



**NATIONAL LABOR RELATIONS BOARD CHIEF  
FREEDOM OF INFORMATION ACT OFFICER  
REPORT FOR 2013**

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**Section I. Steps Taken to Apply the Presumption of Openness**

1. Did your agency hold an agency FOIA conference, or otherwise conduct training during this reporting period? No

Did your FOIA professionals attend any FOIA training, such as that provided by the Department of Justice? Yes

The agency's FOIA Officer and FOIA supervisor/manager attended the Department of Justice Office of Information Policy's Refresher Training on the Reporting Requirements for Fiscal Year 2012 Annual FOIA Report and 2013 Chief FOIA Officer Report. The agency's FOIA Officer also attended training provided by the Office of Government Information Services concerning mediation of FOIA matters, as well as the Annual Symposium and Training Conference sponsored by the American Society of Access Professionals. The agency's FOIA Officer and a Senior Attorney attended an E-discovery conference.

2. Did your agency make any discretionary releases of otherwise exempt information? Yes
3. What exemptions would have covered the information that was released as a matter of discretion? Exemption 5
4. Provide a narrative description, or some examples of, the types of information that your agency released as a matter of discretion.

The agency continued to post on its website internal memoranda that provide case handling and policy guidance and thus are covered by FOIA Exemption 5. These memoranda include the following: General Counsel Memoranda, which are issued to the regional offices by the General Counsel to provide policy guidance; Division of Operations- Management Memoranda, which are issued to the regional offices by the Division of Operations Management to provide case handling guidance; and

Division of Advice Memoranda, which render substantive legal advice to the regional offices in cases presenting novel or complex issues, cases of national interest, or cases that involve developing and changing areas of the law. In addition, during this reporting period, the agency posted a third report in the series of Reports of the Acting General Counsel on social media cases. This report provided case summaries of seven Division of Advice Memoranda, containing deliberative process information, including in open cases, normally withheld from disclosure.

5. Describe any other initiatives undertaken by your agency to ensure that the presumption of openness is being applied.

The NLRB's Office of Public Affairs has continued its efforts in utilizing e-mail and social media, which enables the agency to disseminate information to the public through a variety of forums, reaching audiences who might not otherwise visit the agency's public website. The Office of Public Affairs has been increasingly proactive in releasing information to the public, through press releases, about activities in the field and at headquarters, which are affirmatively sent to 23,711 individuals. The NLRB also has 12,322 e-mail subscribers receiving summaries of case decisions with links to the decisions, 6,262 Facebook fans, and 8,247 Twitter followers, who seek to engage the public in conversation about our agency. Further, each regional office has its own page on NLRB.gov, and regions are encouraged to continue adding new information in real time relevant to their region.

The agency continues its efforts in making its re-designed website more user-friendly by improving the organization of the site, simplifying content, making case searches easier, and providing an increasing number of case documents.

The agency has increased its percentage of FOIA requests granted in full or in part. For Fiscal Year 2012, the agency received 6305 FOIA requests, of which 5215 were granted in full, which was 82.71% of all requests. In Fiscal Year 2011, the agency received 5860 FOIA requests, of which 4525 were granted in full, which was 77.39% of all requests. The number of FOIA requests for Fiscal Year 2012 in which the request was partially granted was 485, totaling 7.69% of the requests. In Fiscal Year 2011, the number of FOIA requests in which the request was partially granted was 482, totaling 8.23% of requests.

The agency also has several ongoing committees, as discussed below, that are reviewing agency documents to determine which ones should be posted on the public website and what redactions, if any, are needed to protect personal privacy.

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

1. Do FOIA professionals within your agency have sufficient IT support? Yes
2. Do your FOIA professionals work with your agency's Open Government Team? Yes
3. Has your agency assessed whether adequate staffing is being devoted to FOIA administration? Yes
4. Describe any other steps your agency has undertaken to ensure that your FOIA system operates efficiently and effectively, such as conducting self-assessments to find greater efficiencies, improving search processes, streamlining consultations, eliminating redundancy, etc.

The NLRB utilizes an internally created FOIA tracking program, the FOIA Tracking System (FTS), which allows for the electronic tracking, processing, and reporting of both initial requests and administrative appeals. The FTS report capabilities allow for monitoring of FOIA processing, ensuring proper and timely responses to FOIA requests. The agency continues its longstanding practice of timely responding to FOIA requests, and, in Fiscal Year 2012, the NLRB responded to requests in an average of six days. Based on these results, it has been determined that adequate staffing is being devoted to responding to FOIA requests.

For those FOIA requests that involve complicated searches for electronic data from the agency's case management system, the FOIA processors have a team of program analysts who work with the FOIA processors to ensure timely and complete responses to FOIA requests. During this reporting period, the agency's Lead Technology Counsel provided support and guidance to FOIA attorneys regarding the retrieval, redaction, and submission of documents and electronically stored information responsive to FOIA requests. At this time, it has been determined that FOIA professionals have sufficient IT support to respond timely to FOIA requests and that adequate staffing is being devoted to FOIA administration. Also, during this reporting period, there was regular interaction between agency FOIA professionals and the Chief FOIA Officer.

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

1. Provide examples of material that your agency has posted this past year.

The NLRB has continued its efforts in proactive disclosure by increasing the posting of information on its website and by making the information more useful to the public. For example, the agency posted a third report in a series of Reports of the Acting General Counsel concerning case developments arising in the context of social media. These cases raise issues of interest for practitioners, human resource professionals, the media, and the public.

During this reporting period, the agency continued its practice of posting various

memoranda on the website. As discussed above, these memoranda include General Counsel Memoranda, Division of Operations- Management Memoranda, and Division of Advice Memoranda.

The agency's re-designed website includes documents that previously were available only by making a FOIA request for them, including dismissal letters, denial letters, unpublished Board orders, rulings on motions, and election data. Improved search capabilities allow greater access to these materials.

As indicated above, the NLRB's Office of Public Affairs has been increasingly proactive in releasing information to the public, through press releases about activities in the field and at headquarters that are now sent to 23,711 e-mail subscribers, up from 12,893 last year; through summaries of case decisions with links to the decisions that are now sent to about 12,322 email subscribers, up from 6,880 email subscribers last year; and through a Facebook page with 6,282 fans and a Twitter account with 8,247 followers, the latter is an increase from 6,334 followers reported last year.

2. Beyond posting new material, is your agency taking steps to make the posted information more useful to the public, especially to the community of individuals who regularly access your agency's website, such as soliciting feedback on the content and presentation of the posted material, improving search capabilities on the site, creating mobile applications, providing explanatory material, etc.? Yes
3. If so, provide examples of such improvements.

A few examples of the agency's efforts to make the posted information on the website more useful to the public includes the re-design of the "advanced search" feature to create a simpler user interface and the addition of a facet search feature, which presents results listed by document categories so the researcher can more quickly find relevant documents. In addition, the NLRB continues to upgrade its website to add interactive maps and graphics to display information in a more accessible format.

4. Describe any other steps taken to increase proactive disclosures at your agency.

The agency has several ongoing committees that are reviewing agency documents to determine which ones should be listed on a docket on the public website and which ones should be publicly viewed, with or without redactions, for personal privacy. Specifically, these committees include the Data Coordinator/External Transactional Systems Committee, which is addressing coordination collection and dissemination of information and continued improvements on an external web page system for real time interactive case access by the public; the Webpages Committee, which is creating a docket of milestone actions and identifying documents to be released to the public; the Privacy Act/Redaction Committee, which is analyzing necessary redactions to public documents to protect privacy interests; and the Digital Strategy Committee, which is addressing issues involving emerging technologies to serve the public more effectively via e-filing, interactive web pages, Twitter, Facebook, and regional office pages.

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

*Electronic receipt of FOIA requests:*

1. Can FOIA requests be made electronically to your agency? Yes, for all requests made to headquarters.
2. If your agency is decentralized, can FOIA requests be made electronically to *all* components of your agency?

Not at this time, but the agency is planning to centralize all FOIA operations in the near future, which should allow for electronic requests of all FOIAs.

*Online tracking of FOIA requests:*

3. Can a FOIA requester track the status of his/her request electronically?

Not at this time; however, this is planned for the future, either through our own website or through FOIA Online, the new government web portal.

4. If so, describe the information that is provided to the requester through the tracking system. For example, some tracking systems might tell the requester whether the request is "open" or "closed," while others will provide further details to the requester throughout the course of the processing, such as "search commenced" or "documents currently in review." List the specific types of information that are available through your agency's tracking system. N/A

5. In particular, does your agency tracking system provide the requester with an estimated date of completion for his or her request?

Although we do not at present allow the requester to track his/her request electronically, 94% of our FOIA requests are processed within the statutory time limits. For those that require additional time, we contact the FOIA requester with the estimated time for completion.

6. If your agency does not provide online tracking of requests, is your agency taking steps to establish this capability?

Yes, we continue to discuss establishing a system for a FOIA requester to track the status of his/her request electronically.

*Use of technology to facilitate processing of requests:*

7. Beyond using technology to redact documents, is your agency taking steps to utilize more advanced technology to facilitate overall FOIA efficiency, such as improving record search capabilities, utilizing document sharing platforms for consultations and referrals, or employing software that can sort and de-duplicate documents? Yes

8. If so, describe the technological improvements being made.

Although the majority of our Agency's FOIA requests involve searching paper documents, for those FOIA requests that can be processed electronically, a team

of Agency personnel, including FOIA professionals, was trained in the electronic software program to handle large, complex FOIA requests. This program has been used for the collection, review, and processing of documents. This software can also sort and de-duplicate documents.

### **Section V. Steps Taken to Improve Timeliness in Responding to Requests and Reduce Backlogs**

1. 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. If your agency does not utilize a separate track for processing simple requests, answer the question below using the figure provided in your report for your non-expedited requests.
  - a. Does your agency utilize a separate track for simple requests?

Not at this time, but we are considering revising our FOIA rules to provide for tiered tracking.
  - b. If so, for your agency overall, for Fiscal Year 2012, was the average number of days to process simple requests twenty working days or fewer? N/A
  - c. If your agency does not track simple requests separately, was the average number of days to process non-expedited requests twenty working days or fewer? Yes
2. Section Sections XII.D.(2) and XII.E.(2) of your agency's Annual FOIA Report, entitled "Comparison of Numbers of Requests/Appeals from Previous and Current Annual Report – Backlogged Requests/Appeals," show the numbers of any backlog of pending requests or pending appeals from Fiscal Year 2012 as compared to Fiscal Year 2011. You should refer to those numbers when completing this section of your Chief FOIA Officer Report. In addition, Section VII.E, entitled "Pending Requests – Ten Oldest Pending Requests," and Section VI.C. (5), entitled "Ten Oldest Pending Administrative Appeals," from both Fiscal Year 2011 and Fiscal Year 2012 should be used for this section.
  - a. If your agency had a backlog of requests at the close of Fiscal Year 2012, did that backlog decrease as compared with Fiscal Year 2011? No
  - b. If your agency had a backlog of administrative appeals in Fiscal Year 2012, did that backlog decrease as compared to Fiscal Year 2011? N/A
  - c. In Fiscal Year 2012, did your agency close the ten oldest requests that were pending as the end of Fiscal Year 2012? Yes
  - d. In Fiscal Year 2012, did your agency close the ten oldest administrative appeals that

were pending as the end of Fiscal Year 2011? Yes

3. If you answered “no” ” to any of the above questions, describe why that has occurred. In doing so, answer the following questions then include any additional explanation: Request Backlog:
  - a. Was the lack of reduction in the request backlog a result of an increase in the number of incoming requests? Yes
  - b. Was the lack of a reduction in the request backlog caused by a loss of staff? No
  - c. Was the lack of reduction in the request backlog caused by an increase in the complexity of the requests received? Yes
  - d. What other causes, if any, contributed to the lack of a decrease in the request backlog? N/A

Administrative Appeal Backlog:

- a. Was the lack of a reduction in the backlog of administrative appeals a result of an increase in the number of incoming appeals? N/A
- b. Was the lack of a reduction in the appeal backlog caused by a loss of staff? N/A
- c. As the lack of a reduction in the appeal backlog caused by a loss of staff? N/A
- d. Was the lack of a reduction in the appeal backlog caused by an increase in the complexity of the appeals received? N/A
- e. Was the lack of a reduction in the appeal backlog caused by an increase in the complexity of the appeals received? N/A
- f. What other causes, if any, contributed to the lack of a decrease in the appeal backlog? N/A

4. OIP has issued **guidance** encouraging agencies to make interim releases whenever they are working on requests that involve a voluminous amount of material or require searches in multiple locations. By providing rolling releases to requesters agencies facilitate access to the requested information. If your agency had a backlog in Fiscal Year 2012, please provide an estimate of the number of cases in the backlog where a substantive, interim response was provided during the fiscal year, even though the request was not finally closed.

The agency has an established practice of providing rolling releases to requesters in cases where voluminous documents are potentially responsive to the request. In approximately ten to fifteen cases in the agency’s backlog, a substantive, interim response was provided in Fiscal Year 2012. For example, in a request processed during this reporting period, thousands of documents were reviewed many of which were identified as possibly responsive. To date, there have been five rolling releases issued with a total disclosure of approximately 1500 pages, in full or in

part. In another case in the agency's backlog, twelve rolling releases were provided concerning a case involving approximately 50,000 documents.

### **Use of FOIAs Law Enforcement "Exclusions"**

1. Did your agency invoke a statutory exclusion during Fiscal Year 2012? No
2. If so, what was the total number of times exclusions were invoked? N/A

### **Spotlight on Success**

This year, we had significant improvements on the public website. We have revamped the regional office pages on NLRB.gov. Now, each regional office posts links to all recent Board and ALJ decisions from their region. This provides greater ease in searching for documents limited to a particular region. In addition, the new regional pages more clearly define regional boundaries and provide contact information for senior leaders. A new content type allows regions to post news of local interest directly to the regional page, and an events calendar shows local outreach activity at a glance. E-mail listservs have been set up for each region, with the average subscription base approximately 1,500 per region. The email lists will be used to send regional updates including news, events, and newsletters.

New on the website is the Protected Concerted Activity page. This page contains information on the right of employees to act together to try to improve their pay and working conditions or fix job-related problems, even if they aren't in a union. It contains over a dozen case studies, an interactive map, frequently asked questions, and instructions on how to contact an NLRB information officer.

Further, the agency re-designed the "search tools" feature to create a simpler user interface that combines several fields and limits initial options to broader categories. The result is better search returns that can then be refined using our new faceting categories. Facets allow users to refine their search in real time by filtering the results using predefined categories, such as Board Decisions, News Releases, Case Information, etc.

Also new on the website is a collection of all news releases issued by the Agency since 1935. The news release archives were digitized, uploaded, and made available in a searchable format on the website.

Finally, the NLRB is in the process of hiring a data coordinator, who will assist in developing strategies for data collection and retention, processing data information requests, and developing procedures for data dissemination.