

The National Labor Relations Board **2024 Chief FOIA Officer Report**

Section I: FOIA Leadership and Applying the Presumption of Openness

The guiding principle underlying the Attorney General's 2022 [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. If your agency tracks *Glomar* responses, 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	7
Partial Grant/Partial Denial	16
No Records	4
Total	27

Exemptions	Number of times applied
Ex. 5	3
Ex. 6	20
Ex. 7(A)	9
Ex. 7(C)	20
Ex. 7(D)	3
Total	55

6. If your agency does not track the use of *Glomar* responses, are you planning to track this information in the future?

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

7. 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 Agency's website is regularly updated with new materials, and several robust search tools are provided for the public to locate information and records. In FY 2023, the Agency posted approximately 26,000 records to its website.

Section II: Ensuring Fair and Effective FOIA Administration

The Attorney General's 2022 [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 to and used by Agency personnel:

- The FOIA Branch maintains training materials and other FOIA resources on the Agency's intranet site for reference by all Agency personnel.
- For all new employee orientation sessions in 2023 and 2024, 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 February 2, 2023, the FOIA Officer and the FOIA Deputy Branch Chief conducted a FOIA training for the Agency (568 participants) focusing on electronic records under the FOIA ("Electronic Record Snags and the FOIA").
- On August 3, 2023, the FOIA Officer and the FOIA Deputy Branch Chief provided an overview of the FOIA and employees' responsibilities thereunder to newly-hired investigatory staff at the New Agent training.

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 2023 and in early 2024, 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 Best Practices Workshop
- 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 Introduction to the FOIA and Proactive Disclosures
- DOJ OIP Training: Virtual FOIA Litigation Workshop
- DOJ OIP Training: Virtual Privacy Considerations Training
- DOJ OIP Training: Virtual Procedural Requirements and Fees Training
- DOJ OIP Training: Virtual Processing a Request from Start to Finish Workshop
- NARA Meeting: Chief FOIA Officers Council Meetings
- NARA Meeting: FOIA Advisory Committee Meetings

- Five Star Legal & Compliance Systems Training: Federal Government M365 eDiscovery Workshop
- Federal Privacy Council Training: [Federal Privacy Bootcamp](#) (multi-week program)
- NLRB Training: Electronic Record Snags and the FOIA

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 professionals 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 of their 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, new agents, summer interns, and honors attorneys. Additionally, the FOIA Branch maintains training materials and other FOIA resources on the Agency’s intranet site for reference by all Agency personnel. Finally, the Chairman of the Board and the General Counsel send an annual Sunshine Week memo in March, informing all staff about the FOIA, reminding them of their record-keeping obligations, and providing information on FOIA resources and training materials.

B. Outreach

7. 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 requests to clarify and/or narrow their requests. Upon receiving a new assignment and as appropriate, FOIA staff

routinely communicate with requesters about their requester category, fee waiver issues, assuming sufficient fees for processing requests, and clarifying unclear or broadly-worded requests. For example, when requesters seek all records in case files, FOIA staff reach out to the requesters to explain what kinds of records are likely to be released and withheld, the exemptions that would apply, 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, as a result, the requester will narrow the request to exclude all but certain "formal" records in the cases, saving the Agency countless hours retrieving, reviewing, and redacting the records. In other instances, requesters have submitted requests that contain expansive language that could arguably render all records of the Agency responsive. When requests like this are received, the FOIA staff engage the requester to understand what the requester seeks so that an appropriate search can be conducted. Additionally, the FOIA staff and FOIA Public Liaison frequently respond to requesters to explain what data is readily available via [an advanced data search tool on the Agency website](#) and demonstrate how to run various data reports. With this information, requesters can retrieve the information sought immediately, saving time and effort for both the Agency and the requester.

8. Outside of the standard request process or routine FOIA Liaison or FOIA Requester Service Center interactions, did your FOIA professionals engage in any outreach or dialogue, with the requester community or open government groups regarding your administration of the FOIA? For example, did you proactively contact frequent requesters, host FOIA-related conference calls with open government groups, or provide FOIA training to members of the public? 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: Staff in the FOIA Branch regularly attended the NARA-led FOIA Advisory Committee Meetings and the Chief FOIA Officers Council Meetings to gain insights about best FOIA practices from other agencies and to hear feedback from the requester community. In March 2023, the FOIA Officer and Deputy Branch Chief analyzed and provided substantive comments in response to the [recommendations](#) to the Ad Hoc Committee for the [Disclosure of Agency Legal Materials](#) of the Administrative Conference of the United States (ACUS). In March and April, the FOIA Officer and Deputy Branch Chief attended several ACUS meetings of this committee, which recommendations primarily focused on amending the FOIA, and provided subject matter expertise and feedback to Agency leadership to submit to ACUS for consideration. Additionally, in December 2023, the Acting FOIA Officer co-presented a 90-minute FOIA webinar sponsored by the American Bar Association (ABA) called "Understanding FOIA: Records, Exemptions, and Best Practices" to an audience of approximately 55 legal professionals (largely comprised of members from the requester community). Feedback was positive, with comments that the presentation enhanced the participants' understanding of the FOIA.

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 2023 (please provide a total number or an estimate of the number for the agency overall).

Answer: Approximately 75 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 and/or through staff temporarily detailed to the Branch.

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 using spreadsheets and pivot tables 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 regularly to assess the number of incoming requests against last year's data, and managers track the backlog to ensure that the oldest requests are being addressed effectively.

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 developments in the FOIA law.

Section III: Proactive Disclosures

The Attorney General's 2022 [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. The Office of the Chief Information Officer has worked with various divisions of the Agency to automate the posting of certain records. For example, an automated process links the NLRB's case management database, NxGen, with the Agency website, and posts various case motions and orders by NLRB Administrative Law Judges (ALJ) and the Board itself automatically and immediately to the Agency's website. Similarly, ALJ and Board decisions are published on the Agency's website as soon as possible after issuance, usually the same day. Also, when new cases are filed with NLRB regional offices, the Agency's website is updated with that information within a day. Finally, the FOIA Branch retrieves, reviews, and posts [Advice Memoranda](#) to the NLRB website in batches on a monthly basis.

2. How long after identifying a record for proactive disclosure does it take your agency to post it?

Answer: Please see response above. Other proactively released records such as memos and reports are published automatically to the website or, if manually, on the same day as released.

3. Does your agency post logs of its FOIA requests?

- If so, what information is contained in the logs?
- Are they posted in CSV format? If not, what format are they posted in?

Answer: The NLRB does not post FOIA request logs online.

4. 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 website and [FOIA E-Library](#). The FOIA Branch has identified the following records and resources that the Agency routinely posts online proactively:

- Cases:
 - [Cases and Organizations of Interest](#)
 - [NLRB Case Map](#): View case or election-related data for the current fiscal year, by hovering over a region on the map. Unfair Labor Practice (C cases) and Representation (R cases) can be seen in a pop-up box. Results can be viewed in tabular form below the map by clicking on a Region.
- 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](#)
- [Agency court filings](#):
 - [Appellate Court Briefs and Motions filed by the General Counsel](#)
 - [Petitions for Review & Applications for Enforcement](#)
 - [Contempt, Compliance, and Special Litigation Branch Briefs](#)

- [Injunction Litigation Branch Appellate Briefs](#)
- 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 17 NLRB internal manuals or other materials regarding NLRB case procedures
- Frequently requested records available through the [Agency's SecureRelease public reading room](#).
- 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
 - [CiteNet](#): The Classified Index of NLRB Board Decisions and Related Court Decisions.
 - [Weekly Summary of Decisions](#)

Further, the posting of FOIA records to the case page is not limited to records that have been requested three or more times. Formal records, especially high-profile cases, are posted to the corresponding Agency case page. See, for example, the Amazon unfair labor practice case in Staten Island, NY (Case No. [29-CA-261755](#)), which is still open and under investigation. The Agency's case page lists the docket activity and provides hyperlinks to proactively released case documents (67 of 75 records, or 89%). Similarly, see the Agency case page for the Starbucks Coffee Company unfair labor practice case in Buffalo, NY (Case No. [03-CA-285671](#)), also an open case. Of the 95 records included on the docket activity list, 84 (or 88%) have been proactively released with hypertext links that allow the user to download the documents. Further, all of the records listed on that case docket since the end of August, 2022 have been proactively released on the case page. The FOIA Branch also publishes records requested by the media to the Agency's public reading room, which is currently being transitioned from the Agency's former FOIA processing system to the successor one.

5. 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.

6. 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: The Agency continues to enhance the information available to the public on its website. In the past year, the Agency upgraded the technology behind the website's advanced data search and has developed a new report called the "Last Two Weeks" report which compiles information about changes and updates to active cases occurring in the preceding two weeks. This report augments the website's current function that allows the public to subscribe to cases so they receive updates posted to the case page. The development of this report was the direct result of the public's interest in obtaining current information about developments in NLRB cases, and it is anticipated that the publication of the report may reduce the number of FOIA requests for this information. The report is scheduled to be first published on the Agency's website on January 19, 2024.

Additionally, the Agency maintains an online search tool called [CiteNet](#). CiteNet allows the user to find a synopsis of relevant issues and the associated classification numbers for most published Board decisions and related court decisions issued since February 1992. The Agency is currently working to improve functionality by updating the CiteNet index, which is linked to the search engine that allows the user to access substantive NLRB case information and related court decisions. Once updated, the index will be a more comprehensive listing of the extensive issues that have been discussed in NLRB cases, thus allowing the user to more easily search for and access issues addressed in NLRB cases.

7. 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.1 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.

8. 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.1 above for examples of the collaborative relationship between OCIO and various other NLRB offices. As for challenges, this past year, the NLRB migrated out of its previous FOIA processing system, FOIAOnline, which was decommissioned at the end of FY 2023. The Agency selected a new vendor and software program and is still working to design and deploy a more user-friendly public reading room.

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 2022 [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 uses to support your FOIA program.

Answer: This past year, OCIO continued to improve services by upgrading the Agency's IT infrastructure. Updates to the FOIA Branch's large case file uploader, which enables the FOIA Branch to provide large FOIA response files to requesters, were implemented in December of 2022 and again in December of 2023. The 2022 update made the uploader and files more secure and allowed requesters to download files more efficiently, and the 2023 update upgraded the server with the latest operating system, continuing to improve security and performance. Upgrades were made behind-the-scenes to the internal FOIA Document Export report to improve security and performance.

Most notably, the Agency transitioned from its previous FOIA processing system, FOIAOnline, to its successor system, SecureRelease, at the end of FY 2023. With the announcement of the decommissioning of FOIAOnline in 2021, the FOIA Officer and Deputy Branch Chief, along with staff from OCIO, invested significant time and effort to research alternate FOIA processing systems. In March 2023, the Agency posted a public solicitation for quotes, and the FOIA Officer, Deputy Branch Chief, and OCIO staff reviewed the submissions. SecureRelease, a product of Deloitte, was chosen. From April through September, the FOIA Officer, Deputy Branch Chief and OCIO staff worked with Deloitte to transition FOIA data from FOIAOnline to SecureRelease. SecureRelease employs more advanced technology than FOIAOnline and handles all aspects of FOIA processing. Examples of "new technology" being utilized in SecureRelease include a public portal for submitting FOIA requests, comprehensive records processing capabilities (including de-duplication, redaction application, publication to a public reading room, etc.), internal tasking and notification alerts, correspondence templates and communications logs, and tracking of released records. The FOIA Branch staff are still learning the capabilities and functionality of this new system but are effectively processing new requests.

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 2023 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 2024.

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 2022 Annual FOIA Report and, if available, for your agency's Fiscal Year 2023 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. The FOIA Branch has continually maintained a collaborative relationship with OCIO staff, which supports an efficient workflow for searching, accessing, reviewing and posting records. Additionally, like the many other federal agencies subject to the sunset of FOIAOnline, the NLRB faced a number of technical difficulties with FOIAOnline as the system degraded and technical support was reduced, impeding the Agency's ability to process requests with the utmost efficiency. Further, although the transition from FOIAOnline to SecureRelease was seamless for the public (no down time), loading the data from FOIAOnline into the new system has taken time. The Agency continues to work with the vendor to tweak and improve the aspects of the system to customize it to the Agency's unique process.

Section V: Steps Taken to Remove Barriers to Access, Improve Timeliness in Responding to Requests, and Reduce Backlogs

The Attorney General's 2022 [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 typical FOIA or Privacy Act process?

Answer: Yes.

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

Answer: First-party requesters may obtain formal case records in open cases directly from the Regional Office of jurisdiction.

3. Please describe any other steps your agency has taken to remove barriers to accessing government information.

Answer: The Agency continually updates its website by publishing materials online and by providing robust search tools for data and other records. See the response to question III.6 above.

B. Timeliness

4. For Fiscal Year 2023, 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 2023 Annual FOIA Report.

Answer: 1.84 days.

5. 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 2023 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 question does not apply to the NLRB.

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

Answer: No. The NLRB maintains only one track for requests (simple) and does not have a separate track for complex requests per Agency regulations.

7. 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 2023?

Answer: Please see response above. However, the average number of days for the NLRB to process simple requests was 11.28 days.

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

Answer: Please see response above. Yes, the average processing time for simple requests decreased from 12.32 days in FY 2022 to 11.28 days in FY 2023.

9. Please provide the percentage of requests processed by your agency in Fiscal Year 2023 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.

10. 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 (11.28 days).

C. Backlogs

Backlogged Requests

11. If your agency had a backlog of requests at the close of Fiscal Year 2023, 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 2022?

Answer: Yes. The NLRB had a FOIA request backlog of 18 at the end of FY 2022. At the end of FY 2023, the NLRB had a FOIA request backlog of six (6).

12. If not, according to Annual FOIA Report Section XII.D.1, did your agency process more requests during Fiscal Year 2023 than it did during Fiscal Year 2022?

Answer: This question does not apply to the NLRB because our backlog decreased from FY 2022 to FY 2023. However, the Agency did process more requests in FY 2023 than FY 2022.

13. If your agency's request backlog increased during Fiscal Year 2023, 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)
- Litigation
- Any other reasons – please briefly describe or provide examples when possible
Answer: This question does not apply to the NLRB.

14. 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 2023. 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 2023 backlog represents approximately one quarter of 1% (.27% = 6 / 2198 x 100) of total requests received in FY 2023.

Backlogged Appeals

15. If your agency had a backlog of appeals at the close of Fiscal Year 2023, 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 2022?

Answer: The NLRB did not carry a backlog of FOIA administrative appeals in FY 2022 or FY 2023.

16. If not, according to section XII.E.1 of the Annual FOIA Report, did your agency process more appeals during Fiscal Year 2023 than it did during Fiscal Year 2022?

Answer: This question does not apply to the NLRB because the Agency did not carry a backlog of FOIA administrative appeals in FY 2022 or FY 2023. However, the NLRB processed fewer administrative appeals in FY 2023 (9 appeals) than in FY 2022 (18 appeals).

17. If your agency's appeal backlog increased during Fiscal Year 2023, 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)
- Litigation
- 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 2023.

18. 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 2023. 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 2023 and/or has no appeal backlog, please answer with "N/A."

Answer: N/A.

D. Backlog Reduction Plans

19. In the 2023 guidelines for Chief FOIA Officer Reports, any agency with a backlog of over 1,000 requests in Fiscal Year 2022 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 2023?

Answer: N/A.

20. If your agency had a backlog of more than 1,000 requests in Fiscal Year 2023, please explain your agency's plan to reduce this backlog during Fiscal Year 2024.

Answer: N/A.

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

21. In Fiscal Year 2023, did your agency close the ten oldest pending perfected requests that were reported in Section VII.E. of your Fiscal Year 2022 Annual FOIA Report?

Answer: No.

22. 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 2022 Annual FOIA Report. If you had less than ten total oldest requests to close, please indicate that.

Answer: The NLRB closed five (5) of its ten oldest pending perfected requests from FY 2022. Four of the five remaining oldest pending perfected requests from FY 2022 are the subject of litigation.

23. 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. In anticipation of the transition out of FOIAOnline, the FOIA managers focused on clearing the backlog, to the extent feasible, to ensure that the fewest possible cases remained open during the transition. The FOIA Officer and Deputy Branch Chief tracked the backlog on a bi-weekly basis starting in the spring. FOIA managers and supervisors promoted the processing of backlogged cases by making strategic assignments to maximize efficiency in

processing and by working with requesters to further narrow requests. The NLRB overcame numerous challenges to successfully reduce its backlog and overall case age in FY 2023: a substantial increase in the number of incoming requests, an increase in the complexity of the requests received, the temporary loss of a FOIA manager and one professional staff, on-going FOIA litigation, and, most significantly, the migration out of FOIAOnline and into an entirely new processing system.

Ten Oldest Appeals

24. In Fiscal Year 2023, did your agency close the ten oldest appeals that were reported pending in Section VI.C.5 of your Fiscal Year 2022 Annual FOIA Report?

Answer: N/A.

25. 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 2022 Annual FOIA Report. If you had less than ten total oldest appeals to close, please indicate that.

Answer: N/A.

26. 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 2023 was 16.22 days, which is down from the average of 19.26 days in FY 2022.

Ten Oldest Consultations

27. In Fiscal Year 2023, did your agency close the ten oldest consultations that were reported pending in Section XII.C. of your Fiscal Year 2022 Annual FOIA Report?

Answer: The NLRB did not have any consultations pending at the close of FY 2022.

28. 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 2022 Annual FOIA Report. If you had less than ten total oldest consultations to close, please indicate that.

Answer: N/A.

Additional Information Regarding Ten Oldest

29. 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 2024.

Answer: While the NLRB significantly reduced its backlog from FY 2022 to FY 2023, four of the five oldest cases that remain open are subject to ongoing litigation. The FOIA attorneys working on those cases continue to engage in discussions with the Plaintiff requester to narrow the scope of the requests and prioritize the processing of the records sought. In FY 2023, the NLRB continued to dedicate substantial resources to work on the oldest requests by utilizing staff from other offices to assist in the review and redaction of voluminous record sets and by making strategic assignments to maximize efficiency.

F. Additional Information about FOIA Processing

30. 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
- Any other information to illustrate the impact of litigation on your overall FOIA administration

Answer: Yes. The Agency is defending two cases in litigation, one that was filed in FY 2022 (originally encompassing seven underlying FOIA requests, but now down to four open requests) and one that was filed during the reporting period. 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 October 2023 status report to the court (the most recent data, at the time of this writing), the Agency has made 35 interim releases to the plaintiff, which required the processing of approximately 179,804 pages, including 23,596 pages released in full or part, 7,619 pages withheld in full, and 148,589 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. The second FOIA request subject to litigation is a challenge to the redactions applied to the record. This case is currently being briefed. The Agency's Reply was filed on January 8, 2024, and the Plaintiff's Reply in Support of its Cross Motion for Summary Judgement is due on February 2, 2024. While this litigation does not require the processing of hundreds of thousands of pages, preparing the Agency's filings has demanded substantial time, diverting one of the FOIA supervisors, as well as managers, from their regular responsibilities.