

The National Labor Relations Board **2023 Chief FOIA Officer Report**

SECTION I: FOIA LEADERSHIP AND APPLYING THE PRESUMPTION OF OPENNESS

The guiding principle underlying the Attorney General’s [FOIA Guidelines](#) is the presumption of openness. The Guidelines also highlight the importance of agency leadership in ensuring effective FOIA administration. Please answer the following questions about FOIA leadership at your agency and describe the steps your agency has taken to ensure that the presumption of openness is being applied to all decisions involving the FOIA.

A. Leadership Support for FOIA

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

Answer: Yes. Under National Labor Relations Board (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

3. What steps has your agency taken to incorporate FOIA into its core mission? For example, has your agency incorporated FOIA milestones into its strategic plan?

Answer: The NLRB has integrated FOIA into its core mission by incorporating FOIA timeliness into the [NLRB’s FY 22-26 Strategic Plan](#), Goal 4, Objective 2, Measure 2. FOIA metrics have also been historically incorporated into the Agency’s [Performance and Accountability Reports](#).

B. Presumption of Openness

4. The Attorney General’s 2022 FOIA Guidelines provides that “agencies should confirm in response letters to FOIA requesters that they have considered the foreseeable harm standard when reviewing records and applying FOIA exemptions.” Does your agency provide such confirmation in its response letters?

Answer: Yes, the NLRB has incorporated language into response letters confirming that the foreseeable harm standard has been considered when reviewing records and applying FOIA exemptions.

5. In some circumstances, agencies may respond to a requester that it can neither confirm nor deny the existence of requested records if acknowledging the existence of records would harm an interested protected by a FOIA exemption. This is commonly referred to as a *Glomar* response. With respect to these responses, please answer the below questions:

In addition to tracking the asserted exemption, does your agency specifically track whether a request involved a *Glomar* response?

Answer: Yes.

If yes, please provide:

the number of times your agency issued a full or partial *Glomar* response (separate full and partial if possible); the number of times a *Glomar* response was issued by exemption (e.g., Exemption 7(C) – 20 times, Exemption 1 – 5 times).

Answer:

Outcome	Case count
Full Denial Based on Exemptions	8
Partial Grant/Partial Denial	14
Total	22

Exemptions applied	Case count
Ex. 5, Ex. 6, Ex. 7(C), Ex. 7(D)	3
Ex. 6	1
Ex. 6, Ex. 7(A), Ex. 7(C)	4
Ex. 6, Ex. 7(C)	7
Ex. 6, Ex. 7(C), Ex. 7(D)	7
Total	22

If your agency does not track the use of *Glomar* responses, what would your agency need to do to track in the future? If possible, please describe the resources and time involved.

Answer: This does not apply to the NLRB because the NLRB tracks and will continue to track *Glomar* responses.

6. 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.

SECTION II: ENSURING FAIR AND EFFECTIVE FOIA ADMINISTRATION

The Attorney General’s FOIA Guidelines provide that “[e]nsuring fair and effective FOIA administration requires . . . proper training, and a full understanding of FOIA obligations by the entire agency workforce.” The Guidelines reinforce longstanding guidance to “work with FOIA requesters in a spirit of cooperation.” The Attorney General also “urge[s] agency Chief FOIA Officers to undertake comprehensive review of all aspects of their agency’s FOIA administration” as part of ensuring fair and effective FOIA administration.

A. FOIA Training

1. 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 personnel.

Answer: The Agency has taken the following measures to ensure proper FOIA training is made available and used by Agency personnel:

- For all new employee orientation sessions in 2022 and 2023, a FOIA staff attorney provides an overview of the FOIA and the Agency's records disclosure guidelines.
- The FOIA Officer has conducted virtual FOIA trainings for staff in regional offices on employees' FOIA responsibilities and obligations, as well as an overview of how the FOIA applies to investigatory and litigation records.
- On June 21, 2022, the FOIA Officer and the FOIA Deputy conducted a virtual FOIA overview training to summer interns across the Agency. This training was recorded and is available to all staff on the Agency's intranet.
- On November 22, 2022, the FOIA Officer conducted a FOIA training for NLRB honors attorneys as a part of their orientation.
- On November 30, 2022, the FOIA Officer conducted a FOIA Exemption 5 training for attorneys in the Agency's headquarters offices.
- On February 2, 2023, the FOIA Officer and the FOIA Deputy conducted a FOIA training for the entire Agency focusing on electronic records under the FOIA.
- In March 2023, to celebrate Sunshine Week, the Chair and the General Counsel sent a memo to all staff highlighting the Agency's FOIA accomplishments, reminding everyone of their FOIA responsibilities, and providing information about FOIA training opportunities and resources.

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

Answer: Yes. Please see below.

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

Answer: Throughout 2022 and 2023, one or more NLRB FOIA Branch staff attended the following trainings and meetings:

- DOJ OIP Training: Virtual Advanced FOIA Training
- DOJ OIP Training: Virtual Annual FOIA Report Training
- DOJ OIP Training: Virtual Chief FOIA Officer Report Training
- DOJ OIP Training: Virtual Continuing FOIA Education Training
- DOJ OIP Training: Virtual Exemptions 1 and 7 Training
- DOJ OIP Training: Virtual Exemptions 4 and 5 Training
- DOJ OIP Training: Virtual FOIA Litigation Workshop
- DOJ OIP Training: Virtual Privacy Considerations Training
- DOJ OIP Training: Virtual Procedural Requirements and Fees Training
- DOJ / HHS Meeting: Virtual FOIA Summit for Agency FOIA Professionals
- NARA Meeting: Chief FOIA Officers Council Meetings
- NARA Meeting: FOIA Advisory Committee Meetings
- NARA Meeting: Meetings with the Co-chairs of the Chief FOIA Officers Council
- E-Discovery, Records & Information Management Virtual Conference 2022

4. Please 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 the FOIA Branch staff attended substantive FOIA training.

5. 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 does not apply to the NLRB because all FOIA staff attended substantive FOIA trainings.

6. 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; and if senior leaders at your agency received a briefing on your agency’s FOIA resources, obligations and expectations during the FOIA process?

Answer: For all new employees during their orientation, a FOIA staff attorney presents an overview on the FOIA responsibilities and the Agency’s records disclosure policies. The FOIA managers also conduct trainings when new political appointees join the Agency and provide FOIA overview trainings to Regional Offices periodically. Additionally, at the request of the General Counsel, the FOIA staff has conducted regular trainings for Agency personnel on how the FOIA applies to Agency emails.

B. Outreach

7. Did your FOIA professionals engage in any outreach or dialogue, outside of the standard request process, 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: Supervisors in the FOIA Branch regularly attended the NARA-led FOIA Advisory Committee Meetings, the Chief FOIA Officers Council Meetings, and the 2022 Annual Open Meeting of the Federal FOIA Ombudsman to gain insights about best FOIA practices from other agencies and to hear feedback from the requester community. Additionally, managers in the FOIA Branch engaged with the FOIA vendor community by attending the DOJ FOIA Technology Showcase (and follow-up workshop) to conduct research on new products and software packages available.

8. As part of the standard request process, do your FOIA professionals proactively contact requesters concerning complex or voluminous requests in an effort to clarify or narrow the scope of the request so requesters can receive responses more quickly? Please describe any such outreach or dialogue, and, if applicable, any specific examples.

Answer: Yes. It is standard procedure for Agency FOIA professionals to contact requesters concerning complex or voluminous request in an effort to clarify and/or narrow their requests. The FOIA staff contact requesters regularly to identify a narrower

set of records that are responsive to FOIA requests. For example, when requesters seek all records in case files, FOIA staff routinely reach out to those requesters to explain what exemptions would apply to the requested cases, particularly if any cases are still under investigation, and the length of time it would take to process all the records. They may also provide an overview of the Agency's FOIA process and show the requester what resources are already available as proactive disclosures online. Often, the requester will narrow the request to exclude all but certain "formal" records in the cases, saving the Agency countless hours retrieving and reviewing the records. In other instances, requesters have sought record types covering multi-year time spans. Such requests would have required a complicated search, resulting in hundreds of records that would have to be manually reviewed to ensure responsiveness before redactions were applied. The FOIA staff contacted the requesters to clarify and narrow the request to data that is readily available via [an advanced data search tool on the Agency website](#). As necessary, FOIA staff can show members of the public how to run various data reports. The requesters are usually very pleased to have access to the information immediately and, as a result, often narrow or withdraw their records request.

9. 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 Fiscal Year 2022 (please provide a total number or an estimate of the number).

Answer: Approximately 50 contacts.

C. Other Initiatives

10. Has your agency evaluated the allocation of agency personnel resources needed to respond to current and anticipated FOIA demands? If so, please describe what changes your agency has or will implement.

Answer: Yes. The FOIA Branch continually assesses its resources against changing business demands. Where additional resources are needed, the FOIA Branch adjusts staffing assignments to leverage expertise among current staff, as well as augments staff resources through collaboration with other offices or by seeking authorization to hire additional FTEs. This past year, the FOIA Branch sought and received authorization to hire one additional FTE (and backfilled a vacant position) to respond to current and anticipated FOIA demands.

11. How does your agency use data or processing metrics to ensure efficient management of your FOIA workload? For example, case management reports, staff processing statistics, etc. In addition, please specifically highlight any data analysis methods or technologies used.

Answer: Supervisors responsible for assigning FOIA requests to the FOIA professionals regularly run docket reports to ensure that assignments are distributed equitably across staff. Additionally, staff processing statistics are maintained and monitored to ensure the timely processing of requests. A trend report is run every week to assess the number of incoming requests against last year's data. This report also includes a backlog count to monitor how many cases are scheduled to backlog at the end of the month if they are not closed.

12. Optional -- If there are any other initiatives undertaken by your agency to ensure fair and effective FOIA administration, please describe them here.

Answer: The FOIA Branch actively encourages employees to take advantage of FOIA trainings to stay abreast of FOIA responsibilities and obligations as well as the impact of FOIA on their day-to-day work.

SECTION III: PROACTIVE DISCLOSURES

The Attorney General's [FOIA Guidelines](#) emphasize that "proactive disclosure of information is . . . fundamental to the faithful application of the FOIA." The Guidelines direct agencies to post "records online quickly and systematically in advance of any public request" and reiterate that agencies should post records "in the most useful, searchable, and open formats possible."

1. Please describe what steps your agency takes to identify, track, and post (a)(2) proactive disclosures.

Answer: Consistent with subsection (a)(2) of the FOIA, the NLRB proactively makes available to the public non-exempt information from certain categories of records without waiting for a specific request to be received. This automatically released public information consists of both data and documents discussed in the next item below. Additionally, through an automated process linking the NLRB's case management database, NxGen, with the Agency website, certain documents such as Decisions and Directions of Election, Notices of Election, and various case motions and orders are made available for immediate download without redactions shortly after they are filed or issued. In the past year, the Agency has worked to increase the number of records available on case pages through this process. Finally, the FOIA Branch retrieves, reviews, and posts [Advice Memoranda](#) to the NLRB website in batches on a monthly basis.

2. 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 maintains a robust [FOIA E-Library](#). The FOIA Branch has identified the following records that the Agency routinely posts online proactively:

- Final Agency opinions and orders rendered in the adjudication of cases
 - [Advice Memoranda](#)
 - [Decisions and Orders of the NLRB](#)
 - [Administrative Law Judge Decisions](#)
 - [Regional Election Decisions](#)
- Specific policy statements that are not published in the Federal Register
 - [Memoranda issued by the General Counsel](#)
 - [Memoranda issued by the NLRB's Division of Operations Management](#)
- Administrative staff manuals and instructions to staff that affect a member of the public
 - [Manuals](#): links to 16 NLRB internal manuals or other materials regarding NLRB case procedures
- Frequently requested records available through [FOIAonline](#)
- Additional proactive postings and online databases include:

- [Monthly records related to representation and unfair labor practice cases](#)
- [Cases and Organizations of Interest](#)
- [Case Search](#) database
- [NLRB Case File Search](#)
- [Tally of Ballots Search](#)
- [Performance and Accountability Reports](#) (PARs)
- [Election Reports](#) of all elections conducted in the NLRB's regions
- [Annual Reports](#) from FY 1936-2009
- Other [reports](#) containing various types of information related to casehandling, the Agency's performance, the FOIA, and Office of the Inspector General
- [Graphs and Data section](#) containing statistical information

Further, the posting of FOIA records to the case page is not limited to records that have been requested three or more times. Records sought by the media, especially high-profile cases, are always posted by FOIA Branch personnel to the corresponding Agency case page. See, for example, the [Amazon unfair labor practice case](#) in Staten Island, NY (Case No. 29-CA-261755). The Agency's case page lists all the FOIA requests made for records (four, at the time of this report), as well as hyperlinks to numerous proactively released case documents (45 of 53 records). Similarly, see the Agency case page for the [Starbucks Coffee Company unfair labor practice case](#) in Buffalo, NY (Case No. 03-CA-285671). Of the 46 records included on the docket activity list (at the time of writing), 35 have been proactively released with hypertext links that allow the user to download the documents. Further, the eight FOIA requests related to the case are included on the case page with hypertext links that allow the user to download the released records.

3. 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.

4. 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 the past year, the Agency convened an internal working group involving senior leadership from the General Counsel's Office, the Office of the Chief Information Officer, the Division of Operations Management, and the FOIA Branch to explore how best to streamline the automatic posting of downloadable records to the Agency's case pages. Over the course of 2022 and into 2023, the group examined which key case records would be appropriate for direct posting to the Agency's website; what changes to NLRB forms and document templates would be necessary to ensure that personally identifiable and other sensitive information was not inadvertently released; what changes would be required to effect direct posting of records; and the personnel resources necessary to implement these changes. The working group is developing templates that minimize the collection and use of personally identifiable information and also looking into appropriate technologies to implement auto-redactions and batch document support.

Additionally, see the response to question III.1 above. Through an automated process linking the NLRB's case management database, NxGen, with the Agency website, certain documents are made available for immediate download without redactions shortly after they are filed or issued. In the past year, the Agency has worked to increase the number of records available on case pages through this process.

5. Does your proactive disclosure process or system involve any collaboration with agency staff outside the FOIA office, such as IT or data personnel? If so, describe this interaction.

Answer: Yes. Please see the response to question III.4 above. Additionally, the FOIA Branch works with the Office of the Chief Information Officer (OCIO) to post Advice Memos on the Agency website on a monthly basis.

6. Optional -- Please describe the best practices used to improve proactive disclosures and any challenges your agency faces in this area.

Answer: Please see the response to question III.4 above.

SECTION IV: STEPS TAKE TO GREATER UTILIZE TECHNOLOGY

A key component of FOIA administration is using technology to make information available to the public and to gain efficiency in FOIA processing. The Attorney General's [FOIA Guidelines](#) emphasize the importance of making FOIA websites easily navigable and complying with the [FOIA.gov](#) interoperability requirements. Please answer the following questions to describe how your agency is using technology to improve its FOIA administration and the public's access to information.

1. Has your agency reviewed its FOIA-related technological capabilities to identify resources needed to respond to current and anticipated FOIA demands?

Answer: Yes.

2. Please briefly describe any new types of technology your agency began using during the reporting period to support your FOIA program.

Answer: During FY 2022, personnel in OCIO automated a previously manual procedure to retrieve and download large and/or multiple NxGen (the Agency's case management database) case files containing in excess of 2,000 records. This "FOIA Large Case File Export Report" enables FOIA Branch staff to export extremely large and/or numerous case files with only one action, rather than multiple, repeated downloads. Unlike the older "FOIA Document Export Report", the "FOIA Large Case File Export Report" will export every document in the case file(s) without additional selection criteria and without a document limit (the older report has an export limit of 2,000 files). Upon export, a new folder is created on the shared drive. All exported documents are stored in that folder with file names beginning with a number so the exported files appear in near-chronological order based on the order they were uploaded to the NxGen case file. An option can also be selected to keep exported cases in separate folders, maintaining case organization rather than all the files from multiple related cases being combined and exported chronologically to a single folder. An on-screen confirmation appears after the successful export of the documents indicating the "Total no. of cases submitted," "Total no. of cases containing documents," and "Total documents exported." An email

confirmation is also sent to the FOIA user who requested the files after all the files have been successfully exported. This new tool has saved the FOIA Branch untold hours that would have been previously spent implementing multiple exports to retrieve records in voluminous case files.

Additionally, a number of years ago, the Agency deployed iSearch, an integrated search interface that allows users to search across all Agency repositories simultaneously using common search language. The Agency has iteratively and continually improved and refined iSearch to make it a more valuable resource for capturing institutional knowledge and finding historical documents. This interface was recently upgraded to iSearch 2.0 with improvements over the last year that include more detailed case designation fields, allowing users to search by specific case types. The Agency has also improved date sorting and created a single meta search tool that allows users to search specifically for Advice Memos and Advice Emails across all sources. These improvements to the iSearch tool have allowed the FOIA Branch to conduct broader, more general searches to identify potentially responsive records more quickly.

3. Does your agency currently use any technology to automate record processing? For example, does your agency use machine learning, predictive coding, technology assisted review or similar tools to conduct searches or make redactions? If so, please describe and, if possible, estimate how much time and financial resources are saved since implementing the technology.

Answer: No.

4. 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: Yes.

5. Did all four of your agency's [quarterly reports](#) for Fiscal Year 2022 appear on FOIA.gov?

Answer: Yes.

6. If your agency did not successfully post all quarterly reports on FOIA.gov, please explain why and provide your agency's plan for ensuring that such reporting is successful in Fiscal Year 2023.

Answer: This does not apply to the NLRB.

7. 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 2021 Annual FOIA Report and, if available, for your agency's Fiscal Year 2022 Annual FOIA Report.

Answer: Please see [FOIA Annual Reports](#) on NLRB's website.

8. In February 2019, DOJ and OMB issued joint [Guidance](#) establishing interoperability standards to receive requests from the National FOIA Portal on FOIA.gov. Are all components of your agency in compliance with the guidance?

Answer: Yes.

9. Optional -- Please describe the best practices used in greater utilizing technology and any challenges your agency faces in this area.

Answer: Please see the response to question IV.2 above. Additionally, like the many other federal agencies subject to the sunset of FOIAOnline, the NLRB has faced a number of technical difficulties with FOIAOnline as the system degrades and reduces technical support, impeding the Agency's ability to process requests with the utmost efficiency.

SECTION V: STEPS TAKEN TO REMOVE BARRIERS TO ACCESS, IMPROVE TIMELINESS IN RESPONDING TO REQUESTS, AND REDUCE BACKLOGS

The Attorney General's [FOIA Guidelines](#) instruct agencies "to remove barriers to requesting and accessing government records and to reduce FOIA processing backlogs." Please answer the following questions to describe how your agency is removing barriers to access, improving timeliness in responding to requests, and reducing FOIA backlogs.

A. Remove Barriers to Access

1. Has your agency established alternative means of access to first-party requested records outside of the FOIA process?

Answer: First-party requesters of formal case records may obtain the records directly from the relevant Regional Office.

2. If yes, please provide examples. If no, please indicate why not. Please also indicate if you do not know.

Answer: See above. Beyond this, the Agency has not explored opportunities for alternative access to records by first-party requesters.

B. Timeliness

3. For Fiscal Year 2022, 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 2022 Annual FOIA Report.

Answer: 2.54 days.

4. 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 2022 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: N/A.

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

Answer: No.

6. 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 2022?

Answer: The NLRB only tracks simple requests and does not have a separate track for complex requests per Agency regulations.

7. If not, did the simple track average processing time decrease compared to the previous Fiscal Year?

Answer: See above.

8. Please provide the percentage of requests processed by your agency in Fiscal Year 2022 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: See response to question V.B.6, above.

9. 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: Yes (12.05 days).

C. Backlogs

BACKLOGGED REQUESTS

10. If your agency had a backlog of requests at the close of Fiscal Year 2022, according to Annual FOIA Report Section XII.D.2, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2021?

Answer: No. The NLRB had a FOIA request backlog of seven at the end of FY 2021. At the end of FY 2022, the NLRB had a FOIA request backlog of 18 (representing less than 1% of requests received during the fiscal year), which reflects a slight increase of eleven.

11. If not, according to Annual FOIA Report Section XII.D.1, did your agency process more requests during Fiscal Year 2022 than it did during Fiscal Year 2021?

Answer: Yes.

12. If your agency's request backlog increased during Fiscal Year 2022, 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)

Impact of COVID-19 and workplace and safety precautions

Any other reasons – please briefly describe or provide examples when possible

Answer: The following factors contributed to the slight increase in the NLRB's FOIA backlog in FY 2022: a substantial increase in the number of incoming requests, an

increase in the complexity of the requests received, a loss of staff, time training new staff, on-going FOIA litigation, and the continuing impact of COVID-19. Specifically, the FOIA Branch received more requests in FY 2022 than in FY 2021, and the scope and complexity of many of those requests was significantly greater. Additionally, the FOIA Branch lost a seasoned member of its processing team and was not able to backfill the position for 8 months.

13. 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 2022. 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. This number can be greater than 100%. If your agency has no request backlog, please answer with "N/A."

Answer: The NLRB's FY 2022 backlog represents less than 1% (.9% = 18 / 1963 x 100) of total requests received in FY 2022.

BACKLOGGED APPEALS

14. If your agency had a backlog of appeals at the close of Fiscal Year 2022, according to Section XII.E.2 of the Annual FOIA Report, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2021?

Answer: The NLRB did not carry a backlog of FOIA administrative appeals in FY 2022 or FY 2021.

15. If not, according to section XII.E.1 of the Annual FOIA Report, did your agency process more appeals during Fiscal Year 2022 than it did during Fiscal Year 2021?

Answer: N/A.

16. If your agency's appeal backlog increased during Fiscal Year 2022, 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)

Impact of COVID-19 and workplace and safety precautions

Any other reasons – please briefly describe or provide examples when possible.

Answer: The NLRB did not carry a backlog of FOIA administrative appeals in FY 2022 or FY 2021.

17. 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 2022. 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. This number can be

greater than 100%. If your agency did not receive any appeals in Fiscal Year 2022 and/or has no appeal backlog, please answer with "N/A."

Answer: N/A.

D. Backlog Reduction Plans

18. In the 2022 guidelines for Chief FOIA Officer Reports, any agency with a backlog of over 1000 requests in Fiscal Year 2021 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 2022?

Answer: N/A.

19. If your agency had a backlog of more than 1,000 requests in Fiscal Year 2022, please explain your agency's plan to reduce this backlog during Fiscal Year 2023.

Answer: N/A.

E. Reducing the Age of Requests, Appeals, and Consultations

TEN OLDEST REQUESTS

20. In Fiscal Year 2022, did your agency close the ten oldest pending perfected requests that were reported in Section VII.E. of your Fiscal Year 2021 Annual FOIA Report?

Answer: No.

21. 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 2021 Annual FOIA Report. If you had less than ten total oldest requests to close, please indicate that.

Answer: The NLRB closed six of its ten oldest pending perfected requests from FY 2021. Three of the four remaining oldest pending perfected requests from FY 2021 are the subject of litigation.

22. 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 NLRB dedicated greater resources to work on the oldest requests by training staff from other offices to assist in the review and redaction of voluminous record sets. Additionally, the FOIA Branch tracked the backlog on a monthly basis and focused its efforts on prioritizing the processing of backlogged cases by making strategic assignments and working with requesters to further narrow requests.

TEN OLDEST APPEALS

23. In Fiscal Year 2022, did your agency close the ten oldest appeals that were reported pending in Section VI.C.5 of your Fiscal Year 2021 Annual FOIA Report?

Answer: Yes. The NLRB closed six of six of its oldest appeals.

24. 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 2021 Annual FOIA Report. If you had less than ten total oldest appeals to close, please indicate that.

Answer: N/A.

25. 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 NLRB continually works to ensure that appeals are processed in a timely manner. When received, appeals are assigned, tracked and monitored to ensure that a determination is made and issued within 20 days. The average number of days for the NLRB to issue a response to an administrative appeal for those closed in FY 2022 was 19.26 days, which is down slightly from FY 2021's average of 19.4 days.

TEN OLDEST CONSULTATIONS

26. In Fiscal Year 2022, did your agency close the ten oldest consultations that were reported pending in Section XII.C. of your Fiscal Year 2021 Annual FOIA Report?

Answer: This does not apply to the NLRB as the NLRB received no requests for consultation in FY 2021.

27. 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 2021 Annual FOIA Report. If you had less than ten total oldest consultations to close, please indicate that.

Answer: This does not apply to the NLRB as the NLRB received no requests for consultation in FY 2021.

ADDITIONAL INFORMATION REGARDING TEN OLDEST

28. If your agency did not close its ten oldest pending requests, appeals, or consultations, please explain why and provide a plan describing how your agency intends to close those "ten oldest" requests, appeals, and consultations during Fiscal Year 2023.

Answer: Of the ten oldest pending requests from FY 2021, four remain open. Three of these are subject to ongoing litigation, and the Agency is working diligently and cooperatively with the requester to provide all responsive documents, with appropriate redactions and subject to the oversight of the court.

F. Additional Information about FOIA Processing

29. Were any requests at your agency the subject of FOIA litigation during the reporting period? If so, please describe the impact on your agency's overall FOIA request processing and backlog. If possible, please indicate the number and nature of requests subject to litigation, common causes leading to litigation, and any other information to illustrate the impact of litigation on your overall FOIA administration.

Answer: Yes. The Agency is defending one case in litigation that was filed during the reporting period and which encompasses seven underlying FOIA requests. The Agency has continued to work cooperatively with the plaintiff to narrow the scope of their multiple requests, prioritize production of specific records sought, and efficiently process

responsive records. The release of records subject to the FOIA litigation has resulted in additional FOIA requests being filed by the plaintiff in the case, compounding the work of the FOIA professionals. As of the November 2022 status report to the court (the most recent data, at the time of this writing), the Agency has made 23 interim releases to the plaintiff, which required the processing of approximately 44,216 pages, including 14,722 pages released in full or part, 3,455 pages withheld in full, and 23,039 pages reviewed and determined to be duplicate or non-responsive. This litigation has demanded the time and attention of several of the Branch's most senior FOIA professionals, as well as managers in other Branches of the Agency.

30. How many requests during Fiscal Year 2022 involved unusual circumstances as defined by the FOIA? (This information is available in your agency's FY22 raw data).

Answer: Four requests have required extensions of time due to unusual circumstances.