



**2016 Chief FOIA Officer Report
NATIONAL LABOR RELATIONS BOARD**

Barbara A. O'Neill
Associate General Counsel
Division of Legal Counsel
Chief FOIA Officer

Section I: Steps Taken to Apply the Presumption of Openness

FOIA Training:

1. Did your agency conduct FOIA training during the reporting period for FOIA professionals?

Yes

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

The FOIA Branch hosted a three-day FOIA Summit for all FOIA Professionals and support staff, covering FOIA law and revised FOIA policies and procedures.

3. If no, please explain why your agency did not hold training during the reporting period, such as if training offered by other agencies was sufficient for your agency's training needs.

N/A

4. Did your FOIA professionals attend any FOIA training or conference during the reporting period such as that provided by the Department of Justice? Yes. All FOIA professionals in the

FOIA Branch attended FOIA training hosted by DOJ. In addition, three FOIA professionals attended training provided by Office of Government Information Services (OGIS). During Fiscal Year 2015 the Freedom of Information Officer was able to attend the American Society of Access Professionals (ASAP) Annual Symposium.

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. 100%

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.

N/A

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?

Yes. In addition to the attendance by several members of the FOIA Branch of outreach activities hosted by OIP including Best Practices Workshops, the FOIA Public Liaison and several FOIA professionals attended Federal FOIA Advisory Committee Meetings hosted by OGIS.

In addition, staff members of the FOIA Branch held conference calls with numerous frequent requesters to discuss the Agency record keeping system, search capabilities, Agency Internet site, and overall FOIA process to assist those requesters in the formulation of future FOIA requests. Because of these meetings, many requesters now submit more targeted requests that result in the agency being able to provide the requester the records it is interested in more quickly and for less expense as compared to those requests processed in the beginning of FOIA centralization.

8. If you did not conduct any outreach during the reporting period, please explain why.

N/A

Discretionary Releases:

9. Does your agency have a distinct process or system in place to review records for discretionary release? Yes

The Agency continues its efforts of reviewing documents for discretionary disclosure. The FOIA

professionals regularly meet with the FOIA Officer concerning specific documents and categories of documents for disclosure, primarily under FOIA Exemption 5.

In addition, the Agency also has an ongoing committee, as discussed below, which reviews Agency documents to determine which ones should be posted on the public website and what redactions, if any, are needed to protect personal privacy.

10. During the reporting period, did your agency make any discretionary releases of information? Yes

11. What exemption(s) would have covered the material released as a matter of discretion?

Exemption 5

12. Provide a narrative description, as well as some specific examples, of the types of information that your agency released as a matter of discretion during the reporting year.

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.

13. If your agency was not able to make any discretionary releases of information, please explain why.

N/A - discretionary releases were made

Other Initiatives:

14. Describe any efforts your agency has undertaken to inform non-FOIA professionals of their obligations under the FOIA?

For Sunshine Week 2015, the FOIA Officer sent a memo by email to all Agency employees reminding them of the importance of FOIA and that FOIA is everyone's responsibility.

As part of the NLRB's Regional Office Detailees' Program and the Orientation Program for Summer Law Students as well as Honors Attorneys, the FOIA Branch made presentations about

general FOIA law as well as the types of FOIA requests received by the Agency.

15. If there are any other initiatives undertaken by your agency to ensure that the presumption of openness is being applied, please describe them here.

The NLRB's Office of Congressional and Public Affairs has continued its efforts in utilizing e-mail and social media, enabling the Agency to disseminate information to the public through a variety of forums and reaching audiences who might not otherwise visit the Agency's public website. The Office of Congressional and Public Affairs proactively releases information to the public about activities in the field and at headquarters through its press releases. These press releases go out to over 23,500 (23,796) individuals. The NLRB also has 20,536 e-mail subscribers receiving summaries of case decisions with links to the decisions and 14,812 Facebook fans. In addition, the NLRB has a Twitter account with 8,529 followers. 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.

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

Processing Procedures:

1. For Fiscal Year 2015, what was the average number of days your agency reported for adjudicating requests for expedited processing?

5 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.

N/A

3. If your agency has a decentralized FOIA process, has your agency taken steps to make the routing of misdirected requests within your agency more efficient? If so, please describe those steps.

N/A, as the Agency completed centralizing its FOIA program in June of 2015.

4. On July 2, 2015, OIP issued new guidance to agencies on the proper procedures to be used in the event an agency has a reason to inquire whether a requester is still interested in the

processing of his or her request. Please confirm here that to the extent your agency may have had occasion to send a "still interested" inquiry, it has done so in accordance with the new guidelines for doing so, including affording requesters thirty working days to respond.

Yes

Requester Services:

5. Agency FOIA Requester Service Centers and FOIA Public Liaisons serve as the face and voice of an agency. In this capacity they provide a very important service for requesters, informing them about how the FOIA process works and providing specific details on the handling of their individual requests. The FOIA also calls on agency FOIA Requester Service Centers and FOIA Public Liaisons to assist requesters in resolving disputes. Please explain here any steps your agency has taken to strengthen these services to better inform requesters about their requests and to prevent or resolve FOIA disputes.

The NLRB's FOIA Public Liaison has participated in training from OGIS and has consulted with OGIS on FOIA practices. In addition, the Agency's website has been updated to identify the FOIA Public Liaison.

Other Initiatives:

6. If there are 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., please describe them here.

With the goals of facilitating greater efficiency and consistency, the Agency decided to centralize FOIA processing. Pilot studies were conducted with the FOIA Branch taking over FOIA responsibilities by groups of different regions over a period of months. During this reporting period, the Agency completed its process of centralizing the handling of all FOIA requests, including those filed in regional offices, with the FOIA Branch in headquarters.

The NLRB currently 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, with the goal of assisting in the proper and timely responses to FOIA requests. The Agency is evaluating options for a new FOIA tracking system that is updated and tailored to the

new role of the FOIA Branch as a result of FOIA centralization.

The Agency continues its longstanding practice of timely responding to FOIA requests, and, in Fiscal Year 2015, the NLRB responded to requests in an average of 12 days.

Section III: Steps Taken to Increase Proactive Disclosures

Posting Material:

1. Describe your agency's process or system for identifying "frequently requested" records required to be posted online under Subsection (a)(2) of the FOIA.

The FOIA Branch monitors its FOIA logs. We will update our frequently requested page on the website.

2. Does your agency have a distinct process or system in place to identify other records for proactive disclosure? Yes

If so, please describe your agency's process or system.

The NLRB FOIA professionals regularly meet with the FOIA Officer to discuss documents for proactive disclosure. In addition, the FOIA Branch regularly meets with high level management officials from the Office of the Chief Information Officer (OCIO), which includes the privacy section, and staff from the Office of Congressional and Public Affairs (OCPA), to identify documents for proactive disclosure and posting online.

3. When making proactive disclosures of records, are your agency's FOIA professionals involved in coding the records for Section 508 compliance or otherwise preparing them for posting?

No

4. Has your agency encountered challenges that make it difficult to post records you otherwise would like to post? Yes

5. If so, please briefly explain those challenges.

In addition to concerns about deliberative process protections under Exemption 5, there always is a challenge in striking a balance between transparency and privacy. As an Agency with the dual roles of investigation and adjudication, often the Agency's substantive "what-to-post" discussions involve striking the appropriate balance. Recently the Agency issued a GC Memorandum requiring the redaction of individuals' names and personal identifiers from formal

documents such as unfair labor practice charges and representation petitions.

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

- Added features to the “Organizations of Interest” page, to present lists of cases for organizations that are of interest to the public. See: <http://www.nlrb.gov/cases-decisions/organizations-interest>

7. Did your agency use any means to publicize or highlight important proactive disclosures for public awareness? If yes, please describe those efforts.

The Agency regularly uses Twitter, Facebook, YouTube, email distribution lists and web postings to highlight important documents, cases and news items. News releases are issued in cases of national and regional significance, and to announce initiatives of the Agency, often with links to documents. In addition, the Agency regularly evaluates the effectiveness of the website and produces new features and pages to highlight its activities.

Other Initiatives:

8. If there are any other steps your agency has taken to increase proactive disclosures, please describe them here. N/A

Section IV: Steps Taken to Greater Utilize Technology

Making Material Posted Online More Useable:

1. 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?

Yes

2. If yes, please provide examples of such improvements.

The Agency previously posted dynamic “Case Pages” on its public website, which allow the public to view activity for any NLRB case, with direct links to available public documents. In the last year, the Agency reviewed its document categories and made available additional document types on these Case Pages. The Agency now provides direct links to over five hundred document types on its website. For an example of a case page, see:

<http://www.nlr.gov/case/01-CA-137863>.

Also, the Agency provides a feedback form on the website for individuals 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, to make the posted information more useful to the public, 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>.

Additional public website enhancements made during the last year to provide useful and usable information to the public include:

- Revised Case Search to include faceting, which categorizes search results and allows the public to further refine these results.
- Developed a new "Organizations of Interest" page, to present lists of cases involving organizations that are of interest to the public.
- Created a new "Recent Filings" page to show a list of all of the recently filed cases.
- Created a new "Tally of Ballots" page to show the latest results of the tabulation of ballots cast in an election.
- Added search capability to the "Weekly Summaries of Decisions" to allow members of the public to more easily find what they are seeking.
- Launched a page that lists contested cases in which one or more recess appointees participated in the issuance of a decision, and which provides links to the case page for each case.

3. Have your agency's FOIA professionals interacted with other agency staff (such as technology specialists or public affairs or communications professionals) in order to identify if there are any new ways to post agency information online?

Members of the Office of the Chief Information Officer (OCIO), which includes the privacy section, staff from the Office of Congressional and Public Affairs (OCPA), and the Agency's FOIA professionals, interact regularly to identify if there are any new ways, or new information, to post online. A primary example is their attendance at Docketing Committee meetings, wherein decisions are made regarding information posted on the website's Case Pages. The Agency's OCIO-based Data Coordinator also directly supports FOIA and OCPA in their interactions with constituents and Congress.

Use of Technology to Facilitate Processing of Requests:

4. Did your agency conduct training for FOIA staff on any new processing tools during the reporting period, such as for a new case management system, or for search, redaction, or other

processing tools.

Yes. Many Agency FOIA professionals received training on a redaction software tool. This software has been used to conduct certain large scale searches for documents, and for review and redaction of voluminous document requests.

5. Beyond using technology to redact documents, is your agency taking steps to use 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? If yes, describe the technological improvements being made.

Yes. The Agency is utilizing a software tool to improve search capabilities, detect duplicates, and to ensure accurate and consistent redactions for large volume document requests.

6. Are there additional tools that could be utilized by your agency to create further efficiencies?

Yes. Since the official record in NLRB cases is electronic, tools that ensure data integrity and complete records would greatly assist the FOIA Branch in processing FOIA requests. An updated FOIA tracking system would assist with the FOIA Annual Report and other newly created internal report requirements involving the FOIA Branch.

Other Initiatives:

7. Did your agency successfully post all four quarterly reports for Fiscal Year 2015?

Yes

8. 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 2016.

N/A

9. Do your agency's FOIA professionals use e-mail or other electronic means to communicate with requesters whenever feasible?

Yes

If yes, what are the different types of electronic means are utilized by your agency to

communicate with requesters?

E-FOIA requests mailbox (requests made directly through the Agency website), email and fax. Additionally, the Agency is moving forward with a separate mailbox to accept emailed requests.

10. If your agency does not communicate electronically with requesters as a default, are there any limitations or restrictions for the use of such means?

N/A

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

Simple Track:

1. Does your agency utilize a separate track for simple requests? No

2. If so, for your agency overall in Fiscal Year 2015, was the average number of days to process simple requests twenty working days or fewer? N/A. As noted below, the average number of days to process all requests was fewer than 20 days.

3. Please provide the percentage of requests processed by your agency in Fiscal Year 2015 that were placed in your simple track. N/A

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? Yes

Backlogs:

BACKLOGGED REQUESTS

5. If your agency had a backlog of requests at the close of Fiscal Year 2015, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2014?

No. The number of backlogged requests for Fiscal Year 2014 was 10 and the number of backlogged cases in Fiscal Year 2015 was 266.

6. If not, explain why and describe the causes that contributed to your agency not being able to reduce its backlog.

The increase in backlogged requests was due to the completion of FOIA centralization while ongoing IT issues and staffing issues remained and at the same time the Agency moved its headquarters offices. In addition, the FOIA Branch was responsible for processing FOIA

appeals.

7. 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 2015. 6.6%

BACKLOGGED APPEALS

8. If your agency had a backlog of appeals at the close of Fiscal Year 2015, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2014?

No

9. If not, explain why and describe the causes that contributed to your agency not being able to reduce backlog.

The increase in backlogged appeals was due to an increase in the complexity of the appeals received, many of which raised multiple arguments on appeals and some appeals that involved a large amount of responsive documents.

10. 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 2015. 4%

Backlog Reduction Plans:

11. In the 2015 guidelines for Chief FOIA Officer Reports, any agency with a backlog of over 1,000 requests in Fiscal Year 2014 was asked to provide a plan for achieving backlog reduction in the year ahead. Did your agency implement a backlog reduction plan last year?

N/A

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 2015.

N/A

12. If your agency had a backlog of more than 1,000 requests in Fiscal Year 2015, what is your agency's plan to reduce this backlog during Fiscal Year 2016?

N/A

Status of Ten Oldest Requests, Appeals, and Consultations:

TEN OLDEST REQUESTS

13. In Fiscal Year 2015, did your agency close the ten oldest requests that were reported pending in your Fiscal Year 2014 Annual FOIA Report?

Yes

14. 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 2014 Annual FOIA Report. If you had less than ten total oldest requests to close, please indicate that.

N/A

15. 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?

No requests were withdrawn.

TEN OLDEST APPEALS

16. In Fiscal Year 2015, did your agency close the ten oldest appeals that were reported pending in your Fiscal Year 2014 Annual FOIA Report?

Yes

17. 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 2014 Annual FOIA Report. If you had less than ten total oldest appeals to close, please indicate that.

N/A

TEN OLDEST CONSULTATIONS

18. In Fiscal Year 2015, did your agency close the ten oldest consultations that were reported pending in your Fiscal Year 2014 Annual FOIA Report? N/A – no consultations were pending

19. 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 2014 Annual FOIA Report. If you had less than ten total oldest consultations to close, please indicate that. N/A

Additional Information on Ten Oldest Requests, Appeals, and Consultations & Plans:

20. Briefly explain any obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2014.

N/A

21. 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.

N/A

22. 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 2016.

N/A

Interim Responses:

23. Does your agency have a system in place to provide interim responses to requesters when appropriate? *See OIP Guidance*, "The Importance of Good Communication with FOIA Requesters." (Mar. 1, 2010)

Yes

24. If your agency had a backlog in Fiscal Year 2015, 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.

Interim responses were provided in 5% of the backlogged cases.

Use of the FOIA's Law Enforcement Exclusions

1. Did your agency invoke a statutory exclusion, 5 U.S.C. § 552(c)(1), (2), (3), during Fiscal Year 2015? No

2. If so, please provide the total number of times exclusions were invoked. N/A

Success Story

Out of all the activities undertaken by your agency since March 2015 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.

One of the major successes for the National Labor Relations Board has been its completion of its efforts to centralize its FOIA program. FOIA centralization was done to increase consistency of FOIA responses nationwide. The Agency had made a commitment to expand the professional and clerical staff and to ensure adequate training of the staff. To insure the success of the FOIA centralization, the FOIA Branch continued to expand from a staff of 10 attorneys and 3 FOIA Specialists, to include 12 attorneys and 4 FOIA Specialists.

The NLRB continued for 2015 to maintain an effective FOIA program resulting in an average FOIA processing time well below the 20-day statutory time period.