



**2019 Chief FOIA Officer Report**  
**NATIONAL LABOR RELATIONS BOARD**

# National Labor Relations Board

## 2019 Chief FOIA Officer Report

### **Section 1: Steps Taken to Apply the Presumption of Openness**

The guiding principle underlying DOJ's [FOIA Guidelines](#) is the presumption of openness.

Please answer the following questions in order to describe the steps your agency has taken to ensure that the presumption of openness is being applied to all decisions involving the FOIA. You may also include any additional information that illustrates how your agency is working to apply the presumption of openness.

#### **A. FOIA Leadership**

1. The FOIA requires each agency to designate a Chief FOIA Officer who is a senior official at least at the Assistant Secretary or equivalent level. Is your agency's Chief FOIA Officer at or above this level?

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

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

*Answer: Currently, Alice B. Stock, Associate General Counsel in the Office of General Counsel, is serving as the NLRB Chief FOIA Officer.*

#### **B. FOIA Training**

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

*Answer: Yes, see below.*

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

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

- *DOJ OIP Training: The Freedom of Information Act for Attorneys and Access Professionals*
- *DOJ OIP Training: Advanced Freedom of Information Act*
- *DOJ OIP Training: FOIA Litigation Seminar*
- *DOJ OIP Training: Continuing FOIA Education*
- *DOJ OIP Best Practices Workshop Series: Reducing Backlogs and Improving Timeliness*
- *American Society of Access Professionals (ASAP) 11th National Training Conference Arlington, Virginia*
- *ASAP 2018 FOIA-Privacy Act Training Workshop — Chicago, Illinois*
- *Microsoft eDiscovery Workshop*

*The NLRB FOIA Branch promotes and encourages use of the DOJ training tools such as the FOIA Professional e-Learning Module and the Federal Employee e-Learning Module for new FOIA Branch employees and Agency employees who are temporarily detailed to the FOIA Branch.*

5. 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: 95% of NLRB FOIA Branch professionals attended FOIA training.*

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

*Answer: This is not applicable to the NLRB. The NLRB FOIA Officer promotes staff participation in substantive FOIA trainings to ensure that the FOIA Branch staff has the proper knowledge, skills and tools to efficiently perform its work.*

## C. Outreach

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

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

- *DOJ OIP Best Practices Workshop Series: Reducing Backlogs and Improving Timeliness*
- *DOJ OIP Sunshine Week 2018 Celebration*
- *Sunshine Week 2019 at the National Archives: The 10<sup>th</sup> Anniversary Celebration of OGIS*
- *2019 National Sunshine Week US Census Bureau: Taking Stock Access to Information and Open Government Data*

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

*The FOIA Officer attended the Deloitte FOIA Think Tank, which was a session with heads of the FOIA offices for DHS, IRS, Navy, and other agencies. The primary focus of the meeting was to discuss ways to leverage technology to improve efficiency. It was a novel opportunity to discuss how agencies are interpreting application of Exemption 7 in open litigation. The most unique aspect of the talk was that while it meant to focus on technology, the conversation shifted to the professionalization of FOIA staff and work within agencies. The participants discussed tips and strategies for increasing the profile of a FOIA office's work within an agency.*

*The FOIA Officer and the Deputy Assistant General Counsel attended an inter-agency roundtable hosted by the Department of Education FOIA Assessment Project Team. The purpose of the roundtable was to gather and share management best practices and to brainstorm ideas to address and improve common FOIA problems. The roundtable discussion centered around the project vision of realizing exceptional FOIA service as it relates to timeliness, accuracy and quality. The attendees were experienced FOIA professionals from "peer" agencies (in terms of FOIA volume and/or agency size) including the Department of Energy, National Labor Relations Board, U.S. Postal Service, Pension Benefit Guaranty Corporation, and Health & Human Services. There were facilitators from the Office of Government Information Services (OGIS) and/or the Department of Justice.*

*The FOIA Officer attended the first of a new training, the FEDWG Office365 eDiscovery User Group. The attendees work to provide inter-agency peer-to-peer support, benchmarking, and an*

*audience for potential briefings and training sessions relating to the current and future state of Office 365's eDiscovery, In-Place Hold, and Advanced eDiscovery functionality.*

#### **D. Other Initiatives**

8. Describe any efforts your agency has undertaken to inform non-FOIA professionals of their obligations under the FOIA. In 2016, the Department [publicized](#) FOIA-related performance standards for employees that have any role in administering the FOIA, including non-FOIA professionals. Please also indicate whether your agency has considered including FOIA-related performance standards in employee work plans for employees who have any role in administering the FOIA.

*Answer: The FOIA Officer conducted FOIA overview presentations to regional staff visiting headquarters as a part of the NLRB Washington Exchange Program, new Regional Directors, summer law interns, and staff in field offices. At these trainings, FOIA materials were provided with information regarding Agency employees' FOIA obligations as they perform the Agency's mission-related activities, along with FOIA Branch employees' contact information.*

*Currently, the NLRB does not have any plans to include FOIA-related performance standards in employee work plans for employees who have any role in administering the FOIA. The FOIA Branch employee work plans contain FOIA-related performance standards.*

9. 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: Since the enactment of the FOIA Improvement Act of 2016, the FOIA Branch staff has been trained to complete a foreseeable harm analysis for each record where a proposed FOIA exemption or redaction is identified, which includes contacting subject matter experts for their opinion regarding the release of records and for their input on what, if any, foreseeable harm exists. To ensure the presumption of openness is being applied, the responsive records undergo at least two, and occasionally three, levels of review.*

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

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

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

1. For Fiscal Year 2018, 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 2018 Annual FOIA Report.

*Answer: For Fiscal Year 2018, the NLRB adjudicated requests for expedited processing in an average of 9.25 days.*

2. If your agency's average number of days to adjudicate requests for expedited processing was above ten calendar days, please describe the steps your agency will take to ensure that requests for expedited processing are adjudicated within ten calendar days or less.

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

3. During the reporting period, did your agency conduct a self-assessment of its FOIA program? If so, please describe the methods used, such as reviewing Annual Report data, using active workflows and track management, reviewing and updating processing procedures, etc. Note: In September 2017, OIP released a FOIA Self-Assessment Toolkit as a resource for agencies conducting a self-assessment of their FOIA program. The Toolkit is available on OIP's website for all agencies to use.

*Answer: With FOIAonline, the FOIA Branch regularly creates various reports to track the review status of FOIA requests, response times, and the completion of review tasks. Additionally, the FOIA Branch compares the Quarterly Reports and the FOIA Annual Reports to assess quarterly and yearly trends and levels of productivity.*

*In the future, the FOIA Branch plans to combine the power of the FOIAonline reporting features with the DOJ FOIA Self-Assessment Toolkit, to conduct helpful assessments so that the FOIA Branch can implement the most efficient processing.*

4. The FOIA Improvement Act of 2016 requires additional notification to requesters about the services provided by the agency's FOIA Public Liaison. Please provide an estimate of the number of times requesters sought assistance from your agency's FOIA Public Liaison during FY 2018 (please provide a total number or an estimate of the number).

*Answer: The FOIA Public Liaison assisted approximately 95 requesters in Fiscal Year 2018.*

5. Please describe the best practices used to ensure that your FOIA system operates efficiently and effectively and any challenges your agency faces in this area.

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

### **Section III: Steps Taken to Increase Proactive Disclosures**

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

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

1. Provide examples of material that your agency has proactively disclosed during the past reporting year, including links to the posted material

*Answer: The NLRB makes numerous proactive disclosures as follows:*

- A. *Since July 2017, the FOIA Branch has made proactive disclosures by making frequently requested records and records requested by the media publicly available on FOIAonline.*
- B. *The NLRB E-Reading Room contains various NLRB decisions, information and other materials which are of interest to the public. Links to the information are located on the public website at <https://www.nlr.gov/news-outreach/foia/e-reading-room>.*

## E-Reading Room

The E-Reading Room is a collection of NLRB materials that may be found elsewhere on this site that are frequently requested or of broad general interest to the public. Here, the Agency keeps links to its rules and regulations, links to case summaries and publications.

- [Decisions and Orders of the NLRB](#)
- [Weekly Summary of NLRB Cases](#)
- [News Releases](#)
- [NLRB Rules and Regulations](#)
- [NLRB FOIA Regulations](#)
- [NLRB Public Notices](#)
- [NLRB Manuals](#)
- [Miscellaneous NLRB Publications](#)
- [NLRB Certification of Compliance with FOIA's Reading Room Requirements \(October 2008\)](#)
- [NLRB's Improvement Plan Under Executive Order 13392 \(FOIA\) \(June 2006\)](#)

- C. *From the FOIA Homepage on the Agency's website, the FOIA Branch updates the Frequently Requested Records page and has recently made several proactive disclosures by providing hyperlinks/access to certain releasable Agency records. The Frequently Requested Records web page is located at <https://www.nlr.gov/news-publications/more->*



*information/foia/frequently-requested-records. In an effort to increase the number of proactive disclosures, there are links to the following Agency records:*

- i) Frequently Requested Records in FOIA cases are available on FOIAonline, and*
- ii) Representation Petitions and Certifications / Unfair Labor Practice Charges and Dismissal Letters, and*
- iii) Cases and Organizations of Interest.*

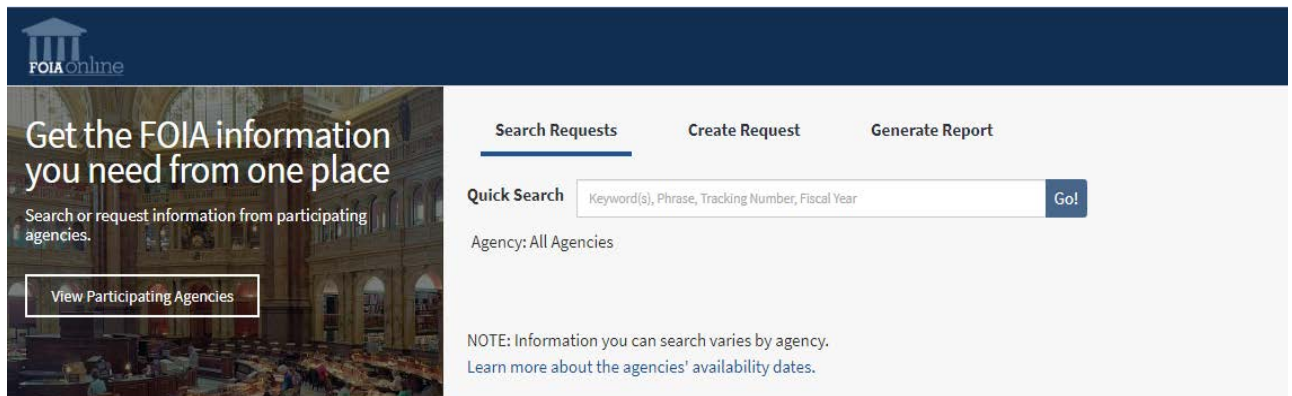
[Home](#) » [News & Publications](#) » [More Information](#) » [FOIA](#)

## Frequently Requested Records

FOIA requests are generally "third-party" requests or concern an organization, or a particular topic of interest. This section includes some of the NLRB's frequently requested records.

- [As of August 1, 2017, frequently requested records may be found on FOIAonline](#)
- [Representation Petitions and Certifications \(RD, RM, & RC\) / Unfair Labor Practice Charges and Dismissal Letters \(CB, CC, CD, CP, CG & CE\)](#)
- [Cases and Organizations of Interest](#)

- i. Frequently Requested Records in FOIA cases are available by searching on FOIAonline.*



The screenshot shows the FOIAonline website interface. At the top left is the FOIAonline logo. Below it, a large banner reads "Get the FOIA information you need from one place" with a subtext "Search or request information from participating agencies." and a "View Participating Agencies" button. To the right, there are three navigation tabs: "Search Requests" (selected), "Create Request", and "Generate Report". Below these is a "Quick Search" section with a text input field containing the placeholder "Keyword(s), Phrase, Tracking Number, Fiscal Year" and a "Go!" button. Underneath the search field, it says "Agency: All Agencies". At the bottom of the search section, there is a note: "NOTE: Information you can search varies by agency. Learn more about the agencies' availability dates."

- ii. *In response to receiving several monthly requests for certain types of Agency records filed with or issued by the twenty-six Regional Offices, the FOIA Branch created a webpage where requesters may directly search for these records. These records are: Representation Petitions and Certifications in RD, RM, & RC cases; and Unfair Labor Practice Charges and Dismissal Letters in CB, CC, CD, CP, CG, & CE cases. The FOIA Branch began posting the January 2017 records online at: <https://www.nlr.gov/region-monthly-uploads>. On a monthly basis, the FOIA Branch tries to maintain and update this webpage with new responsive records in accordance with the FOIA.*

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## Representation Petitions and Certifications / Unfair Labor Practice Charges and Dismissal Letters

This page contains Representation Petitions and Certifications in RD, RM, & RC cases as well as Unfair Labor Practice Charges and Dismissal Letters in CB, CC, CD, CP, CG, & CE cases. The documents are organized by document type, region, and date.

Note: Records for certain NLRB offices are grouped together as follows:

1. **Region 1:** Boston, MA Regional Office and Hartford, CT Subregional Office
2. **Region 10:** Atlanta, GA Regional Office, Birmingham, AL Subregional Office, and Nashville, TN Resident Office.
3. **Region 15:** New Orleans, LA Regional Office, Memphis, TN Subregional Office, and Little Rock, AR Resident Office
4. **Region 12:** Tampa FL Regional Office, Hato Rey, PR Subregional Office, and Miami, FL Resident Office.
5. **Region 14:** St. Louis, MO Regional Office, Overland Park, KS Subregional Office, and Tulsa, OK Resident Office.
6. **Region 18:** Minneapolis, MN Regional Office and Milwaukee, WI Subregional Office.
7. **Region 19:** Seattle, WA Regional Office and Portland, OR Subregional Office
8. **Region 20:** San Francisco, CA Regional Office and Honolulu, HI Subregional Office
9. **Region 25:** Indianapolis, IN Regional Office and Peoria, IL Subregional Office

Region Year Month Document Type (Select One)

All 2017 Jan All Apply

Select any item from dropdown and click on Apply to see results.

- i. *The Cases and Organizations of Interest web page, which is located at <https://www.nlr.gov/cases-decisions/cases/cases-and-organizations-interest>, provides links to the case pages where documents about each case may be found, and provides direct links to public records available on the Agency website.*

## Cases and Organizations of Interest

Every case in the Agency's Next Generation Case Management System (NxGen) has a corresponding "case page" that allows the public to see activity in that case and provides direct links to available public documents. With this page, the Agency is taking its first step towards presenting lists of cases for organizations that are of interest to the public. We expect to maintain this page, with organizations being added or removed as circumstances warrant. Additionally, our future plans are to present an "organization page" for most organizations involved in cases before the Agency.

- Bridgewater Associates
- Columbia University
- Google
- Harvard College
- Ithaca College
- Lyft Inc
- McDonald's
- Menard, Inc
- National Football League
- Northwestern University
- Postmates, Inc
- Tesla Inc.
- The New School
- Trump Companies
- Volkswagen Group of America, Inc.
- Walmart
- Yale University

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5. **Region 14:** St. Louis, MO Regional Office, Overland Park, KS Subregional Office, and Tulsa, OK Resident Office.
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8. **Region 20:** San Francisco, CA Regional Office and Honolulu, HI Subregional Office
9. **Region 25:** Indianapolis, IN Regional Office and Peoria, IL Subregional Office

Region: All | Year Month: 2017 | Jan | Document Type (Select One): All | Apply

Select any item from dropdown and click on Apply to see results.

D. Two categories of memoranda issued by the NLRB’s Division of Advice are released to the public on the Agency website at <https://www.nlr.gov/cases-decisions/advice-memos>. These are memoranda directing dismissal of unfair labor practice charges that are required to be released pursuant to *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132 (1975), and Memoranda in closed cases that are not required by law to be released but are released in the General Counsel's discretion. On a monthly basis, the FOIA Branch reviews and proactively posts the Advice Memoranda records in accordance with the FOIA.

## Advice Memos

Two categories of advice memoranda are released to the public: memoranda directing dismissal of the charge that are required to be released pursuant to *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132 (1975), and memoranda in closed cases that are not required by law to be released but are released in the General Counsel's discretion. The table below has been restructured and memos are now listed by date of issuance instead of date of release.

[Click HERE](#) to see a list of the Recently Released Advice Memos.

[Click HERE](#) to see a list of Recent Advice Memos Dealing with Handbook Rules post-*Boeing*.

### Issuance Date

- Any - ▾

Apply

<u>Case Number</u>	<u>Case Name</u>	<u>Issuance Date</u> ▾	<u>Release Date</u>
13-CA-163062, ET AL.	Uber Technologies	04/16/2019	05/14/2019
19-CB-228483, ET AL.	Inlandboatmen's Union (Crowley Marine Services)	04/03/2019	05/14/2019
16-CA-231249	Vistra Energy	04/01/2019	05/14/2019

- E. Recently, the NLRB created a separate webpage for the posting of Advice Memoranda specifically involving various issues related to handbook rules, following the NLRB's seminal 2017 case, *The Boeing Co.*, that established a new standard in employers' maintenance of work rules, at: <https://www.nlr.gov/news-publications/nlr-memoranda/advice-memos/advice-memoranda-dealing-handbook-rules-post-boeing>

## Advice Memoranda Dealing with Handbook Rules post-Boeing

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In its decision in *The Boeing Company*, 365 NLRB No. 154 (Dec. 14, 2017), the Board reassessed its standard for determining when the mere maintenance of a work rule violates Section 8(a)(1) of the Act. Overturning the first prong of *Lutheran Heritage Village-Livonia*, 343 NLRB 646 (2004), the Board established a new standard that focuses on the balance between the rule's negative impact on employees' ability to exercise their Section 7 rights and the rule's connection to employers' right to maintain discipline and productivity in their workplace.

The following is a list of Advice memos dealing with various types of handbook rules post-*Boeing*.

<u>Case Number</u>	<u>Case Name</u>	<u>Issuance Date</u> ▼	<u>Release Date</u>
28-CA-216065	Nuance Transcription Services, Inc.	11/14/2018	03/14/2019
10-CA-207362	Blue Cross Blue Shield of Tennessee	08/10/2018	09/14/2018
27-CA-203915, ET AL.	Colorado Professional Security Services	08/07/2018	04/15/2019
21-CA-209339	ADT, LLC	07/31/2018	03/14/2019
05-CA-206213	Washington Post	07/06/2018	09/14/2018
12-CA-211123	Ally Financial	07/05/2018	05/14/2019
09-CA-210124	Wilson Health	06/20/2018	12/17/2018

F. The Decisions Homepage, which is located at <https://www.nlr.gov/cases-decisions/decisions>, provides Board Decisions, Administrative Law Judge Decisions, Briefs and many other records as illustrated below.

## Decisions

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### Administrative Law Judge Decisions

After a Regional Director issues a complaint in an unfair labor practice case, an NLRB Administrative Law Judge hears the case and issues a decision and recommended order, which can then be appealed to the Board in Washington.

### Appellate Court

After the Board issues a decision and final order in a contested unfair labor practice case, any person aggrieved may seek review of the final order, and the Board may seek enforcement of its order, in an appropriate United States Court of Appeals.

### Board Decisions

Online NLRB decisions are offered in PDF format. Slip opinions are subject to revision before publication in bound volumes.

### Contempt, Compliance, and Special Litigation Branch Briefs

The Contempt, Compliance, and Special Litigation Branch (CCSLB) represents the Board and the General Counsel in all suits not statutorily based on Sections 10(e) and (f) of the Act, and conducts civil and criminal contempt litigation to obtain compliance with Board orders.

### Information on Decisions Issued by January 4, 2012 Board Member Appointees

On January 4, 2012, three individuals were named as recess appointments to the National Labor Relations Board. On June 26, 2014, the United States Supreme Court ruled in *NLRB v. Noel Canning*, 134 S. Ct. 2550 (2014), that these appointments to the Board were not valid.

### Notable Board Decisions

The Office of the Executive Secretary has identified the following Notable Board Decisions that may be of special interest to the labor-management community.

### Regional Election Decisions

Three types of Regional election Decisions are available here:

- **Decisions and Directions of Elections (D&DEs)** - the Regional Director concludes that the prerequisites to an election have been satisfied and directs that an election be conducted.
- **Decisions and Orders (D&Os)** - the Regional Director determines that an election should not be conducted and the petition is dismissed.
- **Regional Director Supplemental Decision on Objections and Challenges** - a post-election decision resolving objections and/or challenges with or without a post-election hearing.

### Unpublished Board Decisions

The Board decisions listed below are not intended or appropriate for publication and are not binding precedent, except with respect to the parties in the specific case. The Board began posting all unpublished decisions here on February 4, 2011. Please note that this page does not contain a complete collection of all unpublished Board decisions dated prior to February 4, 2011.

G. *The News & Publications Homepage, which is located at <https://www.nlr.gov/news-publications>, provides News Releases, Publications, NLRB Memoranda, and links to More Information, including the NLRB Mobile App and Sunshine Act Notices.*

## News & Publications

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The Office of Congressional and Public Affairs is dedicated to helping journalists and the general public understand the mission and activities of the National Labor Relations Board. This is the place to find news about significant cases, settlements, complaints and decisions, as well as background material on the Agency and its leaders.

**NLRB Memoranda**

**News**

**Publications**

**More Information**

H. *In the Graphs & Data Homepage, which is located at <https://www.nlr.gov/reports/nlr-performance-reports/graphs-data>, the public may download data on Recent Charge and Petition Filings and the Tally of Ballots from elections, as well as obtain graphs and tables regarding the Agency's mission.*

## Graphs & Data

The National Labor Relations Board (NLRB) has counted millions of votes, investigated hundreds of thousands of unfair labor practice charges, and issued thousands of decisions. The numbers tell an important part of the Agency's story. Making what we do accessible to the public is an important part of the NLRB's mission. In this section, you will find charts and tables that reflect the Agency's work, and downloadable data for your own analysis.

Over time, this page will be updated and expanded, and we welcome your input. Please forward comments and suggestions to [publicinfo@nlrb.gov](mailto:publicinfo@nlrb.gov).

**Graphs & Tables**

- Charges and Complaints
- Petitions and Elections
- Decisions
- Litigation
- Remedies

**Data**

- Recent Filings
- Tally of Ballots



- I. *The Reports and Guidance Homepage, which is located at <https://www.nlr.gov/reports>, provides NLRB Manuals, General Counsel Memoranda, Operation-Management Memoranda and more records as shown below.*

## Reports

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The NLRB offers many reports on the web for public review. Where available, archived versions are also posted.

**NLRB Reports**

- Performance and Accountability Reports (PAR)
- Annual Reports
- Weekly Summaries of Decisions
- 10(j) Injunction Activity
- Election Reports
- Summary of Operations

**FOIA Reports**

- FOIA Annual Reports
- FOIA Quarterly Reports
- Chief FOIA Officer Report

**Inspector General Reports**

- OIG Audit Reports
- OIG Inspection Reports
- OIG Semiannual Reports

**Other Reports**

- Plan for Retrospective Analysis of Existing Rules
- Justifications of Performance Budgets for Committee on Appropriations
- Strategic Plan, 2014-2018
- Federal Activities Inventory Reform Act (FAIR) Reports
- No FEAR Act Reports
- Government Performance & Results Act (GPRA) Reports
- Employee Satisfaction Surveys
- Sustainability Plan
- Buy American Act Report
- Common Identification Issuance Report (HSD12)
- Service Contract Inventories

2. Please describe how your agency identifies records that have been requested and released three or more times (and are therefore required to be proactively disclosed pursuant to 5 U.S.C. § 552(a)(2)(D)).

*Answer: In most cases, the FOIA Officer and FOIA Managers review incoming FOIA requests and make the FOIA request assignments. With regular and frequent review of incoming requests, they can identify duplicate requests and ensure that these records are proactively disclosed.*

*Additionally, the FOIA Branch managers and/or processors often run searches in FOIAonline to identify the FOIA requests that seek the same responsive records from a particular case file.*

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.

*Answer: The responsive records posted on FOIAonline are available to the public. Due to FOIAonline's powerful search engine, the public can easily search the system and obtain records made publicly available through prior FOIA requests. Currently, the NLRB is revising the Agency's public website to highlight and explain available Agency case records and to make it easier for the public to locate and access records.*

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

*Answer: After conducting a self-assessment last year, the FOIA Branch began to: 1) upgrade the FOIA Homepage to make it more user friendly and easier to navigate, and 2) work with OCIO to make previously-released records, which are publicly available on the FOIAonline website, also available through the Agency website.*

#### **Section IV: Steps Taken to Greater Utilize Technology**

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

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

1. Is your agency leveraging technology to facilitate efficiency in conducting searches, including searches for emails? If so, please describe the type of technology used. If not, please explain why and please describe the typical search process used instead.

*Answer: The Agency currently uses an eDiscovery tool to conduct searches of Microsoft Exchange, SharePoint, and OneDrive for Business. This year, the FOIA Officer attended the Microsoft eDiscovery Workshop which is a private sector training that informs participants about the enabling on-demand access to a shared pool of resources such as networks, servers, etc. There are several advantages of this technology. First, as file retention moves to electronic storage and the cloud, agencies have a one-stop repository for all its electronic records. This arrangement facilitates more cost effective searching of records including emails, SharePoint, and OneDrive. Our agency primarily uses the tool to conduct searches for business emails and Agency employees' calendars. Another advantage is the cost-effective nature of the product, because it is a tool that can be used seamlessly by a FOIA office, an E-Discovery office, and the Office of the Chief Information Officer for different kinds of mission functions. Third, the nature of the tool allows a FOIA office to more quickly conduct and process requests for emails. The other interesting aspect of this Workshop training is that the participants tend to head the E-Discovery office of largest insurance businesses, some federal agencies, and E-Discovery practices. It is insightful to learn from these firms about the evolving technology for managing massive amounts of data effectively and how that technology can be used in FOIA cases. Over time, agency participants have discussed and later launched a new training series catered to federal agencies.*

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

*Answer: Yes. Recently, the FOIA Managers conducted a thorough review of the NLRB FOIA Homepage by reviewing the DOJ FOIA Self-Assessment Toolkit and the OIP Guidance: Agency FOIA Websites 2.0. The FOIA Branch is in the process of completely revising the NLRB FOIA Homepage.*

3. Did your agency successfully post all four quarterly reports for Fiscal Year 2018?

*Answer: Yes, the NLRB posted the four quarterly reports for Fiscal Year 2018, but the Third Quarter report did not appear on FOIA.gov. The FOIA Branch worked with DOJ OIP to resolve this issue. The reports are posted on the NLRB website at: <https://www.nlr.gov/reports-guidance/reports/foia-quarterly-reports>.*

4. If your agency did not successfully post all quarterly reports, with information appearing on FOIA.gov, please explain why and provide your agency's plan for ensuring that such reporting is successful in Fiscal Year 2019.

*Answer: This is not applicable to the NLRB.*

5. The FOIA Improvement Act of 2016 requires all agencies to post the raw statistical data used to compile their Annual FOIA Reports. Please provide the link to this posting for your agency's Fiscal Year 2017 Annual FOIA Report and, if available, for your agency's Fiscal Year 2018 Annual FOIA Report.

*Answer: The NLRB 2017 FOIA Annual Report and the NLRB 2018 FOIA Annual Report are posted on the Agency website at: <https://www.nlr.gov/reports-guidance/reports/foia-annual-reports>.*

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

*Answer: The FOIA Branch can post Agency records online quickly with FOIAonline. FOIAonline has an excellent search engine, which is user friendly for the public. Due to the FOIAonline tracking tool, the FOIA Branch has increased its FOIA workflow process. The FOIAonline report tool allows the FOIA Branch to produce custom reports for staff and management and to create metrics to increase efficiency. The FOIAonline report tool enables the FOIA Branch and the staff to easily conduct self-assessments. Additionally, the FOIA Branch uses an eDiscovery tool to conduct searches of Microsoft Exchange, SharePoint, and OneDrive, and uses Business Relativity for FOIA cases involving voluminous responsive records.*

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

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

For the figures required in this Section, please use the numbers contained in the specified sections of your agency's 2018 Annual FOIA Report and, when applicable, your agency's 2017 Annual FOIA Report.

### **A. Simple Track**

Section VII.A of your agency's Annual FOIA Report, entitled "FOIA Requests – Response Time for All Processed Requests," includes figures that show your agency's average response times for processed requests. For agencies utilizing a multi-track system to process requests, there is a category for "simple" requests, which are those requests that are placed in the agency's fastest (non-expedited) track, based on the low volume and/or simplicity of the records requested.

1. Does your agency utilize a separate track for simple requests? If your agency uses a multi-track system beyond simple, complex, and expedited to process requests, please describe the tracks you use and how they promote efficiency.

*Answer: No. The NLRB does not have a separate track for simple requests pursuant to NLRB's current Rules and Regulations. However, the FOIA Branch manually reviews each FOIA request and makes an effort to identify and process the simple requests first.*

2. If your agency uses a separate track for simple requests, was the agency overall average number of days to process simple requests twenty working days or fewer in Fiscal Year 2018?

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

3. Please provide the percentage of requests processed by your agency in Fiscal Year 2018 that were placed in your simple track.

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

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

*Answer: The average number of days taken to process all non-expedited requests was over twenty working days.*

## **B. Backlogs**

Section XII.A of your agency's Annual FOIA Report, entitled "Backlogs of FOIA Requests and Administrative Appeals" shows the numbers of any backlogged requests or appeals from the fiscal year. You should refer to these numbers from your Annual FOIA Reports for both Fiscal Year 2016 and Fiscal Year 2017 when completing this section of your Chief FOIA Officer Report.

### **BACKLOGGED REQUESTS**

5. If your agency had a backlog of requests at the close of Fiscal Year 2018, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2017?

*Answer: Yes. The NLRB had a FOIA request backlog of 295 at the end of Fiscal Year 2017. At the end of Fiscal Year 2018, the NLRB had a reduced FOIA request backlog of 87, which reflects a significant backlog decrease of 70.51%.*

6. If not, did your agency process more requests during Fiscal Year 2018 than it did during Fiscal Year 2017?

*Answer: This is not applicable to the NLRB.*

7. If your agency's request backlog increased during Fiscal Year 2018, please explain why and describe the causes that contributed to your agency not being able to reduce its backlog. When doing so, please also indicate if any of the following were contributing factors:

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

*Answer: This is not applicable to the NLRB because the Agency reduced its FOIA request backlog by 70.51%.*

8. If you had a request backlog please report the percentage of requests that make up the backlog out of the total number of requests received by your agency in Fiscal Year 2018. If your agency has no request backlog, please answer with “N/A.”

*Answer: The NLRB received 1,305 requests during Fiscal Year 2018. The total Fiscal Year 2018 backlog was 87, which is the equivalent of 6.6% of the total requests received.*

## **BACKLOGGED APPEALS**

9. If your agency had a backlog of appeals at the close of Fiscal Year 2018, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2017?

*Answer: The NLRB did not have a backlog of administrative appeals at the end of Fiscal Year 2018. At the end of Fiscal Year 2017, the NLRB had an administrative appeal backlog of one case.*

10. If not, did your agency process more appeals during Fiscal Year 2018 than it did during Fiscal Year 2017?

*Answer: This is not applicable to the NLRB.*

11. If your agency’s appeal backlog increased during Fiscal Year 2018, please explain why and describe the causes that contributed to your agency not being able to reduce its backlog. When doing so, please also indicate if any of the following were contributing factors:

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

*Answer: This is not applicable to the NLRB, because the Agency does not have an appeal backlog for Fiscal Year 2018.*

12. If you had an appeal backlog please report the percentage of appeals that make up the backlog out of the total number of appeals received by your agency in Fiscal Year 2018. If your agency did not receive any appeals in Fiscal Year 2018 and/or has no appeal backlog, please answer with "N/A."

*Answer: This is not applicable to the NLRB, because the Agency does not have an appeal backlog for Fiscal Year 2018.*

### **C. Backlog Reduction Plans**

13. In the 2018 guidelines for Chief FOIA Officer Reports, any agency with a backlog of over 1000 requests in Fiscal Year 2017 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 2018?

*Answer: The NLRB did not have a backlog more than 1,000 FOIA requests in Fiscal Year 2017. In Fiscal Year 2018, the FOIA Branch took the following steps to reduce backlog:*

- *Made more records publicly available on the FOIAonline website;*
- *Created FOIA template response letters;*
- *Utilized the FOIAonline report tool to provide metrics to measure effectiveness and make assessments;*
- *Authorized compensatory time and time off awards for the FOIA Branch staff members;*
- *Provided in-house training for FOIA Branch staff;*
- *Encouraged FOIA Branch staff to attend DOJ and OGIS training sessions and the ASAP 11th National Training Conference;*
- *Requested additional staff personnel and additional supervisory personnel; and*
- *Requested personnel for vacant positions.*

14. If your agency had a backlog of more than 1,000 requests in Fiscal Year 2018, what is your agency's plan to reduce this backlog during Fiscal Year 2019?

*Answer: This is not applicable to the NLRB.*



#### **D. Status of Oldest Requests, Appeals, and Consultations**

Section VII.E, entitled "Pending Requests – Ten Oldest Pending Requests," Section VI.C.(5), entitled "Ten Oldest Pending Administrative Appeals," and Section XII.C., entitled "Consultations on FOIA Requests – Ten Oldest Consultations Received from Other Agencies and Pending at Your Agency," show the ten oldest pending requests, appeals, and consultations. You should refer to these numbers from your Annual FOIA Reports for both Fiscal Year 2016 and Fiscal Year 2017 when completing this section of your Chief FOIA Officer Report.

#### **OLDEST REQUESTS**

15. In Fiscal Year 2018, did your agency close the ten oldest requests that were reported pending in your Fiscal Year 2017 Annual FOIA Report?

*Answer: Yes. The FOIA Branch is pleased to report that it closed the ten oldest FOIA requests reported in the Fiscal Year 2017 Annual FOIA Report.*

16. If no, please provide the number of these requests your agency was able to close by the end of the fiscal year, as listed in Section VII.E of your Fiscal Year 2016 Annual FOIA Report. If you had fewer than ten total oldest requests to close, please indicate that.

*Answer: This is not applicable to the NLRB. The FOIA Branch closed the ten oldest FOIA requests reported in the Fiscal Year 2017 Annual FOIA Report.*

17. Of the requests your agency was able to close from your ten oldest, please indicate how many of these were closed because the request was withdrawn by the requester. If any were closed because the request was withdrawn, did you provide any interim responses prior to the withdrawal?

*Answer: Two of the requesters on the ten oldest cases withdrew their requests. The FOIA Branch closed the remaining eight requests by providing the responsive records to the requesters. The FOIA Branch did not provide an interim response in these ten cases.*

18. 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 FOIA Branch staff is encouraged to attend FOIA training on a regular basis to stay current on new guidance and polices. The Branch's FOIA supervisors assist staff with training on the techniques of properly triaging and prioritizing cases. Each staff member is directed to work on the top three oldest cases in their work queue to possibly narrow, process, and close out those requests.*

## **TEN OLDEST APPEALS**

19. In Fiscal Year 2018, did your agency close the ten oldest appeals that were reported pending in your Fiscal Year 2017 Annual FOIA Report?

*Answer: For the Fiscal Year 2017 Annual FOIA Report, the NLRB reported that it had one old administrative appeal. The NLRB closed this administrative appeal in Fiscal Year 2018.*

20. 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 2017 Annual FOIA Report. If you had fewer than ten total oldest appeals to close, please indicate that.

*Answer: For the Fiscal Year 2017 Annual FOIA Report, the NLRB reported one pending administrative appeal. The NLRB closed this administrative appeal in Fiscal Year 2018.*

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

*Answer: The FOIA Branch set the goal of closing 100% of the administrative FOIA appeals within 20 days and included this goal in the NLRB Strategic Plan for Fiscal Years 2019 through 2022.*

## **TEN OLDEST CONSULTATIONS**

22. In Fiscal Year 2018, did your agency close the ten oldest consultations that were reported pending in your Fiscal Year 2017 Annual FOIA Report?

*Answer: For the Fiscal Year 2017 Annual FOIA Report, the NLRB reported no outstanding consultations.*

23. 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 2017 Annual FOIA Report. If you had fewer than ten total oldest consultations to close, please indicate that.

*Answer: This is not applicable to the NLRB. For the Fiscal Year 2017 Annual FOIA Report, the NLRB reported no outstanding consultations.*

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

24. Briefly explain any obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2018.

*Answer: The NLRB did not face any obstacles in closing its ten oldest requests.*

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

*Answer: This is not applicable to the NLRB.*

26. If your agency did not close its ten oldest pending requests, appeals, or consultations, please provide a plan describing how your agency intends to close those “ten oldest” requests, appeals, and consultations during Fiscal Year 2018.

*Answer: This is not applicable to the NLRB. For the Fiscal Year 2018 Annual FOIA Report, the NLRB closed the ten oldest cases from the Fiscal Year 2017 Annual FOIA Report.*

## **F. Success Stories**

Out of all the activities undertaken by your agency since March 2018 to increase transparency and improve FOIA administration, please briefly describe here at least one success story that you would like to highlight as emblematic of your agency’s efforts. The success story can come from any one of the five key areas. As noted above, OIP will highlight these agency success stories during Sunshine Week. To facilitate this process, all agencies should use bullets to describe their success story and limit their text to a half page. The success story is designed to be a quick summary of key achievements. A complete description of all your efforts will be contained in the body of your Chief FOIA Officer Report.

*Answer:*

*National Labor Relations Board:*

- *By using technology and transitioning to FOIAonline as the Agency’s FOIA case management system, the NLRB FOIA Branch was able to decrease its backlog by 70.51%.*
- *By creating a large arsenal of FOIA template response letters with sufficient analysis and FOIA exemption law to support the FOIA Officer’s determinations, the NLRB FOIA Branch has decreased the number of administrative appeals.*