

NATIONAL LABOR RELATIONS BOARD

Freedom of Information Act Annual Report

Fiscal Year 2007

I. Basic Information

- A. For questions concerning this Report contact:
Jacqueline Young, FOIA Officer (jacqueline.young@nrlb.gov)
National Labor Relations Board
1099 14th Street, NW, Suite 10600
Washington, DC 20570
- B. Report may be obtained through the Internet at:
www.nrlb.gov/nrlb/about/foia/07Report.pdf
- C. Report may also be obtained by making a request to the address listed above.

II. How to Make a FOIA Request

- A. Our FOIA Reference Guide, located on the NLRB's FOIA Home Page at www.nrlb.gov/foia/foia_reference_guide.aspx, details the different methods of making a FOIA request to the NLRB.
- B. The NLRB's median response time for responding to FOIA requests in FY 2007 was 6 working days. For appeals, the median processing time was 18 working days.
- C. All federal agencies, including the NLRB, are required under the FOIA to provide records upon receiving a written request, except for those documents that are protected from disclosure by the FOIA's nine exemptions and three exclusions. The most common reasons why some requests are not granted by the NLRB are because requesters seek information protected by the following FOIA exemptions:

• Exemptions (b)(6) and (b)(7)(C):	protects information concerning other individuals that, if released, would constitute an invasion of their personal privacy.
• Exemption (b)(5):	protects certain inter- and intra-agency memoranda, including those setting forth internal recommendations from staff and those that contain attorney work product.
• Exemptions (b)(7)(A) (b)(7)(D) and (b)(7)(E)	protects certain records in lawenforcement investigatory files, including records the release of which would interfere with an ongoing proceeding and records that would reveal confidential sources or enable someone to avoid complying with the law.

III. Definitions of Terms and Acronyms Used in this Report

- A. Agency-specific acronyms and other terms:
 - 1. NLRB -- National Labor Relations Board
 - 2. FOIA -- Freedom of Information Act (5 U.S.C. § 552)
 - 3. FY -- Fiscal Year
 - 4. P.A. -- Privacy Act (5 U.S.C. § 552a)

B. Basic terms, expressed in common terminology

1. FOIA/PA Request -- Freedom of Information Act/Privacy Act Request. A FOIA request is generally a request for access to records concerning a third party, an organization, or a particular topic of interest. A Privacy Act request is a request for records concerning oneself; such requests are also treated as FOIA requests. (All requests for access to records, regardless of which law is cited by the requester, are included in this report.)
2. Initial Request -- a request to the NLRB for access to records under the FOIA.
3. Appeal --a request to the NLRB asking that it review at a higher administrative level a full or partial denial of a FOIA request, or any other FOIA determination such as a matter pertaining to fees.
4. Processed Request or Appeal -- a request or appeal for which the NLRB has taken a final action on the request or the appeal in all respects.
5. Multi-track Processing -- a system in which simple requests requiring minimal action are placed in one processing track and more voluminous and complex requests are placed in one or more other tracks. Requests in each track are processed on a first-in/first-out basis. Note: The NLRB does not have multi-track processing as it generally responds to requests on a timely basis and does not have any significant FOIA backlog. A requester who has an urgent need for records may request expedited processing (see III.B.6. directly below).
6. Expedited Processing -- The NLRB will process a FOIA request on an expedited basis when a requester has shown exceptional need or urgency for the records that warrants prioritization of his or her request over other requests that were made earlier.
7. Simple Request -- a FOIA request that an agency using multi-track processing places in its fastest (non-expedited) track based on the volume and/or simplicity of records requested. As noted above, the NLRB does not have multitrack processing.
8. Complex Request -- a FOIA request that any agency using multi-track processing places in a slower track based on the volume and/or complexity of records requested. As noted above, the NLRB does not have multi-track processing.
9. Grant -- a NLRB decision to disclose all records in full in response to a FOIA request.
10. Partial Grant -- a NLRB decision to disclose a record in part in response to a FOIA request, deleting information determined to be exempt under one or more of the FOIA's exemptions; or a decision to disclose some records in their entities, but to withhold others in whole or in part.
11. Denial -- a NLRB decision not to release any part of a record or records in response to a FOIA request because all the information in the requested records is determined by the NLRB to be exempt under one or more of the FOIA's exemptions, or for some procedural reason (such as because no record is located in response to a FOIA request).
12. Time Limits -- the time period set forth in the FOIA for an agency to respond to a FOIA request, ordinarily 20 "working days" from proper receipt of a "perfected" FOIA request (see III.B.13. & 17. below). Note: The NLRB response times in Part VII below, in accordance with the Justice Department Guidelines, are given in working days.
13. Perfected Request -- a FOIA request for records that adequately describes the records sought; that has been received by the NLRB component in possession of the records, and for which there is no remaining question about the payment of applicable fees.
14. Exemption 3 Statute -- a separate federal statute prohibiting the disclosure of a certain type of information and authorizing its withholding under FOIA subsection (b)(3).

15. Median Number -- the middle, not average, number. For example, of 3, 7, and 14, the median number is 7.
16. Average Number -- the number obtained by dividing the sum of a group of numbers by the quantity of numbers in the group. For example, of 3, 7, and 14, the average number is 8.
17. Working Days -- days except Saturdays, Sundays, and legal public holidays. As noted, the NLRB's response times in Part VII below are given in median working days.

IV. Exemption 3 Statutes

- A. The NLRB did not rely on any Exemption 3 statutes during the fiscal year covered by this report (FY 2007).

V. Initial FOIA Requests

- A. Total Number of Requests:

1. 116 * requests were pending at the end of fiscal year 2006.
2. 4320 requests were received during fiscal year 2007.
3. 4278 requests were processed during fiscal year 2007.
4. 158 requests were pending as of the end of fiscal year 2007.

- B. Disposition of Initial Requests in Fiscal Year 2007:

1. 3201 requests were granted in full.
2. 387 requests were denied in part based on FOIA Exemptions.
3. 306 requests were denied in full based on FOIA Exemptions.

(1) Exemption 1	0
(2) Exemption 2	31
(3) Exemption 3	0
(4) Exemption 4	8
(5) Exemption 5	213
(6) Exemption 6	253
(7) Exemption (7A)	222
(8) Exemption 7(B)	0
(9) Exemption 7(C)	279
(10) Exemption 7(D)	212
(11) Exemption 7(E)	5
(12) Exemption 7(F)	0
(13) Exemption 8	0
(14) Exemption 9	0

The total number of exemptions relied upon exceeds the number of adverse determinations because a determination often relies on more than one exemption.

* Last year the number reported as pending at the end of the fiscal year 2006 was 269. However, as a result of a review of the electronic database and duplication of files, the number of requests pending at the end of fiscal year 2006 has been adjusted to 116.

4. Other reasons for non-disclosure (total)	384
(a) no records exist reflecting the requested information	84
(b) request referred	174
(c) request withdrawn	81
(d) fee-related reason	9
(e) records not reasonably described	2
(f) not proper FOIA request for some other reason	0
(g) not an Agency record	5
(h) Duplicate Request	0
(i) Other: record destroyed	29

VI. Appeals of Initial Denials of FOIA Requests

A. Total Number of Requests:

1. Number of appeals received during fiscal year 2007	25
2. Number of appeals processed during fiscal year 2007	25

B. Disposition of appealed requests in FY 2007:

1. Number granted in full	1
2. Number granted in part	5
3. Number denied in full	18

(a) The number of times each FOIA exemption was used, counting each exemption once per appeal:

(1) Exemption 1	0
(2) Exemption 2	1
(3) Exemption 3	0
(4) Exemption 4	0
(5) Exemption 5	13
(6) Exemption 6	8
(7) Exemption 7(A)	5
(8) Exemption 7(B)	0
(9) Exemption 7(C)	14
(10) Exemption 7(D)	10
(11) Exemption 7(E)	0
(12) Exemption 7(F)	0
(13) Exemption 8	0
(14) Exemption 9	0

The total number of exemptions relied upon exceeds the number of determinations on appeal because a determination often relies upon more than one exemption.

4. Other reasons for non-disclosure (total)	1
(a) no records exist reflecting the requested information	0
(b) request referred	0
(c) request withdrawn	0
(d) fee-related reason	0
(e) records not reasonably described	0
(f) not proper FOIA request for some other reason	0
(g) not an Agency record	0
(h) Duplicate Request	0
(i) Other: record destroyed	1

VII. Compliance with Time Limits/Status of Pending Requests

- A. Median processing time for the 4278 requests processed during fiscal year 2007: 6 working days (note: the NLRB does not have multi-track processing. No requester sought expedited processing).
- B. Status of pending requests:
 - 1. Number of requests pending as of the end of fiscal year 2007 is 158.
 - 2. Median number of days that such requests were pending as of the end of fiscal year 2007 is 15 working days.

VIII. Comparison with Previous Fiscal Year

- A. The number of requests received in FY 2006 was 4689; the number received in FY 2007, 4320, represents an decrease of 7.87%.
- B. The number of requests processed in FY 2006 was 4553; the number processed in FY 2007 was 4278.
- C. The median number of days requests were pending as of the end of FY 2006 was 19 days. The median number of days that such requests were pending at the end of FY 2007 is 15 days.
- D. No requests for expedited processing were received in FY 2007 and therefore none were granted.
- E. Other narrative statements: none.

IX. Costs/FOIA Staffing

- A. Staffing levels:
 - 1. Number of full-time FOIA personnel 1
 - 2. Number of personnel with part-time or occasional FOIA duties (in total work-years) 8.53.
 - 3. Total number of personnel (in work-years) 9.53.
- B. Total costs (including staff and all resources):
 - 1. FOIA processing (including appeals) \$724,834.62
 - 2. Litigation related activities \$9,133.74
 - 3. Total costs \$733,968.36

X. Fees

This includes charges for search, review, document duplication, and any other direct costs permitted under agency regulations.

- A. Total amount of fees collected by agency for processing requests: \$74,581.41.
- B. Percentage of total costs: 10.16%.

XI. FOIA Regulations (Including Fee Schedule)

The NLRB's FOIA regulations, including the fee schedule, are codified at 29 C.F.R. 102.117.

XII. REPORT ON EXECUTIVE ORDER 13,392 IMPLEMENTATION.

The reporting period for Section XII of this Annual Report is different from that used for the rest of this Report. For all other portions of the Report, the reporting period is Fiscal Year 2007. The reporting period for this section includes progress made by the NLRB through January 2008.

This section of the annual report contains the National Labor Relations Board's description of its progress in implementing the milestones and goals of the Agency's FOIA Improvement Plan.

A. Description of supplemental/modification of agency improvement plan (if applicable)

Not applicable

B. Report on agency implementation of its plan, including its performance in meeting milestones, with respect to each improvements area

The NLRB has been successful in its overall progress in meetings its goals and milestones established in the report it submitted on June 14, 2006, in response to Executive Order 13,392. For this reporting period, the Agency has not fully completed its goal of posting its revised FOIA Manual to the Agency's Website due to the recently enacted FOIA amendments (OPEN Government Act of 2007, Pub. L. No. 110-175, 121 Stat. 2524 (2007)).

During this period, the NLRB was able to see many benefits from its past improvements, including improvements to the Agency's FOIA Web site and to its FOIA Tracking System (FTS). (These procedures are fully described in Section XII of NLRB's FOIA Report for Fiscal Year 2006.)

In particular, improvements to the NLRB's FTS permitted increased electronic tracking and reporting of Agency-wide FOIA requests. In addition to increasing management report capabilities, the FTS improvements allowed for the NLRB's ability to monitor the progress of pending FOIA cases Agency-wide, which ensured the Agency's continued success in timely processing FOIA requests. Moreover, the enhanced features allowed for quality review of data entry and for more accurate generation of statistics for the Annual Report. Based on the many benefits that the NLRB gained from the enhanced FTS, the NLRB worked extensively with officials from the Broadcasting Board of Governors (BBG), an independent federal agency, to share with them our FTS. This past year BBG decided to adopt the NLRB's FTS system, which resulted in significant cost savings to the BBG of many thousands of dollars (FTS cost the NLRB approximately \$250,000 to develop and maintain).

C. Identification and discussion of any deficiency in meeting plan milestones (if applicable)

1. FOIA Improvement Plan area to which the deficient milestone relates.

FOIA Manual- updated and clarified

2. Deficient milestone and the original target date from the FOIA Improvement Plan.

Review and update FOIA Manual- December 31, 2007

3. Steps taken to correct the deficiency and the dates by which the steps were completed.

The NLRB has updated and revised the NLRB's FOIA Manual which serves as a guide to Regional and Headquarters personnel responsible for FOIA processing. Representatives from various NLRB offices served on the FOIA Manual Committee. Based on a review of Court of Appeals' and Supreme Court law that issued since the original manual was published in 1999, the updated manual was initially completed in December, 2007. However, with the review of the recently enacted OPEN Government Act of 2007, and pending further guidance from DOJ as to their interpretation of those provisions, considerations for further revisions to the Manual are presently being considered.

4. Future remedial steps and the dates by which the steps will be completed.

Pending further Agency review of the OPEN Government Act of 2007 and further guidance from the Department of Justice concerning the legislation, the Manual will be further revised and posted on the Agency's website. The NLRB anticipates its internal review of the new law will be completed by the end of February and that any revisions that are needed

will be completed within two months of final guidance from the Department of Justice.

D. Additional narrative statement regarding other Executive Order-related activities (optional)

Not applicable

E. Concise descriptions of FOIA exemptions

The nine exemptions to the FOIA authorize federal agencies to withhold information covering: (1) classified national defense and foreign relations information; (2) internal agency rules and practices; (3) information that is prohibited from disclosure by another federal law; (4) trade secrets and other confidential business information; (5) inter-agency or intra-agency communications that are protected by legal privileges; (6) information involving matters of personal privacy; (7) records or information compiled for law enforcement purposes, to the extent that the production of those records (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions, or (F) could reasonably be expected to endanger the life or physical safety of any individual; (8) information relating to the supervision of financial institutions; and (9) geological information on wells.

F. Additional statistics

1. Ten Oldest Pending FOIA Requests

Using the template provided below, please list in the appropriate column labeled by year, each of your ten oldest pending requests as of January 1, 2008. Please list the requests by date.

Calendar Year	2000	2001	2002	2003	2004	2005	2006	2007
Requests	0	0	0	0	0	0	0	10/31 11/1 11/1 11/7 11/13 11/19 11/20

								11/21 11/26 11/26
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These cases are now closed.

2. Consultations

i) Number of Consultations Received, Processed, and Pending Please provide the number of consultations received, processed, and currently pending, in the appropriate column below.

Consultations Received From Other Agencies During FY07	Consultations Received From Other Agencies That Were Processed by Your Agency During FY07 (includes those received prior to FY07)	Consultations Received From Other Agencies That Were Pending at Your Agency as of October 1, 2007 (includes those received prior to FY07)
0	0	0

ii) Ten Oldest Pending Consultations Received From Other Agencies

Using the template provided below, please list in the appropriate column labeled by year, each of your ten oldest pending consultations received from other agencies as of January 1, 2008. Please list the consultations by the date it was received by your agency.

Calendar Year	2000	2001	2002	2003	2004	2005	2006	2007
Requests	0	0	0	0	0	0	0	0

The NLRB does not have any pending consultations.

G. Agency Improvement Plan (in current form)

The NLRB's FOIA Improvement Plan is available on the internet (*PDF).