



## 2014 Chief FOIA Officer Report

**NATIONAL LABOR RELATIONS BOARD  
CHIEF FREEDOM OF INFORMATION ACT OFFICER  
REPORT FOR 2014  
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### **Section I: Steps Taken to Apply the Presumption of Openness**

#### ***FOIA Training:***

1. Did your agency hold an agency FOIA conference, or otherwise conduct training during this reporting period? No
2. If so, please provide the number of conferences or trainings held, a brief description of the topics covered, and an estimate of the number of participants from your agency who were in attendance. N/A
3. Did your FOIA professionals attend any FOIA training during the reporting period such as that provided by the Department of Justice? Yes
4. Provide an estimate of the percentage of your FOIA professionals who attended substantive FOIA training during this reporting period. Forty percent of FOIA professionals at Headquarters attended FOIA training hosted by DOJ. Due to budget issues, no FOIA professionals were able to attend American Society of Access Professionals (ASAP) events.
5. OIP has issued guidance that every agency should make core, substantive FOIA training available to all their FOIA professionals at least once each year. Provide your agency's plan for ensuring that such training is offered to all agency FOIA professionals by March 2015. Your plan should anticipate an upcoming reporting requirement for your 2015 Chief FOIA Officer Reports that will ask whether all agency FOIA professionals attended substantive FOIA training in the past year. The FOIA professionals will attend DOJ training. If sufficient funds are available, the FOIA professionals will attend the ASAP annual conference.

***Outreach:***

6. Did your FOIA professionals engage in any outreach and dialogue with the requester community or open government groups regarding your administration of the FOIA? If so, please briefly discuss that engagement. No

***Discretionary Disclosures:***

In his 2009 FOIA Guidelines, the Attorney General strongly encouraged agencies to make discretionary releases of information even when the information might be technically exempt from disclosure under the FOIA. OIP encourages agencies to make such discretionary releases whenever there is no foreseeable harm from release.

7. Does your agency have a formal process in place to review records for discretionary release? Yes

If so, please briefly describe this process. If your agency is decentralized, please specify whether all components at your agency have a process in place for making discretionary releases. The Agency continues its efforts of reviewing documents for discretionary disclosure. The FOIA professionals regularly meet with the Acting FOIA Officer concerning specific documents and categories of documents for proactive disclosure, primarily under FOIA Exemption 5.

The Agency also has several ongoing committees, as discussed below, which 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.

8. During the reporting period did your agency make any discretionary releases of otherwise exempt information? Yes

9. What exemptions would have covered the information that was released as a matter of discretion? Exemption 5

10. 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 to these memoranda, the Agency disclosed as a matter of discretion other documents including e-mails, information about processing of closed investigations, and internal training materials.

11. If your agency was not able to make any discretionary releases of information, please explain why. N/A - discretionary releases were made

***Other Initiatives:***

12. Did your agency post all of the required quarterly FOIA reports for Fiscal Year 2013? Yes

If not, please explain why not and what your plan is for ensuring that such reporting is successfully accomplished for Fiscal Year 2014. N/A

13. Describe any other initiatives undertaken by your agency to ensure that the presumption of openness is being applied. If any of these initiatives are online, please provide links in your description.

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 of text 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 access to case information by the public; the Webpages Committee, which is creating a docket of milestone actions and identifying documents to be released to the public and 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.

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 transmitted electronically to 27,538 e-mail subscribers. The NLRB also has 12,754 e-mail subscribers receiving summaries of case decisions with links to the decisions, 10,495 Facebook fans, and 9,876 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 in real time new information relevant to their region.

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

As the Attorney General emphasized in his FOIA Guidelines, "[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.

Describe here the steps your agency has taken to ensure that your management of your FOIA program is effective and efficient. To do so, answer the questions below and then include any additional information that you would like to describe how your agency ensures that your FOIA system is efficient and effective.

### ***Personnel:***

During Sunshine Week 2012 OPM announced the creation of a new job series entitled the Government Information Series, to address the work performed by FOIA and Privacy Act professionals. Creation of this distinct job series was a key element in recognizing the professional nature of their work.

1. Has your agency converted all of its FOIA professionals to the new Government Information Specialist job series? No

2. If not, what proportion of personnel has been converted to the new job series? None

3. If not, what is your plan to ensure that all FOIA professionals' position descriptions are converted? In anticipation of centralizing the Agency's FOIA functions, the NLRB's Office of Human Resources and Division of Legal Counsel have met and created a position descriptions for non-attorney FOIA Specialists with postings for such positions anticipated shortly. Attorney Advisers performing FOIA work are in the excepted service.

### ***Processing Procedures:***

4. For Fiscal Year 2013 did your agency maintain an average of ten or less calendar days to adjudicate requests for expedited processing? Yes

If not, describe the steps your agency will take to ensure that requests for expedited processing are adjudicated within ten calendar days or less. NA

5. Has your agency taken any steps to make the handling of consultations and referrals more efficient and effective, such as entering into agreements with other agencies or components on how to handle certain categories or types of records involving shared equities so as to avoid the need for a consultation or referral altogether, or otherwise implementing procedures that speed up or eliminate the need for consultations. No If so, please describe those steps. N/A

***Requester Services:***

6. Do you use e-mail or other electronic means to communicate with requesters when feasible? Yes
7. Does your agency notify requesters of the mediation services offered by the Office of Government Information Services (OGIS) at NARA? Yes
8. 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, eliminating redundancy, etc.

The NLRB utilizes an internally created 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 2013, the NLRB responded to requests in an average of six days.

In furtherance of facilitating greater efficiency, the Agency is in the process of centralizing the processing of all FOIA requests, including those filed in regional offices, in headquarters.

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

Both the President and Attorney General focused on the need for agencies to work proactively to post information online without waiting for individual requests to be received.

Describe here the steps your agency has taken both to increase the amount of material that is available on your agency website, and the usability of such information, including providing examples of proactive disclosures that have been made during this past reporting period (i.e., from March 2013 to March 2014). In doing so, answer the questions listed below and describe any additional steps taken by your agency to make and improve proactive disclosures of information.

***Posting Material:***

1. Do your FOIA professionals have a system in place to identify records for proactive disclosures? Yes
2. If so, describe the system that is in place. The NLRB FOIA professionals regularly meet with the Acting FOIA officer to discuss documents for proactive disclosure.

Provide examples of material that your agency has posted this past reporting period, including links to where this material can be found online.

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 electronically transmitted to 27,538 e-mail subscribers, up from 23,711 last year; through summaries of case decisions with links to the decisions that are now sent to about 12,754 e-mail subscribers, up from 12,322 e-mail subscribers last year; and through a Facebook page with 10,495 fans and a Twitter account with 9,876 followers, the former is an increase from 6,262 followers reported last year. The Agency released a mobile application that provides its stakeholders and the general public with information regarding their rights and obligations under the National Labor Relations Act. In addition, the Agency posted to its website election decisions covering the period from 2000 to the present.

NLRB Mobile App:

<http://www.nlr.gov/news-outreach/news-story/national-labor-relations-board-launches-mobile-app>

NLRB News Releases:

<http://www.nlr.gov/news-outreach/news-releases>

Election decisions:

<http://www.nlr.gov/cases-decisions/regional-election-decisions>

***Making Posted Material More Useful:***

4. 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 posted material, improving search capabilities on the site, posting material in open formats, making information available through mobile applications, providing explanatory material, etc.? Yes

5. If so, provide examples of such improvements. The Agency previously posted case pages on its public website, which allow the public to view activity in NLRB cases and provide direct links to any available public documents. In the last year, the Agency reviewed its document categories and made available 182 additional document types on these case pages. The Agency now provides direct links to 341 document types on its website. For an example of a case page, See: <http://www.nlr.gov/case/20-CA-104883>

Also, the Agency provides a form on the website for persons to address any difficulties with navigation of the site or other technical issues or questions, comments and suggestions. See: <http://www.nlr.gov/resources/site-feedback>

In addition, the Agency publishes a weekly summary of Board decisions with a link to the decision. See: <http://www.nlr.gov/cases-decisions/weekly-summaries-decisions>

6. Did your agency use any means to publicize or highlight important proactive disclosures for public awareness? Yes

If so, was social media utilized? The Agency released a mobile application that provides employers, employees and unions with information regarding their rights and obligations under the National Labor Relations Act. The Agency frequently posts important briefs and significant court decisions on its website, Facebook and Twitter.

7. Has your agency encountered challenges that make it difficult to post records you otherwise would like to post? No If so, please briefly explain what those challenges are. N/A
8. Describe any other steps taken to increase proactive disclosures at your agency. As discussed above, the Agency has several committees that are reviewing Agency documents to determine which types of documents should be listed on a docket on the public website and which types of documents should be publicly viewed, with or without text redactions, for personal privacy.

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

A key component of the President's FOIA Memorandum was the direction to "use modern technology to inform citizens about what is known and done by their Government." In addition to using the internet to make proactive disclosures, agencies should also be exploring ways to utilize technology in responding to requests. Over the past several years agencies have reported widespread use of technology in receiving and tracking FOIA requests and preparing agency Annual FOIA Reports. For 2014, as we have done over the past years, the questions have been further refined and now also address different, more innovative aspects of technology use.

##### ***Online tracking of FOIA requests:***

1. Can a FOIA requester track the status of his/her request electronically? No
2. If yes, how is this tracking function provided to the public? For example, is it being done through regularly updated FOIA logs, online portals, or other mediums? N/A - No tracking system for requester
3. 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 - No tracking system for requester
4. In particular, does your agency tracking system provide the requester with an estimated date of completion for his/her request? N/A No tracking system for requester.

5. If your agency does not provide online tracking of requests, is your agency taking steps to establish this capability? Yes. In 2014, the Agency plans to conduct market research and to procure a cloud-based or shared service solution that would provide FOIA requesters with the ability to track the status of their request..

If not, please explain why.

***Use of technology to facilitate processing of requests:***

6. 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

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

For those FOIA requests that can be processed electronically, a team of Agency personnel, including FOIA professionals, was trained in an 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. In addition, the Agency has adopted the practice of responding to FOIA requests via e-mail.

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 professionals 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 personnel regarding the retrieval, redaction, and submission of documents and electronically stored information responsive to FOIA requests. Also in this reporting period, the NLRB has used a data coordinator, who assists in developing strategies for data collection and retention, processing data information requests, and developing procedures for data dissemination.

8. Are there additional technological tools that would be helpful to achieving further efficiencies in your agency's FOIA program? Yes. The Agency's Lead Technology Counsel continues to evaluate how electronic discovery tools can be used to achieve further efficiencies in the Agency's FOIA program. These include additional tools for searching through unstructured records as well as software tools for collecting and processing electronic records, and platforms for the review and identification of potentially responsive records.

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



The President and the Attorney General have emphasized the importance of improving timeliness in responding to requests. This section 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 those contained in the specified sections of your agency's 2013 Annual FOIA Report and, when applicable, your agency's 2012 Annual FOIA Report.*

***Simple Track Requests:***

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.
  - a. Does your agency utilize a separate track for simple requests? No
  - b. If so, for your agency overall, for Fiscal Year 2013, was the average number of days to process simple requests twenty working days or fewer? N/A, As noted below, the average was fewer than 20 days
  - 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

***Backlogs and "Ten Oldest" Requests, Appeals and Consultations:***

2. 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. 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 2012 and Fiscal Year 2013 when completing this section of your Chief FOIA Officer Report.

Backlogs

- a. If your agency had a backlog of requests at the close of Fiscal Year 2013, did that backlog decrease as compared with Fiscal Year 2012? Yes

- b. If your agency had a backlog of administrative appeals in Fiscal Year 2013, did that backlog decrease as compared to Fiscal Year 2012? Yes. . The Agency had no backlog of appeals in Fiscal Year 2013.

#### Ten Oldest Requests

- c. In Fiscal Year 2013, did your agency close the ten oldest requests that were pending as of the end of Fiscal Year 2012? Yes
- d. 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 2012 Annual FOIA Report. If you had less than ten total oldest requests to close, please indicate that. For example, if you only had seven requests listed as part of your "ten oldest" in Section VII.E. and you closed two of them, you should note that you closed two out of seven "oldest" requests. N/A

#### Ten Oldest Appeals

- e. In Fiscal Year 2013, did your agency close the ten oldest administrative appeals that were pending as of the end of Fiscal Year 2012? Yes
- f. If no, please provide the number of these appeals your agency was able to close, as well as the number of appeals your agency had in Section VI.C.(5) of your Fiscal Year 2012 Annual FOIA Report. N/A

#### Ten Oldest Consultations

- g. In Fiscal Year 2013, did your agency close the ten oldest consultations received by your agency and pending as of the end of Fiscal Year 2012? N/A – no consultations
- h. If no, please provide the number of these consultations your agency did close, as well as the number of pending consultations your agency listed in Section XII.C. of your Fiscal Year 2012 Annual FOIA Report. N/A

#### ***Reasons for Any Backlogs:***

3. If you answered "no" to any of the questions in item 2 above, describe why your agency was not able to reduce backlogs and/or close the ten oldest pending requests, appeals, and consultations. In doing so, answer the following questions then include any additional explanation:

##### Request and/or Appeal Backlog

- a. Was the lack of a reduction in the request and/or appeal backlog a result of an increase in the number of incoming requests or appeals? N/A (no backlog to reduce)

- b. Was the lack of a reduction in the request and/or appeal backlog caused by a loss of staff? N/A
- c. Was the lack of a reduction in the request and/or appeal backlog caused by an increase in the complexity of the requests received? N/A
- d. What other causes, if any, contributed to the lack of a decrease in the request and/or appeal backlog? N/A

“Ten oldest” Not Closed

- e. Briefly explain the obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2012. N/A
- f. If your agency was unable to close any of its ten oldest requests or appeals 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. N/A

***Plans for Closing of Ten Oldest Pending Requests, Appeals, and Consultations and Reducing Backlogs:***

Given the importance of these milestones, it is critical that Chief FOIA Officers assess the causes for not achieving success and create plans to address them.

4. If your agency did not close its ten oldest pending requests, appeals, and consultations, please provide a plan describing how your agency intends to close those “ten oldest” requests, appeals, and consultations during Fiscal Year 2014. N/A

5. If your agency had a backlog of more than 1000 pending requests and did not reduce that backlog in Fiscal Year 2013, provide your agency’s plan for achieving backlog reduction in the year ahead. N/A

***Interim Responses:***

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.

6. Does your agency have a system in place to provide interim responses to requesters when appropriate? Yes

7. If your agency had a backlog in Fiscal Year 2013, please provide an estimate of the number or percentage of cases in the backlog where a substantive, interim response was provided during the fiscal year, even though the request was not finally closed. N/A

## **Use of FOIA’s Law Enforcement “Exclusions”**

In order to increase transparency regarding the use of the FOIA’s statutory law enforcement exclusions, which authorize agencies under certain exceptional circumstances to “treat the records as not subject to the requirements of [the FOIA],” 5 U.S.C. § 552(c)(1), (2), (3), please answer the following questions:

1. Did your agency invoke a statutory exclusion during Fiscal Year 2013? No
2. If so, what was the total number of times exclusions were invoked? N/A

## **Spotlight on Success**

Out of all the activities undertaken by your agency since March 2013 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, these agency success stories will be highlighted during Sunshine Week by OIP. 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 a key achievement. A complete description of all your efforts will be contained in the body of your Chief FOIA Officer Report.

■ In response to a massive request for documents related to the legality of President Obama’s recess appointments of three National Labor Relations Board members, the Agency, through the use of an electronic collection, storage, and retrieval system, collected more than 50,000 documents from 100 custodians. The Agency, through the use of this electronic system, was able to de-duplicate the documents, resulting in 8,000 documents for review. Review and redaction was conducted by a team of 20 Agency professionals also using that same advanced technology. The Agency, on a rolling basis, released nine productions of documents, totaling more than 5,000 pages.

■ The Agency’s average FOIA processing time remained at six days while its FOIA Branch has been undergoing a reorganization to increase efficiency and ensure quality and consistent responses, resulting in changes to the FOIA professional staff, restructuring of the FOIA Appeals process, and centralization of Agency-wide FOIA requests.