOIA officer for assistance with the FOIA process.”

UNITED STATES GOVERNMENT
National Labor Relations Board



Memorandum

Date: March 15, 2021

To: All Employees

From: Lauren McFerran, Chairman
Peter Sung Ohr, Acting General Counsel

Subject: Sunshine Week
March 15-19, 2021

“That the People know the facts and the country shall be safe.”
Abraham Lincoln

“The basic purpose of FOIA is to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed.” *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978).

Sunshine Week is a national initiative dedicated to educating the public about the importance of open government and the vital role the Freedom of Information Act (FOIA) plays in providing access to records and information about the activities of the Federal Government. Embraced by journalists, non-profits, businesses, law firms, educators, and private citizens alike, Sunshine Week promotes the principle that “sunlight is said to be the best of disinfectants,” a well-known quote from U.S. Supreme Court Justice Louis Brandeis.

Sunshine Week is the perfect time to remind everyone, as emphasized in an Attorney General Memorandum on FOIA (March 19, 2009), that “FOIA is **everyone’s responsibility**,” not just our FOIA Branch. Managing and uploading all case-related records in our electronic case files, exercising mindful consideration in all of our written communications, and timely addressing any FOIA-related inquiries from the FOIA Branch are just a few of the ways all of us can take the Agency’s FOIA responsibilities seriously.

You may learn more about the FOIA and its role in promoting open government by viewing the [Department of Justice’s FOIA Training Module for Federal Government Employees](#) on the Agency’s Skillport page. Information regarding how to file a FOIA request, additional FOIA resources, and the Board’s proactive disclosures are available on the Agency’s recently-revised [FOIA page](#). You are also encouraged to reach out to the FOIA Branch if you have

questions about how the FOIA protections and exemptions impact the records that are submitted and relied upon in your casehandling duties.

In the spirit of Sunshine Week, we would like to take this opportunity to share the recent recognition the Agency has received for its FOIA work. The U.S. Department of Justice's Office of Information Policy has selected several Agency employees from various offices to receive the **2021 Sunshine Week Award for Exceptional Advancements in IT to Improve the Agency's FOIA Administration**. Specifically, DOJ is honoring Tom Pojeta, Sunil Prabha, and Joel Powell in OCIO for their work on finding a solution to transmit large volume responses to FOIA requesters, and Hari Sharma (OCIO), Amy Dodds (Division of Advice), and Patricia Weth (FOIA Branch) for their collaborative work on improving the process in making Advice memoranda publicly available. These employees worked together with a shared commitment to advance our FOIA mission and proactively make more Agency records available to the public. Please join us in celebrating the contributions of these Agency employees.

We wish everyone a Happy Sunshine Week.

Lauren McFerran

Lauren McFerran, Chairman

Peter Sung Ohr

Peter Sung Ohr, Acting General Counsel

4. Did your FOIA professionals or the personnel at your agency who have FOIA responsibilities attend any substantive FOIA training or conference during the reporting period such as that provided by the Department of Justice?

Answer: Yes, see below.

5. If yes, please provide a brief description of the type of training attended or conducted and the topics covered.

Answer: Throughout the year, various members of the NLRB FOIA Branch attended the following trainings:

- DOJ OIP Training: The Freedom of Information Act for Attorneys and Access Professionals
- DOJ OIP Workshop: FOIA and Technology
- DOJ OIP Training: Virtual Exemption 5 Workshop
- DOJ OIP Training: Virtual Exemption 4 Workshop
- DOJ OIP Training: Virtual Privacy Considerations
- DOJ OIP Training: Virtual Continuing FOIA Education
- DOJ OIP Training: Virtual Fee and Fee Waivers Workshop
- DOJ OIP Training: Virtual FOIA Litigation Workshop
- DOJ OIP Training: Virtual Annual FOIA Report Training

- DOJ OIP Workshop: Artificial Intelligence for FOIA Professionals
- 2020 Federal Privacy Summit
- DOJ OIP Training: Exemption 1 and Exemption 7 Workshop
- Federal Computer Week: Electronic Records Readiness: Transforming to Meeting M-19-21 Requirements (virtual)
- Federal Electronic Discovery Working Group Virtual Conference

At the FOIA Branch staff meetings, training is conducted to keep the staff updated on recent case law and policies. Team members will discuss interesting cases and share their findings at these meetings. Team members will also share any technology tips they learn that will assist their colleagues in performing their job.

6. Provide an estimate of the percentage of your FOIA professionals and staff with FOIA responsibilities who attended substantive FOIA training during this reporting period.

Answer: 100% of NLRB FOIA Branch staff attended FOIA training.

7. OIP has [directed agencies](#) to “take steps to ensure that all of their FOIA professionals attend substantive FOIA training at least once throughout the year.” If your response to the previous question is that less than 80% of your FOIA professionals attended training, please explain your agency’s plan to ensure that all FOIA professionals receive or attend substantive FOIA training during the next reporting year.

Answer: This is not applicable to the NLRB since 100% of the FOIA staff attended FOIA trainings.

C. Outreach

8. Did your FOIA professionals engage in any outreach or dialogue with the requester community or open government groups regarding your administration of the FOIA? Please describe any such outreach or dialogue, and, if applicable, any specific examples of how this dialogue has led to improvements in your agency’s FOIA administration.

Answer: The NLRB FOIA Branch staff attended the following outreach events with the requester community:

- Office of Government Information Services Webinar: FOIA Requests for CDC COVID-19 Records
- Office of Government Information Services Annual Open Meeting

In July 2020, the Branch’s Deputy Assistant General Counsel and Jason R. Baron gave a presentation at the OGIS Annual Meeting regarding the 2018-2020 FOIA Advisory Committee’s Final Report and the 22 recommendations.

The Deputy Assistant General Counsel of the FOIA Branch is a member of the National Archives and Records Administration (NARA)'s FOIA Advisory Committee for the 2018-2020 term and the 2020 to 2022 term. The NLRB supported the application to this committee in order to assist in the improvement of FOIA administration. The purpose of this committee is to encourage dialogue between NARA and the requester community, solicit public comments, and develop consensus recommendations for improving FOIA administration and proactive disclosure. Information regarding the FOIA Advisory Committee can be found at: <https://www.archives.gov/ogis/foia-advisory-committee>.

D. Other Initiatives

9. Describe any efforts your agency has undertaken to inform non-FOIA professionals of their obligations under the FOIA. In particular, please describe how often and in what formats your agency provides FOIA training or briefings to non-FOIA staff.

Answer: During the 2021 Sunshine week, at the request of the Chief FOIA Officer and the FOIA Officer, the General Counsel and the Chairman sent an Agency-wide memorandum reminding employees of their responsibilities under the FOIA, providing links to DOJ FOIA training modules, and suggesting that employees contact the FOIA Branch if they have any questions regarding the FOIA. The memorandum is provided in its entirety in response to question 3 above.

Throughout the year, the FOIA Officer and the FOIA supervisors conduct FOIA overview presentations to new Regional Directors, summer law interns, new hires, and staff in field offices.

In December 2020, an illuminating article regarding the FOIA Branch was published in an Agency newsletter, "All Aboard." The article was lighthearted, yet informative. It helped to provide employees with an understanding of the FOIA, its purposes, and the types of releasable records. For your reading pleasure, this article begins on the next page.



The FOIA Branch Finishes Off Another Spectacular Fiscal Year!

By Molly G. Sykes

You may not realize it by speaking with our humble FOIA professionals, but the NLRB FOIA team has accomplished a lot since the Board centralized FOIA processing in 2015. From drastically reducing the number of backlogged requests to mastering the legal nuances of the Freedom of Information Act to rolling out a completely revamped website, the NLRB FOIA Branch has consistently improved upon itself year after year. It's the hard work of the NLRB FOIA team that has made the Board one of the best agencies out there in terms of providing transparency and accountability to the American people.



So what is the Freedom of Information Act? In a nutshell, the creation of the FOIA was spurred by increasing government secrecy surrounding the Cold War. Since its passage in 1967, the FOIA

has repeatedly been amended to make it even stronger and to provide ever more information about the workings of the Executive Branch. While there are various exemptions under the FOIA that protect information such as attorney work product or personal identifying information, the reach of the FOIA is broad and vast. And it has exposed many secrets over the years. The FBI's surveillance of prominent Black writers like James Baldwin, the EPA's flagrant disregard for dioxin dumping in America's waterways, even that a hydrogen bomb almost detonated over North Carolina in 1961 when the B-52 carrying it crashed.

The Board might not have much information to share with the public about hydrogen bombs, but the FOIA Branch is no less important for it. You know the articles you read every day in Law360

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All Aboard

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or Bloomberg? A lot of the information they report on is derived from FOIA requests and the Board's proactive disclosures under the FOIA, such as Advice memoranda, unfair labor practice charges, representation petitions, the annual Performance and Accountability Reports, and more. And information gleaned from FOIA requests are vital to those who advocate before the Board, from the Economic Policy Institute to the National Right To Work Foundation. It's the NLRB FOIA team that makes sure that that information is out there to be used, that voluminous files are combed through and redacted under the right exemptions, and that the public remains informed about the Board's movements.

In fact, in Fiscal Year 2019, the FOIA Branch processed over 1,000 requests from all over the country. And the NLRB FOIA team has been working hard to get through those requests expeditiously. At the end of FY 2017, the number of backlogged requests in the FOIA Branch was 295. By the next year, the Branch had it down to only 87. In FY 2019, the Branch reduced that by 59.77%, with a request backlog of only 35 cases. In October alone, the first month of this fiscal year, the NLRB FOIA team closed seven of their top ten oldest cases. When was the last time the FBI could say they'd captured seven of their Top Ten Most Wanted in a single month?

But swiftly processing requests is not all FOIA professionals do. After all, the FOIA is a complex statute that is frequently updated via legislation and policy directives and continuously interpreted by the courts. To stay at the top of their game, FOIA professionals need to attend a plethora of trainings hosted by the Department of Justice, the American Bar Association, and more. And in addition to being experts on FOIA law, FOIA professionals also need to be expert negotiators. Requesters often ask for an incredible volume of records, even when what they really want is just a subset. Many don't know how far-reaching a FOIA request can be, and many are also understandably suspicious that the government is trying to hide things. Have you ever convinced someone who thinks you're hiding evidence of a

nationwide conspiracy that they *don't* need a full 1000+ page casefile? Well, the FOIA Branch's so-called "Requester Whisperers" have. "Just being able to talk to someone who has regular expertise on what we're able to disclose, our FOIA professionals are better poised to negotiate a reduction in the size of what the FOIA request will be," Assistant General Counsel and Branch Chief Synta Keeling said, "And they've gotten really good at it, really good at processing. So much so that over the past summer we're basically down to a backlog of about two or three requests. And we've been in the hundreds before, so this is something we are really proud that we were able to do."

But perhaps the NLRB FOIA team's greatest challenge is getting us non-FOIA experts to understand just how much of our stuff may be subject to FOIA requests. That email you forwarded around with an off-color joke? A record under FOIA. Your Outlook Calendar where you wrote in "Pointless Meeting With Dumb Ol' Marge"? Another FOIA record. Your Skype instant messages or the personal texts you've sent from your Agency phone? Someone could request them. As Deputy Assistant General Counsel Patricia Weth told me, "There's no FOIA exemption for 'embarrassing.'"

So how has the FOIA Branch achieved so much? Patricia Weth chalks up the FOIA Branch's successes to her coworkers: "I am grateful for my FOIA Branch colleagues not only for their hard work, knowledge, and problem-solving skills, but for their workstyle. Each team member works well together and supports and uplifts one another, which creates the most collaborative positive work environment that I have known in my career." Synta Keeling agrees: "I'm not where I am without my team, without the individual FOIA specialists and FOIA attorneys, without the supervisors and the administrative professionals...it's something we do collectively. When we have open communication, when we're working together, we really demolish problems." ‡

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FUN FOIA - Odd Requests

- ❖ Asking about certain celebrities and why the requester's love for them goes unrequited.
- ❖ Documents confirming that a requester's parents were, in fact, seasonal workers, and left them in the care of others for three months a year for that reason, because the requester suspects their parents instead spent that time collecting antiques.
- ❖ All records regarding an alleged NLRB nationwide drone surveillance program.
- ❖ The ongoing battle over a FOIA request seeking records showing whether Conan, a special operations military dog involved in the raid on Abu Bakr al-Baghdadi, is male or female. (The United States Special Operations Command stated that it can "neither confirm nor deny the existence" of such records, and that they would, in any event, constitute a national security secret).



I think we can all agree that no matter what sex he was assigned at birth, Conan is "A Very Good Boy."

10. Optional -- If there are any other initiatives undertaken by your agency to ensure that the presumption of openness is being applied, please describe them here.

Answer: The FOIA Branch has taken on the process of updating the NLRB FOIA regulations and updating the NLRB FOIA Manual.

Section II: Steps Taken to Ensure that Your Agency Has an Effective System in Place for Responding to Requests

DOJ's FOIA Guidelines emphasize that "[a]pplication of the proper disclosure standard is only one part of ensuring transparency. Open government requires not just a presumption of disclosure, but also an effective system for responding to FOIA requests." It is essential that agencies effectively manage their FOIA program.

Please answer the following questions to describe the steps your agency has taken to ensure that the management of your FOIA program is effective and efficient. You should also include any additional information that that describes your agency's efforts in this area.

1. For Fiscal Year 2020, what was the average number of days your agency reported for adjudicating requests for expedited processing? Please see Section VIII.A. of your agency's Fiscal Year 2020 Annual FOIA Report.

Answer: For Fiscal Year 2020, the NLRB FOIA Branch adjudicated requests for expedited processing in an average of 3.49 days.

2. If your agency's average number of days to adjudicate requests for expedited processing was above ten calendar days, according to Section VIII.A. of your agency's Fiscal Year 2020 Annual FOIA Report, please describe the steps your agency will take to ensure that requests for expedited processing are adjudicated within ten calendar days or less.

Answer: This is not applicable to the NLRB since the number of days it took the Agency to adjudicate requests for expedited processing was well below 10 days.

3. During the reporting period, did your agency conduct a self-assessment of its FOIA program? If so, please describe the methods used, such as reviewing Annual Report or raw data, using active workflows and track management, reviewing and updating processing procedures, etc.

Note: In September 2017, OIP released a FOIA Self-Assessment Toolkit as a resource for agencies conducting a self-assessment of their FOIA program. The Toolkit is available on OIP's website for all agencies to use.

Answer: With FOIAonline, the NLRB FOIA Branch regularly creates various reports to track the review status of FOIA requests and response times and to make case assignments. Additionally,

the FOIA Branch compares the Quarterly Reports and the FOIA Annual Reports to assess quarterly and yearly trends and levels of productivity. The FOIA Branch will continue to use the FOIAonline reporting features to assess its productivity and assist it in streamlining processes and procedures. Additionally, the FOIA Branch holds an annual staff meeting to review and discuss the Quarterly Reports, Annual FOIA Report, the Chief FOIA Officer Report, and the DOJ 2020 Chief FOIA Officers' Report Assessment and Summary to illustrate areas of improvement and to study areas to focus upon for improvement in the next fiscal year.

Since Fiscal Year 2019, the FOIA Branch began conducting self-assessments using the DOJ FOIA Self-Assessment Toolkit modules ("Toolkit"). The Branch continues to conduct these self-assessments to increase efficiency and productivity. For example, in Fiscal Year 2020 and Fiscal Year 2021, the FOIA Branch has used the Toolkit to assist with drafting the new FOIA regulations and updating the Agency's FOIA Manual.

4. Standard Operating Procedures (SOPs): Having SOPs can improve the consistency and quality of an agency's FOIA process. In addition, describing an agency's standard practices for handling FOIA requests on agency FOIA websites can help requesters better understand how their request will be handled.

a) Does your agency have SOPs that outline general processes for handling FOIA requests and appeals?

Answer: Yes

b) If not, does your agency have plans to create FOIA SOPs?

Answer: This is not applicable to the NLRB.

c) If yes, how often are they reviewed/updated to account for changes in law, best practices, and technology?

Answer: The 2011 NLRB FOIA Manual is posted on the NLRB FOIA homepage at: <https://www.nlr.gov/guidance/freedom-of-information-act-foia/foia-resources>. The FOIA Branch is in the process of updating this manual.

d) In addition to having SOPs, does your agency post or otherwise describe your standard processes for handling requests on your website?

Answer: Yes. The NLRB FOIA Homepage contains a detailed FOIA Reference Guide located at <https://www.nlr.gov/guidance/freedom-of-information-act-foia/foia-reference-guide>. The FOIA Reference Guide provides detailed guidance and discusses the FOIA exemptions most likely used by the NLRB. To make it user-friendly, the FOIA Reference Guide was organized as a frequently-asked-questions outline including the following questions.

- I. What does the FOIA provide?
- II. What types of records are maintained by the NLRB?
- III. What NLRB records can I access without a FOIA request?

- IV. If I do file a FOIA request, do I have to pay a fee?
- V. May I seek a waiver of fees?
- VI. What if I want expedited processing?
- VII. What should I expect in response to a FOIA request?
- VIII. Do I have appeal rights?
- IX. Can I file a lawsuit about my FOIA request?

5. The FOIA Improvement Act of 2016 requires additional notification to requesters about the services provided by the agency's FOIA Public Liaison. Please provide an estimate of the number of times requesters sought assistance from your agency's FOIA Public Liaison during FY 2020 (please provide a total number or an estimate of the number).

Answer: The FOIA Public Liaison assisted approximately 97 requesters in Fiscal Year 2020.

6. Does your agency frequently receive common categories of first-party requests? If so, please describe the types of requests and if your agency has explored establishing alternative means of access to these records outside of the FOIA process?

Answer: The NLRB FOIA Branch receives a large portion of its FOIA requests from first party requesters. These first party requesters ask for their records from their NLRB cases. The Agency does not have an alternative means of access to these records outside of the FOIA process.

7. The FOIA Improvement Act of 2016 required all agencies to update their FOIA regulations within 180 days. Has your agency updated its FOIA regulations in accordance with the FOIA Improvement Act of 2016? If not, what is your agency's plan to update your regulations?

Answer: Yes. The NLRB FOIA Branch updated its FOIA regulations timely in accordance with the FOIA Improvement Act of 2016. Additionally, the NLRB FOIA Branch has begun the process of revising the current FOIA regulations.

8. Please explain how your agency worked to mitigate the impact of the COVID-19 pandemic on FOIA processing. Examples could include, but are not limited to: altering workflows, implementing new technology, providing notices and instructions or otherwise communicating directly with requesters.

Answer: Prior to the COVID-19 pandemic, the NLRB FOIA Branch had been a paperless office since 2016 and had been using FOIAonline since 2017. Most FOIA requests are received electronically through FOIAonline or by fax, and record searches can generally be completed electronically. The FOIA Branch's use of technology thus permitted a seamless transition for our FOIA processing work beginning in the first weeks of the pandemic.

Despite the pandemic, the FOIA Branch was able to continue reaching a 91% decrease in its backlog and to minimize disruptions to requester services. After the NLRB expanded telework availability in response to the pandemic, the FOIA Branch increased virtual trainings and meetings for our staff. To address concerns regarding virtual FOIA processing, the FOIA Branch

worked with staff in the Office of the Chief Information Officer (OCIO) to promptly upgrade the laptops of FOIA staff in headquarters and in remote locations. The FOIA Branch also revamped its FOIA template letters to reflect processing changes in the handling of paper responses and fee payments. For the few instances of cases involving paper records, the FOIA Branch provides the requester with the electronic search results, and notifies the requester in the final response letter that there is a possibility of additional responsive paper records for which the Branch invites requesters to refile a FOIA request once the offices are staffed in person. In order to minimize the number of mailed FOIA fee check payments received by the Agency during the pandemic, the FOIA response letters direct requesters to pay their FOIA fees via pay.gov. While responsive records are almost always provided electronically, a few requesters continue to require paper copies of responsive records be mailed to them. The Agency's Facilities and Property Branch (one of the Agency's front-line heroes during this pandemic), has taken this task on for the FOIA Branch. While most FOIA fee payments have come in via pay.gov, this office also receives mailed check payments for processing, as well as any requests received by mail, that it then scans and emails to the FOIA Branch for updating into FOIAonline and processing.

9. Optional -- Please describe:

- **Best practices used to ensure that your FOIA system operates efficiently and effectively**
- **Any challenges your agency faces in this area**

Answer: The NLRB FOIA Branch is a partner Agency with FOIAonline. FOIAonline is a multi-agency workflow system and repository that enables partner agencies to: 1) receive, manage, track, and respond to FOIA requests, 2) generate reports, 3) communicate with requesters, 4) post responsive records online, and 5) manage FOIA case files as electronic records. FOIAonline also allows the public to: 1) submit FOIA requests to participating FOIAonline agencies, 2) search for other people's FOIA requests and responsive records, and 3) check the status reports on the processing of their requests. The FOIA Officer, Deputy Assistant General Counsel, and Office of the Chief Information Officer Senior Applications Developer attend all FOIAonline meetings to regularly inform the FOIAonline Team of any issues that arise in processing, to stay current on FOIAonline developments, and suggest future developments that would complement and improve the NLRB's FOIA processing.

Section III: Steps Taken to Increase Proactive Disclosures

The Department of Justice has long focused on the need for agencies to work proactively to post information online without waiting for individual requests to be received.

Please answer the following questions to describe the steps your agency has taken to increase the amount of material that is available on your agency websites. In addition to the questions below, you should also describe any additional steps taken by your agency to make and improve proactive disclosures of information.

1. Provide examples of any material that your agency has proactively disclosed during the past reporting year, including records that have been requested and released three or more times in accordance with 5 U.S.C. § 552(a)(2)(D). Please include links to these materials as well.

Answer: The NLRB makes numerous proactive disclosures as follows:

- Final Agency Opinions and Orders
 - Advice Memoranda. Two categories of advice memoranda are released to the public: 1) memoranda directing dismissal of the charge that are required to be released pursuant to *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132 (1975), and 2) memoranda in closed cases that are not required by law to be released but are released in the General Counsel's discretion.
 - Decisions and Orders of the NLRB. A searchable index of all Board Decisions issued.
 - Administrative Law Judge Decisions. A searchable index of ALJ Decisions issued.
 - Regional Election Decisions. A searchable index of 1) Decisions and Directions of Elections (D&DEs) - the Regional Director concludes that the prerequisites to an election have been satisfied and directs that an election be conducted, 2) Decisions and Orders (D&Os) - the Regional Director determines that an election should not be conducted and the petition is dismissed, 3) Regional Director Supplemental Decision on Objections and Challenges - a post-election decision resolving objections and/or challenges with or without a post-election hearing.
- Specific Policy Statements
 - Memoranda issued by the General Counsel
 - Memoranda issued by the NLRB's Division of Operations Management
- Administrative staff manuals and instructions to staff
 - Manuals. This page contains NLRB casehandling manuals and other materials regarding NLRB case procedures and FOIA requests maintained by the NLRB.
- Frequently Requested Records
 - As of August 1, 2017, frequently requested records may be found on FOIAonline. Records sought may have already been posted proactively. Requesters can search by the NLRB case name, number, or search terms to locate any responsive records.
 - Monthly records related to representation and unfair labor practice cases.
 - Cases and Organizations of Interest. This page links to the case pages of NLRB cases that are of great public interest.
 - Case Search. From here, requesters can conduct a search for an NLRB case using the case number or name. Clicking on the resulting case number or name takes a requester to its case page.
 - NLRB Case File Search. This page contains links to case pages for all cases maintained in the Agency's casehandling system. Data on these cases can be downloaded in CSV and XML format. Representation Cases listed in the search results will also include the number of employees in the bargaining unit and the unit description.

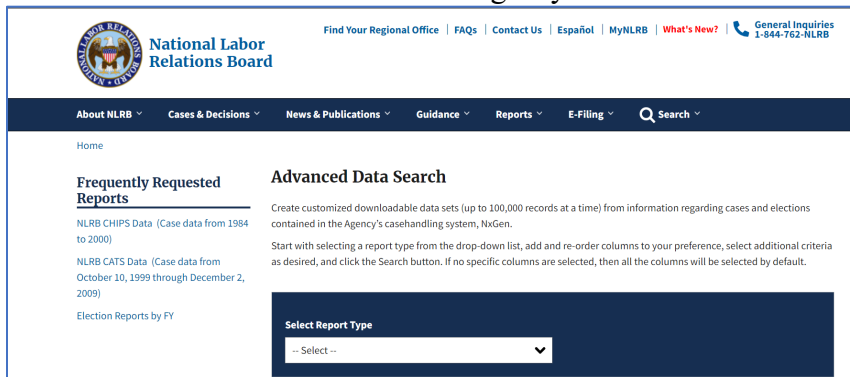
- [Tally of Ballots Search](#). This page contains data on cases in which a tally of ballots in an election was issued.
- [NLRB Data on Data.gov](#). NLRB data for unfair labor practice cases ("C cases") and representation cases ("R cases") filed from October 10, 1999 through December 2, 2009, from the NLRB's legacy system, Case Activity Tracking System (CATS) are available at: www.data.gov by searching "NLRB."
- Other Proactive Disclosed NLRB Records
 - [Reports](#). The Agency makes many reports available to the public, containing various types of information related to casehandling, the Agency's performance, the FOIA, and Office of the Inspector General.
 - [Performance and Accountability Reports \(PARs\)](#). The PAR presents the NLRB's audited financial statements, and sets forth the Agency's performance against its major objectives. Additionally, it addresses goals, metrics, and performance, as required by the Government Performance and Results Act of 1993.
 - [Election Reports](#). These reports list all elections conducted in the NLRB's regions. Elections are counted in the month in which the outcome is certified.
 - [Annual Reports](#). As of FY2009, the Agency ceased producing Annual Reports, which are available at this link. Financial and performance data are now available in the annual [Performance and Accountability Reports \(PAR's\)](#). Statistical information is now available on the NLRB website's [Graphs and Data section](#).

2. Beyond posting new material, is your agency taking steps to make the posted information more useful to the public, especially to the community of individuals who regularly access your agency's website?

Answer: Yes

3. If yes, please provide examples of such improvements. In particular, please describe steps your agency is taking to post information in open, machine-readable, and machine-actionable formats, to the extent feasible. If not posting in open formats, please explain why and note any challenges.

Answer: In Fiscal Year 2020, the NLRB created the Advanced Data Search which is located at <https://www.nlr.gov/advanced-search>. Advanced Data Search allows requesters to create customized downloadable data sets (up to 100,000 records at a time) from information regarding cases and elections contained in the Agency's electronic casehandling system, NxGen.



4. Optional -- Please describe:

- **Best practices used to improve proactive disclosures**
- **Any challenges your agency faces in this area**

Answer: The FOIA Branch continues to work with the FOIAonline team and the Office of the Chief Information Officer (OCIO) team to make certain previously released records, which are publicly available on in FOIAonline, also available through the Agency website. Currently, the public can search FOIAonline and obtain frequently requested records, as well as records disclosed to media requesters.

Section IV: Steps Taken to Greater Utilize Technology

A key component of FOIA administration is using technology to make information more accessible. In addition to using the internet to make proactive disclosures, agencies should also be exploring ways to utilize technology in responding to requests.

Please answer the following questions to describe how your agency is utilizing technology to improve its FOIA administration and the public's access to information. You should also include any additional information that that describes your agency's efforts in this area.

1. Please briefly describe the types of technology your agency uses to support your FOIA program. In addition, please highlight if your agency is leveraging or exploring any new technology that you have not previously reported. If so, please describe the type of technology.

Answer: One member of the FOIA Branch team is an IT data expert. This team member's expertise and knowledge has saved the Branch immeasurable work hours and costs. The FOIA Branch managers, along with the Branch's in-house IT data expert, routinely investigate new technology to assist in its mission. The FOIA Branch has attended presentations on artificial intelligence and all presentations by the Chief FOIA Officers Council Technology Subcommittee.

Over the last fiscal year, the FOIA Branch has explored various options to send voluminous records to requesters due to several issues with CDs and flash drives. Additionally, there is a 20 MB limit to send records out via the Agency Outlook email and 10 MB limit on the FOIAonline email, which may require the Branch to send out multiple emails to requesters to provide them with a voluminous record set. FOIAonline allows a requester to obtain voluminous records via FOIAonline, but the requester must create an account prior to filing the FOIA request.

One potential solution the Branch came up with was to use MAXDrive, which is located on OMB's max.gov, and allows any federal employee to send files of up to 2GB to any recipient at no cost. Some agencies use it to release voluminous FOIA records. However, MAXDrive prohibits the posting of any data that contains PII. Due to the large number of first party

requester records, this option was not the complete solution for the NLRB. Working with the OCIO team, the FOIA Branch was able to deliver records to requesters using the requester's drop box or Google Drive account. However, every requester does not have these accounts. For a complete solution to this issue, the OCIO team created a section on SharePoint where the FOIA Branch can allow the requester access for a limited time to obtain the records. To date, this solution has proved extremely successful. Currently, OCIO is developing a new file sharing tool for the sole purpose of providing the FOIA Branch with a seamless and efficient manner to release voluminous records. Upon completion, the OCIO has graciously offered to share the specifications of this tool with other agencies to assist agencies in building their own similar tools so they can also have access to this positive solution.

The FOIA Branch has many requests with responsive records that contain voluminous emails and email attachments. Reviewing these requests is extremely time consuming. The Branch tried various techniques to alleviate this tedious process. Recently, the FOIA Branch purchased software: Evermap AutoPortfolio™ Plug-In - Extract, Convert And Manage PDF Portfolios. The AutoPortfolio™ plug-in for Adobe Acrobat provides functionality for converting portfolios into regular PDF files (all files are combined into one), extracting embedded files including file attachments, converting non-PDF attachments into PDF format, and the deduplication of load files and PDF Portfolios. This software purchase for a nominal fee has saved the FOIA Branch an enormous amount of work hours.

In Fiscal Year 2020, the FOIA Branch and the FOIAonline team have successfully completed its work and implemented a payment module that interfaces with www.Pay.gov.

2. OIP issued guidance in 2017 encouraging agencies to regularly review their FOIA websites to ensure that they contain essential resources, and are informative and user-friendly. Has your agency reviewed its FOIA website(s) during the reporting period to ensure it addresses the elements noted in the guidance?

Answer: In September 2019, the NLRB launched the newly-revamped NLRB FOIA Homepage, which included a FOIA E-Library. Over the course of Fiscal Year 2020, the FOIA Branch routinely reviewed and updated the FOIA Homepage with the assistance of the OCIO team.

3. Did your agency successfully post all four quarterly reports for Fiscal Year 2020?

Answer: Yes. The NLRB successfully posted the four quarterly reports for Fiscal Year 2020. The reports are posted on the NLRB website at: <https://www.nlr.gov/guidance/freedom-of-information-act-foia/foia-reports>.

4. If your agency did not successfully post all quarterly reports, with information appearing on FOIA.gov, please explain why and provide your agency's plan for ensuring that such reporting is successful in Fiscal Year 2021.

Answer: This is not applicable to the NLRB.

5. The FOIA Improvement Act of 2016 requires all agencies to post the raw statistical data used to compile their Annual FOIA Reports. Please provide the link to this posting for your agency's Fiscal Year 2019 Annual FOIA Report and, if available, for your agency's Fiscal Year 2020 Annual FOIA Report.

Answer: The NLRB 2019 FOIA Annual Report and the NLRB 2020 FOIA Annual Report are posted on the Agency website at: <https://www.nlr.gov/guidance/freedom-of-information-act-foia/foia-reports>.

6. Optional -- Please describe:

all

- **Best practices used in greater utilizing technology**
- **Any challenges your agency faces in this area**

Answer: With FOIAonline, the FOIA Branch posts Agency records online quickly and has increased its FOIA workflow process. The FOIAonline report tool enables the FOIA Branch to 1) produce custom reports for staff and management and to create metrics to increase efficiency, and 2) conduct individual productivity assessments. Additionally, the FOIA Branch uses the Microsoft Office 365 eDiscovery tool to conduct searches of Microsoft Exchange, SharePoint Online, and OneDrive, and uses Relativity for FOIA cases involving voluminous responsive records.

Regarding challenges, the FOIA Branch continues to work with the FOIAonline team to post FOIAonline records to the NLRB case pages located on the Agency website. Once this project is completed, it will make the records and the frequently requested records more easily available to the public.

Section V: Steps Taken to Improve Timeliness in Responding to Requests and Reducing Backlogs

The Department of Justice has emphasized the importance of improving timeliness in responding to requests. This section of your Chief FOIA Officer Report addresses both time limits and backlog reduction. Backlog reduction is measured both in terms of numbers of backlogged requests or appeals and by looking at whether agencies closed their ten oldest requests, appeals, and consultations.

For the figures required in this Section, please use the numbers contained in the specified sections of your agency's FY 2019 and 2020 Annual FOIA Reports.

A. Simple Track

Section VII.A of your agency's Annual FOIA Report, entitled "FOIA Requests – Response Time for All Processed Requests," includes figures that show your agency's average

response times for processed requests. For agencies utilizing a multi-track system to process requests, there is a category for "simple" requests, which are those requests that are placed in the agency's fastest (non-expedited) track, based on the low volume and/or simplicity of the records requested.

1. Does your agency utilize a separate track for simple requests?

Answer: No. The NLRB does not have a separate track for simple requests pursuant to NLRB's current Rules and Regulations. However, the FOIA Branch manually reviews each FOIA request to identify and process the simple requests first. The FOIA Branch is in the process of updating the Agency's FOIA regulations and will provide for separate tracks for simple and complex requests.

2. If your agency uses a separate track for simple requests, according to Annual FOIA Report section VII.A, was the agency overall average number of days to process simple requests twenty working days or fewer in Fiscal Year 2020?

Answer: This is not applicable to the NLRB because the Agency does not have a separate track for simple requests.

3. Please provide the percentage of requests processed by your agency in Fiscal Year 2020 that were placed in your simple track. Please use the following calculation based on the data from your Annual FOIA Report: (processed simple requests from Section VII.C.1) divided by (requests processed from Section V.A.) x 100.

Answer: This is not applicable to the NLRB because the Agency does not have a separate track for simple requests.

4. If your agency does not track simple requests separately, was the average number of days to process all non-expedited requests twenty working days or fewer?

Answer: The average number of days to process all non-expedited requests was 18.31 working days.

B. Backlogs

Section XII.A of your agency's Annual FOIA Report, entitled "Backlogs of FOIA Requests and Administrative Appeals" shows the numbers of any backlogged requests or appeals from the fiscal year. You should refer to these numbers from your Annual FOIA Reports for both Fiscal Year 2019 and Fiscal Year 2020 when completing this section of your Chief FOIA Officer Report.

BACKLOGGED REQUESTS

5. If your agency had a backlog of requests at the close of Fiscal Year 2020, according to Annual FOIA Report Section XII.A, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2019?

Answer: Yes. The NLRB had a FOIA request backlog of 35 at the end of Fiscal Year 2019. At the end of Fiscal Year 2020, the NLRB had a reduced FOIA request backlog of 3, which reflects a decrease of 91%.

6. If not, according to Annual FOIA Report Section V.A, did your agency process more requests during Fiscal Year 2020 than it did during Fiscal Year 2019?

Answer: This is not applicable to the NLRB. In Fiscal Year 2019, the NLRB processed 1,420 FOIA requests. In Fiscal Year 2020, the NLRB processed 1,393 FOIA requests.

7. If your agency's request backlog increased during Fiscal Year 2020, please explain why and describe the causes that contributed to your agency not being able to reduce its backlog. When doing so, please also indicate if any of the following were contributing factors:

- **An increase in the number of incoming requests.**
- **A loss of staff.**
- **An increase in the complexity of the requests received. If possible, please provide examples or briefly describe the types of complex requests contributing to your backlog increase.**
- **Any other reasons – please briefly describe or provide examples when possible.**

Answer: This is not applicable to the NLRB.

8. If you had a request backlog please report the percentage of requests that make up the backlog out of the total number of requests received by your agency in Fiscal Year 2020. Please use the following calculation based on data from your Annual FOIA Report: (backlogged requests from Section XII.A) divided by (requests received from Section V.A) x 100. If your agency has no request backlog, please answer with "N/A."

Answer: The NLRB received 1,327 requests during Fiscal Year 2020. The total Fiscal Year 2020 backlog was 3, which is the equivalent of .2% of the total requests received.

BACKLOGGED APPEALS

9. If your agency had a backlog of appeals at the close of Fiscal Year 2020, according to Section XII.A of the Annual FOIA Report, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2019?

Answer: The NLRB did not have a backlog of administrative appeals at the end of Fiscal Year 2020 or at the end of Fiscal Year 2019.

10. If not, according to section VI.A of the Annual FOIA Report, did your agency process more appeals during Fiscal Year 2020 than it did during Fiscal Year 2019?

Answer: This is not applicable to the NLRB.

11. If your agency's appeal backlog increased during Fiscal Year 2020, please explain why and describe the causes that contributed to your agency not being able to reduce its backlog. When doing so, please also indicate if any of the following were contributing factors:

- **An increase in the number of incoming appeals.**
- **A loss of staff.**
- **An increase in the complexity of the requests received. If possible, please provide examples or briefly describe the types of complex requests contributing to your backlog increase.**
- **Any other reasons – please briefly describe or provide examples when possible.**

Answer: This is not applicable to the NLRB.

12. If you had an appeal backlog please report the percentage of appeals that make up the backlog out of the total number of appeals received by your agency in Fiscal Year 2020. Please use the following calculation based on data from your Annual FOIA Report: (backlogged appeals from Section XII.A) divided by (appeals received from Section VI.A) x 100. If your agency did not receive any appeals in Fiscal Year 2020 and/or has no appeal backlog, please answer with "N/A."

Answer: This is not applicable to the NLRB.

C. Backlog Reduction Plans

13. In the 2020 guidelines for Chief FOIA Officer Reports, any agency with a backlog of over 1000 requests in Fiscal Year 2019 was asked to provide a plan for achieving backlog reduction in the year ahead. Did your agency implement a backlog reduction plan last year? If so, describe your agency's efforts in implementing this plan and note if your agency was able to achieve backlog reduction in Fiscal Year 2020?

Answer: The NLRB had a backlog of 35 requests in Fiscal Year 2019. In Fiscal Year 2020, the FOIA Branch managers took the following steps to reduce the backlog:

- Provided in-house training for FOIA Branch team;
- Encouraged FOIA Branch team to attend DOJ training sessions;
- Hired two attorney-advisors for vacant staff positions;
- Updated the template FOIA response letters;

- Utilized the FOIAonline report tool to provide metrics to measure effectiveness and productivity, and to make assessments;
- Proactively disclosed more records publicly available through FOIAonline and on the NLRB website; and
- Conducted weekly backlog reduction meetings during the Fourth Quarter.

The FOIA Branch set the goal of responding to at least 60% of initial FOIA requests within 20 working days. This goal is included in the NLRB Strategic Plan FY 2019 - FY2022 on page 12.

At the end of Fiscal Year 2020, the NLRB had a reduced FOIA request backlog of 3, which reflects a significant backlog decrease of 91%.

14. If your agency had a backlog of more than 1,000 requests in Fiscal Year 2020, please explain your agency's plan to reduce this backlog during Fiscal Year 2021.

Answer: This is not applicable to the NLRB. Each fiscal year, the NLRB implements a backlog reduction plan, which has proved effective.

D. Status of Oldest Requests, Appeals, and Consultations

Section VII.E, entitled "Pending Requests – Ten Oldest Pending Requests," Section VI.C.(5), entitled "Ten Oldest Pending Administrative Appeals," and Section XII.C., entitled "Consultations on FOIA Requests – Ten Oldest Consultations Received from Other Agencies and Pending at Your Agency," show the ten oldest pending requests, appeals, and consultations. You should refer to these numbers from your Annual FOIA Reports for both Fiscal Year 2019 and Fiscal Year 2020 when completing this section of your Chief FOIA Officer Report.

OLDEST REQUESTS

15. In Fiscal Year 2020, did your agency close the ten oldest pending perfected requests that were reported in Section VII.E. of your Fiscal Year 2019 Annual FOIA Report?

Answer: Yes. The FOIA Branch is pleased to report that it closed the ten oldest FOIA requests reported in the Fiscal Year 2019 Annual FOIA Report.

16. If no, please provide the number of these requests your agency was able to close by the end of the fiscal year, as listed in Section VII.E of your Fiscal Year 2019 Annual FOIA Report. If you had fewer than ten total oldest requests to close, please indicate that.

Answer: This is not applicable to the NLRB.

17. Beyond work on the ten oldest requests, please describe any steps your agency took to reduce the overall age of your pending requests.

Answer: The Branch's FOIA supervisors give guidance to the staff regarding the techniques of properly triaging, searching for records, and reviewing records. Each staff member is directed to work on the oldest cases in their work queue to possibly narrow, process, and close out those requests. For some cases with voluminous records, additional staff members are assigned to assist with the review of the records.

TEN OLDEST APPEALS

18. In Fiscal Year 2020, did your agency close the ten oldest appeals that were reported pending in Section VI.C.5. of your Fiscal Year 2019 Annual FOIA Report?

Answer: Yes. For the Fiscal Year 2019 Annual FOIA Report, the NLRB reported that it had one pending administrative appeal, which was not backlogged. The NLRB closed this administrative appeal in Fiscal Year 2020.

19. If no, please provide the number of these appeals your agency was able to close by the end of the fiscal year, as listed in Section VII.C.(5) of your Fiscal Year 2019 Annual FOIA Report. If you had fewer than ten total oldest appeals to close, please indicate that.

Answer: This is not applicable to the NLRB.

20. Beyond work on the ten oldest appeals, please describe any steps your agency took to reduce the overall age of your pending appeals.

Answer: The FOIA Branch set the goal of closing 95% of the administrative FOIA appeals within 20 days. This goal is included in the NLRB Strategic Plan FY2019 - FY2022 on page 12.

TEN OLDEST CONSULTATIONS

21. In Fiscal Year 2020, did your agency close the ten oldest consultations that were reported pending in Section XII.C. of your Fiscal Year 2019 Annual FOIA Report?

Answer: For the Fiscal Year 2019 Annual FOIA Report, the NLRB reported no outstanding consultations.

22. If no, please provide the number of these consultations your agency was able to close by the end of the fiscal year, as listed in Section XII.C. of your Fiscal Year 2019 Annual FOIA Report. If you had fewer than ten total oldest consultations to close, please indicate that.

Answer: This is not applicable to the NLRB. For the Fiscal Year 2019 Annual FOIA Report, the NLRB reported no outstanding consultations.

E. Additional Information on Ten Oldest Requests, Appeals, and Consultations & Plans

23. Briefly explain any obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2019.

Answer: The NLRB closed its ten oldest requests. These FOIA requests contained voluminous responsive records and the review of these records was extremely time consuming.

24. If your agency was unable to close any of its ten oldest requests because you were waiting to hear back from other agencies on consultations you sent, please provide the date the request was initially received by your agency, the date when your agency sent the consultation, and the date when you last contacted the agency where the consultation was pending.

Answer: This is not applicable to the NLRB.

25. If your agency did not close its ten oldest pending requests, appeals, or consultations, please provide a plan describing how your agency intends to close those “ten oldest” requests, appeals, and consultations during Fiscal Year 2021.

Answer: This is not applicable to the NLRB. For the Fiscal Year 2020 Annual FOIA Report, the NLRB closed the ten oldest cases from the Fiscal Year 2019 Annual FOIA Report.

F. Success Stories

Out of all the activities undertaken by your agency since March 2020 to increase transparency and improve FOIA administration, please briefly describe here at least one success story that you would like to highlight as emblematic of your agency’s efforts. The success story can come from any one of the five key areas but should not be something that you have reported in a prior year. As noted above, OIP will highlight these agency success stories during Sunshine Week. To facilitate this process, all agencies should use bullets to describe their success story and limit their text to a half page. The success story is designed to be a quick summary of key achievements. A complete description of all your efforts will be contained in the body of your Chief FOIA Officer Report.

Answer: Our biggest success story this year is our significant backlog reduction, proudly boasting a 91% decrease. In 2015, the NLRB created a centralized FOIA Branch with the goal of increasing quality and consistency of FOIA responses nationwide. By Fiscal Year 2016, the backlog was 294. Over this four-year period, the FOIA Branch has thoroughly trained its team and cultivated an atmosphere of cooperation and efficient processing, created a large arsenal of FOIA template response letters, implemented FOIAonline as an effective case management system, created and sustained a paperless office, developed a strong working relationship with the OCIO team and FOIAonline team, and implemented feedback from its requester community, which it used to increase proactive disclosures and update a user-friendly NLRB FOIA homepage. All of these efforts have yielded positive results. At the end of Fiscal Year 2020, the

NLRB had reduced the FOIA request backlog to 3, which reflects a decrease of 91% from the previous year.