



## Chief FOIA Officer Report 2013

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### **I: Steps Taken to Apply the Presumption of Openness**

*Describe the steps your agency has taken to ensure that the presumption is being applied to all decisions involving the FOIA.*

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. Agency FOIA professionals attended the “Overview of the Freedom of Information Act” and the “Refresher Training on the Guidelines for Preparation of Annual FOIA Reports” provided by the Department of Justice.

*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.*

2. *Did your agency make any discretionary releases of otherwise exempt information?*

The agency releases almost all of the records requested under FOIA, with limited redactions, and does not formally track whether a release of information is discretionary. However, it is likely that several documents disclosed to requestors in the FY 2012 requests could have been withheld or redacted under Exemptions 2 or 5.

3. *What exemptions would have covered the information that was released as a matter of discretion?*

Not applicable.

4. *Provide a narrative description, or some examples of, the types of information that your agency released as a matter of discretion.*

Not applicable.

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

The agency has not taken any other formal initiatives to ensure that the presumption of openness is being applied to decisions involving releases under FOIA. However, the agency has been successful in its efforts to implement the President's memo and the Attorney General's Guidelines regarding openness: in FY 2012, the agency only redacted or withheld information from three requestors.

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

*Describe here the steps your agency has taken to ensure that its system for responding to requests 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.*

1. *Do FOIA professionals within your agency have sufficient IT support?*

The NMB FOIA professionals have the IT support necessary to make electronic proactive disclosures quickly, particularly if the requestor is requesting a specific document or group of documents. The NMB currently uses a central electronic case-tracking system to monitor deadlines for responding to FOIA requests. All NMB FOIA professionals have access to this system while working at agency headquarters or remotely. The FOIA professionals also have access to software applications to ensure that they are able to search for agency records thoroughly and efficiently.

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?*

Not applicable.

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 agency has created a dedicated email account [foia@nmb.gov](mailto:foia@nmb.gov) so that requestors may file their requests electronically which allows for more efficient processing. The agency has also determined through self assessments that having a more efficient way of searching documents would ensure that FOIA professionals are working effectively. To this end the agency has contracted with a document imaging company to ensure that all agency documents have in-document searching capabilities.

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

*Describe here the steps your agency has taken to increase the amount of material that is available on your agency's 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 2012 to March 2013). 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.*

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

The agency posted numerous types of records on its website and the Knowledge Store, including Board determinations in representation dispute cases, jurisdictional opinions, arbitration awards, press releases regarding mediation cases and collective bargaining agreements.

- 2. Beyond posting new material, is your agency taking steps to make the 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, providing explanatory material, etc.?*

Yes. The NMB is continuously updating its on-line Lyceum to respond to the needs of the public. The NMB Lyceum was implemented to serve as an easily accessible resource, providing training and information on the daily activities of the NMB and how the agency operates. Through the Lyceum, the NMB offers on-line courses which provide information about the agency, provide training for air and rail carriers and labor organizations involved in mediation, and provide information about the Railway Labor Act. The Lyceum also provides other types of information to the community of individuals who frequent our website, such as information regarding the NMB's current face-to-face course offerings and instructional materials for arbitrators. The agency encourages comments on any posted material.

3. *Is so, provide examples of such improvements.*

During FY 12 the NMB worked on adding new training videos regarding the grievance mediation process to the Lyceum. The agency also sought comments from labor organizations air and rail carriers as well as members of the public on the agency's posted proposed rulemaking.

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

No other steps have been taken at this time.

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

*Electronic Receipt of requests:*

1. *Can FOIA requests be made electronically to your agency?*

Yes. The NMB currently accepts FOIA requests electronically via [foia@nmb.gov](mailto:foia@nmb.gov).

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

Not applicable.

*Online tracking of FOIA requests:*

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

No.

4. *If so, describe the information that is provided to the requester through the tracking system. List the specific types of information that are available through your agency's tracking system.*

Not applicable.

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

Not applicable.

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

Not at this time.

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.*

*The NMB has contracted with a document imaging company to ensure that all agency documents are scanned in the agency's database system to provide upgraded in-document searching capabilities that were previously unavailable. This will also allow for more efficient searches when responding to FOIA requests.*

#### **Part V: Steps Taken to Improve Timelines in Responding to Requests and Reducing Backlogs**

*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 and appeals.*

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 time for processed requests. 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?*

No.

- b. *If so, for your agency overall, for FY 2012, was the average number of days to process simple requests twenty working days or fewer?*

Not applicable.

- 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?*

No.

2. 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 FY 2012 as compared to FY 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 FY 2011 and FY 2012 should be used for this section.

a. If your agency had a backlog of requests at the close of FY 2012, did that backlog decrease as compared with FY 2011?

Yes. The backlog decreased from five to one request.

b. If your agency had a backlog of administrative appeals in FY 2012, did that backlog decrease as compared to FY 2011?

Not applicable.

c. In FY 2012, did your agency close the ten oldest requests that were pending as of the end of FY 2011?

Yes. The agency had five requests pending at the end of FY 2011 and processed the requests during FY 2012.

d. In FY 2012, did your agency close the ten oldest administrative appeals that were pending as of the end of FY 2011?

Not applicable.

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 a reduction in the request backlog a result of an increase in the number of incoming requests?

Not applicable.

b. Was the lack of a reduction in the request backlog caused by a loss of staff?

Not applicable.

c. Was the lack of a reduction in the request backlog caused by an increase in the complexity of the requests received?

Not applicable.

*d. What other causes, if any, contributed to the lack of a decrease in the request backlog?*

Not applicable.

#### *Administrative Appeal Backlog*

*a. Was the lack of a reduction in the appeal backlog a result of an increase in the number of incoming requests?*

Not applicable.

*b. Was the lack of a reduction in the appeal backlog caused by a loss of staff?*

Not applicable.

*c. Was the lack of a reduction in the appeal backlog caused by an increase in the complexity of the requests received?*

Not applicable.

*d. What other causes, if any, contributed to the lack of a decrease in the appeal backlog?*

Not applicable.

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 requestors agencies facilitate access to the requested information. If your agency had a backlog in FY 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.*

*No (0) cases.*

#### **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)(1-3), please answer the following questions:

1. Did your agency invoke a statutory exclusion during FY 2012?

No.

2. If so, what is the total number of times exclusions were involved?

Not applicable.

### **Spotlight On Success**

During FY 12 the NMB launched its dedicated email address [foia@nmb.gov](mailto:foia@nmb.gov) for filing FOIA requests. The creation of this FOIA only email address has made it easier for requesters and allows for more efficient processing of those requests.