

NLRB FOIA ANNUAL REPORT

FOR
10/01/2017
THROUGH
09/30/2018

The following **Annual Freedom of Information Act** report covers the Period 10/01/2017, through 09/30/2018, as required by 5 U.S.C. 552.

I. BASIC INFORMATION REGARDING REPORT

1. Name, Title, Address, and Telephone Number

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FOIA Officer

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FOIA Branch - 4th Floor

Washington, DC 20570

202-273-2995

Electronic address for Report on the agency web site.

2. <https://www.nlr.gov/reports-guidance/reports/foia-annual-reports>
How to obtain a copy of the report in paper form.
3. N/A

II. MAKING A FOIA REQUEST

1. <https://www.nlr.gov/foia/where-file-your-foia-request>
FOIAonline.gov

III. ACRONYMS, DEFINITIONS, AND EXEMPTIONS

1. Acronyms used :

Acronym	Definition
DLC	Division of Legal Counsel
NLRB	National Labor Relations Board
OIG	Office of Inspector General

2. Definition of terms used in this report :

- a. **Administrative Appeal** - a request to a federal agency asking that it review at a higher administrative level a FOIA determination made by the agency at the initial request level.
- b. **Average Number** - the number obtained by dividing the sum of a group of numbers by the quantity of numbers in the group. For example, of 3, 7, and 14, the average number is 8.
- c. **Backlog** - the number of requests or administrative appeals that are pending at an agency at the end of the fiscal year that are beyond the statutory time period for a response.
- d. **Component** - for agencies that process requests on a decentralized basis, a "component" is an entity, also sometimes referred to as an Office, Division, Bureau, Center, or Directorate, within the agency that processes FOIA requests. The FOIA now requires that agencies include in their Annual FOIA Report data for both the agency overall and for each principal component of the agency.

- e. **Consultation** - the procedure whereby the agency responding to a FOIA request first forwards a record to another agency for its review because that other agency has an interest in the document. Once the agency in receipt of the consultation finishes its review of the record, it responds back to the agency that forwarded it. That agency, in turn, will then respond to the FOIA requester.
- f. **Exemption 3 Statute** - a federal statute that exempts information from disclosure and which the agency relies on to withhold information under subsection (b)(3) of the FOIA.
- g. **FOIA Request** - a FOIA request is generally a request to a federal agency for access to records concerning another person (i.e., a "third-party" request), or concerning an organization, or a particular topic of interest. FOIA requests also include requests made by requesters seeking records concerning themselves (i.e., "first-party" requests) when those requesters are not subject to the Privacy Act, such as non-U.S. citizens. Moreover, because all first-party requesters should be afforded the benefit of both the access provisions of the FOIA as well as those of the Privacy Act, FOIA requests also include any first-party requests where an agency determines that it must search beyond its Privacy Act "systems of records" or where a Privacy Act exemption applies, and the agency looks to FOIA to afford the greatest possible access. All requests which require the agency to utilize the FOIA in responding to the requester are included in this Report.

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

- h. **Full Grant** - an agency decision to disclose all records in full in response to a FOIA request
- i. **Full Denial** - an agency decision not to release any records in response to a FOIA request because the records are exempt in their entirety under one or more of the FOIA exemptions, or because of a procedural reason, such as when no records could be located.
- j. **Median Number** - the middle, not average, number. For example, of 3, 7, and 14, the median number is 7.
- k. **Multi-Track Processing** - a system in which simple requests requiring relatively minimal review are placed in one processing track and more voluminous and complex requests are placed in one or more other tracks. Requests granted expedited processing are placed in yet another track. Requests in each track are processed on a first in/first out basis.
- l. **Expedited Processing** - an agency will process a FOIA request on an expedited basis when a requester satisfies the requirements for expedited processing as set forth in the statute and in agency regulations.
- m. **Simple Request** - a FOIA request that an agency using multi-track processing places in its fastest (non-expedited) track based on the low volume and/or simplicity of the records requested.
- n. **Complex Request** - a FOIA request that an agency using multi-track processing places in a slower track based on the high volume and/or complexity of the records requested.
- o. **Partial Grant/Partial Denial** - in response to a FOIA request, an agency decision to disclose portions of the records and to withhold other portions that are exempt under the FOIA, or to otherwise deny a portion of the request for a procedural reason.
- p. **Pending Request or Pending Administrative Appeal** - a request or administrative appeal for which an agency has not taken final action in all respects.
- q. **Perfect Request** - a request for records which reasonably describes such records and is made in accordance with published rules stating the time, place, fees (if any) and procedures to be followed.
- r. **Processed Request or Processed Administrative Appeal** - a request or administrative appeal for which an agency has taken final action in all respects.

- s. **Range in Number of Days** - the lowest and highest number of days to process requests or administrative appeals.
 - t. **Time Limits** - the time period in the statute for an agency to respond to a FOIA request (ordinarily twenty working days from receipt of a perfected FOIA request).
3. Concise descriptions of the nine FOIA exemptions :
- a. **Exemption 1** - classified national defense and foreign relations information
 - b. **Exemption 2** - internal agency rules and practices
 - c. **Exemption 3** - information that is prohibited from disclosure by another federal law
 - d. **Exemption 4** - trade secrets and other confidential business information
 - e. **Exemption 5** - inter-agency or intra-agency communications that are protected by legal privileges
 - f. **Exemption 6** - information involving matters of personal privacy
 - g. **Exemption 7** - records or information compiled for law enforcement purposes, to the extent that the production of those records (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions, or (F) could reasonably be expected to endanger the life or physical safety of any individual
 - h. **Exemption 8** - information relating to the supervision of financial institutions
 - i. **Exemption 9** - geological information on wells

IV. EXEMPTION 3 STATUTES

Statute	Type of Information Withheld	Case Citation	Number of Times Relied Upon per Component	Total Number of Times Relied Upon by Agency
5 U.S.C. app 4 § 107(a)(2) (Ethics in Government Act of 1978)	Confidential financial disclosure report pertaining to certain government employees	Meyerhoff v. EPA, 958 F.2d 1498, 1500-02 (9th Cir. 1992); Boyd v. Exec. Office for U.S. Attorneys, 161 F. Supp. 3d 1, 7 (D.D.C. 2015); Seife v. NIH, 874 F. Supp. 2d 248, 254 (S.D.N.Y. 2012).	NLRB HQ : 1	1

V. FOIA REQUESTS

A. Received, Processed and Pending FOIA Requests				
	Number of Requests Pending as of Start of Fiscal Year	Number of Requests Received in Fiscal Year	Number of Requests Processed in Fiscal Year	Number of Requests Pending as of End of Fiscal Year
OIG	4	20	23	1
NLRB HQ	401	1285	1524	162
TOTAL	405	1305	1547	163

* The NLRB reported 403 requests pending with a total of 407 requests pending as of September 30, 2018 in the FY 2017 FOIA Annual Report. The above numbers reflect new data provided by FOIAonline.

B.(1) Disposition of FOIA Requests -- All Processed Requests													
	Number of Full Denials Based on Reasons Other than Exemptions												TOTAL
	Number of Full Grants	Number of Partial Grants / Partial Denials	Number of Full Denials Based on Exemptions	No Records	All Records Referred to Another Agency	Request Withdrawn	Fee-Related Reason	Records Not Reasonably Described	Improper FOIA Request for Other Reasons	Not an Agency Record	Duplicate Request	Other	
OIG	3	8	8	3	0	1	0	0	0	0	0	0	23
NLRB HQ	284	794	50	92	0	201	24	22	11	0	46	0	1524
TOTAL	287	802	58	95	0	202	24	22	11	0	46	0	1547

B.(2) Disposition of FOIA Requests -- Other Reasons for Full Denials Based on Reasons Other than Exemptions		
	Description of Other Reasons for Denials from Chart B.(1) & Number of Times Those Reasons Were Relied Upon	TOTAL

B.(3) Disposition of FOIA Requests -- Number of Times Exemptions Applied														
	Ex. 1	Ex. 2	Ex. 3	Ex. 4	Ex. 5	Ex. 6	Ex. 7(A)	Ex. 7(B)	Ex. 7(C)	Ex. 7(D)	Ex. 7(E)	Ex. 7(F)	Ex. 8	Ex. 9
OIG	0	0	0	0	5	13	0	0	14	5	0	0	0	0
NLRB HQ	0	1	1	43	120	742	155	0	726	123	1	0	0	0
TOTAL	0	1	1	43	125	755	155	0	740	128	1	0	0	0

VI. ADMINISTRATIVE APPEALS OF INITIAL DETERMINATIONS OF FOIA REQUESTS

A. Received, Processed and Pending FOIA Appeals				
	Number of Appeals Pending as of Start of Fiscal Year	Number of Appeals Received in Fiscal Year	Number of Appeals Processed in Fiscal Year	Number of Appeals Pending as of End of Fiscal Year
DLC	1	14	13	2
TOTAL	1	14	13	2

B. Disposition of Administrative Appeals All Processed Appeals					
	Number of Affirmed on Appeal	Number Partially Affirmed & Partially Reversed/Remanded on Appeal	Number of Completely Reversed/Remanded on Appeal	Number of Appeals Closed for Other Reasons	TOTAL
DLC	5	3	2	3	13
TOTAL	5	3	2	3	13

C.(1) Reasons for Denial on Appeal Number of Times Exemptions Applied														
	Ex. 1	Ex. 2	Ex. 3	Ex. 4	Ex. 5	Ex. 6	Ex. 7(A)	Ex. 7(B)	Ex. 7(C)	Ex. 7(D)	Ex. 7(E)	Ex. 7(F)	Ex. 8	Ex. 9
DLC	0	0	0	0	2	3	4	0	2	1	0	0	0	0
TOTAL	0	0	0	0	2	3	4	0	2	1	0	0	0	0

C.(2) Reasons for Denial on Appeal Reasons Other than Exemptions												
	No Records	Records Referred at Initial Request Level	Request Withdrawn	Fee-Related Reason	Records Not Reasonably Described	Improper Request for Other Reasons	Not Agency Record	Duplicate Request or Appeal	Request in Litigation	Appeal Based Solely on Denial for Expedited Processing	Other	
DLC	1	0	3	0	0	0	0	0	0	1	0	
TOTAL	1	0	3	0	0	0	0	0	0	1	0	

C.(3) Reasons for Denial on Appeal Other Reasons		
	Description of Other Reasons for Denials from Chart C.(2) & Number of Times Those Reasons Were Relied Upon	TOTAL

* For FY 2018, the NLRB does not have applicable information for this table.

C.(4) Response Time for Administrative Appeals				
	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days
DLC	20.0	31.77	11.0	152.0
TOTAL	20.0	31.77	11.0	152.0

C.(5) Ten Oldest Pending Administrative Appeals										
	10th Oldest Appeal and Number of Days Pending	9th	8th	7th	6th	5th	4th	3rd	2nd	Oldest Appeal and Number of Days Pending
DLC									2018-09-11 13	2018-09-04 18
TOTAL									2018-09-11 13	2018-09-04 18

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

A. Processed Requests -- Response Time for All Processed Perfected Requests												
	SIMPLE				COMPLEX				EXPEDITED			
	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days
OIG	15.0	14.52	< 1	59.0	-	-	-	-	9.0	9.0	9.0	9.0
NLRB HQ	25.0	63.45	< 1	471.0	-	-	-	-	10.0	24.72	2.0	148.0
TOTAL	24.0	62.73	< 1	471.0	-	-	-	-	9.5	24.33	2.0	148.0

B. Processed Requests Response Time for Perfected Requests in Which Information Was Granted												
	SIMPLE				COMPLEX				EXPEDITED PROCESSING			
	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days
OIG	17.0	20.55	1.0	59.0	-	-	-	-	-	-	-	-
NLRB HQ	25.0	62.38	< 1	471.0	-	-	-	-	9.0	23.16	2.0	148.0
TOTAL	25.0	61.94	< 1	471.0	-	-	-	-	9.0	23.16	2.0	148.0

C. Processed Requests Response Time in Day Increments														
Simple Requests														
	1-20 Days	21-40 Days	41-60 Days	61-80 Days	81-100 Days	101-120 Days	121-140 Days	141-160 Days	161-180 Days	181-200 Days	201-300 Days	301-400 Days	401+ Days	TOTAL
OIG	18	1	2	0	0	0	0	0	0	0	0	0	0	21
NLRB HQ	640	213	98	76	53	50	42	26	38	31	88	39	3	1397
TOTAL	658	214	100	76	53	50	42	26	38	31	88	39	3	1418

Complex Requests														
	1-20 Days	21-40 Days	41-60 Days	61-80 Days	81-100 Days	101-120 Days	121-140 Days	141-160 Days	161-180 Days	181-200 Days	201-300 Days	301-400 Days	401+ Days	TOTAL
OIG	0	0	0	0	0	0	0	0	0	0	0	0	0	0
NLRB HQ	0	0	0	0	0	0	0	0	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0	0	0	0	0	0	0	0	0

* The NLRB does not formally use multi-track processing for FOIA requests.

Expedited Requests														
	1-20 Days	21-40 Days	41-60 Days	61-80 Days	81-100 Days	101-120 Days	121-140 Days	141-160 Days	161-180 Days	181-200 Days	201-300 Days	301-400 Days	401+ Days	TOTAL
OIG	1	0	0	0	0	0	0	0	0	0	0	0	0	1
NLRB HQ	27	6	1	1	1	1	1	1	0	0	0	0	0	39
TOTAL	28	6	1	1	1	1	1	1	0	0	0	0	0	40

D. Pending Requests All Pending Perfected Requests									
	SIMPLE			COMPLEX			EXPEDITED		
	Number Pending	Median Number of Days	Average Number of Days	Number Pending	Median Number of Days	Average Number of Days	Number Pending	Median Number of Days	Average Number of Days
OIG	1	8.0	8.0	0	-	-	0	-	-
NLRB HQ	153	39.0	99.67	0	-	-	1	289.0	289.0
TOTAL	154	39.0	99.07	0	-	-	1	289.0	289.0

* The NLRB does not formally use multi-track processing for FOIA requests.

E. Pending Requests Ten Oldest Pending Perfected Requests

	10th Oldest Request and Number of Days Pending	9th	8th	7th	6th	5th	4th	3rd	2nd	Oldest Request and Number of Days Pending
OIG										2018-09-18 8
NLRB HQ	2017-05-23 340	2017-05-18 341	2017-05-11 311	2017-04-03 376	2017-03-27 381	2017-03-09 394	2017-03-03 404	2017-03-03 404	2017-03-03 404	2017-02-07 414
TOTAL	2017-05-23 340	2017-05-18 341	2017-05-11 311	2017-04-03 376	2017-03-27 381	2017-03-09 394	2017-03-03 404	2017-03-03 404	2017-03-03 404	2017-02-07 414

VIII. REQUESTS FOR EXPEDITED PROCESSING AND REQUESTS FOR FEE WAIVER

A. Requests for Expedited Processing					
	Number Granted	Number Denied	Median Number of Days to Adjudicate	Average Number of Days to Adjudicate	Number Adjudicated Within Ten Calendar Days
OIG	1	2	8.0	7.33	2
NLRB HQ	36	92	5.0	9.3	108
TOTAL	37	94	5.0	9.25	110

B. Requests for Fee Waiver				
	Number Granted	Number Denied	Median Number of Days to Adjudicate	Average Number of Days to Adjudicate
OIG	0	2	28.0	28.0
NLRB HQ	5	164	4.0	14.83
TOTAL	5	166	4.0	14.99

IX. FOIA PERSONNEL AND COSTS

	PERSONNEL			COSTS		
	Number of Full-Time FOIA Employees	Number of Equivalent Full-Time FOIA Employees	Total Number of Full-Time FOIA Staff	Processing Costs	Litigation-Related Costs	Total Costs
DLC	0	1.0	1.0	\$37,663.00	\$0.00	\$37,663.00
OIG	0	1.0	1.0	\$4,642.00	\$0.00	\$4,642.00
NLRB HQ	16	0.0	16.0	\$2,034,778.00	\$7,003.00	\$2,041,781.00
TOTAL	16	2.0	18.0	\$2,077,083.00	\$7,003.00	\$2,084,086.00

X. FEES COLLECTED FOR PROCESSING REQUESTS

	Total Amount of Fees Collected	Percentage of Total Costs
NLRB HQ	\$6,725.00	0.00
TOTAL	\$6,725.00	0.32

XI. FOIA REGULATIONS

A. Number of Times Subsection (c) Used	
	Number of Times Subsection (c) Used

* For FY 2018, the NLRB does not have applicable information for this table.

B. Number of Subsection (a)(2) Postings		
	Number of Items Posted by FOIA Office	Number of Items Posted by Program
NLRB HQ	1537	3585
TOTAL	1537	3585

XII. BACKLOGS, CONSULTATIONS, AND COMPARISONS

A. Backlogs of FOIA Requests and Administrative Appeals		
	Number of Backlogged Requests as of End of Fiscal Year	Number of Backlogged Appeals as of End of Fiscal Year
NLRB HQ	87	0
TOTAL	87	0

B. Consultations on FOIA Requests Received, Processed, and Pending Consultations				
	Number of Consultations Received from Other Agencies that Were Pending as of Start of the Fiscal Year	Number of Consultations Received from Other Agencies During the Fiscal Year	Number of Consultations Received from Other Agencies that Were Processed During the Fiscal Year	Number of Consultations Received from Other Agencies that Were Pending as of End of the Fiscal Year

* For FY 2018, the NLRB did not receive any requests for consultations.

C. Consultations on FOIA Requests Ten Oldest Consultations Received from Other Agencies and Pending										
	10th Oldest Consultation and Number of Days Pending	9th	8th	7th	6th	5th	4th	3rd	2nd	Oldest Consultation and Number of Days Pending
TOTAL										

* For FY 2018, the NLRB did not receive any requests for consultations.

D. Comparison of Numbers of Requests from Previous and Current Annual Report Requests Received, Processed, and Backlogged				
	NUMBER OF REQUESTS RECEIVED		NUMBER OF REQUESTS PROCESSED	
	Number Received During Fiscal Year from Last Year's Annual Report	Number Received During Fiscal Year from Current Year's Annual Report	Number Processed During Fiscal Year from Last Year's Annual Report	Number Processed During Fiscal Year from Current Annual Report
OIG	29	20	25	23
NLRB HQ	2189	1285	2080	1524
TOTAL	2218	1305	2105	1547

	Number of Backlogged Requests as of End of the Fiscal Year from Previous Annual Report	Number of Backlogged Requests as of End of the Fiscal Year from Current Annual Report
NLRB HQ	295	87
TOTAL	295	87

E. Comparison of Numbers of Administrative Appeals from Previous and Current Annual Report Appeals Received, Processed, and Backlogged				
	NUMBER OF APPEALS RECEIVED		NUMBER OF APPEALS PROCESSED	
	Number Received During Fiscal Year from Last Year's Annual Report	Number Received During Fiscal Year from Current Annual Report	Number Processed During Fiscal Year from Last Year's Annual Report	Number Processed During Fiscal Year from Current Annual Report
DLC	11	14	12	13
TOTAL	11	14	12	13

	Number of Backlogged Appeals as of End of the Fiscal Year from Previous Annual Report	Number of Backlogged Appeals as of End of the Fiscal Year from Current Annual Report
DLC	1	0
TOTAL	1	0