

THE NATIONAL MEDIATION BOARD FREEDOM OF INFORMATION ACT REFERENCE GUIDE

I. Introduction

The Freedom of Information Act (FOIA), 5 U.S.C. § 552 was enacted in 1966 so that any individual or organization can have access to government records, unless the records are protected from disclosure by one or more of the nine FOIA Exemptions.

The rules for making FOIA requests to the National Mediation Board (NMB) are set forth in the Code of Federal Regulations at 29 C.F.R. § 1208, which is available online from this link. This reference guide should provide you with the basic information you will need.

II. Access to Certain Records Without a FOIA Request

All agencies are required by statute to make available electronically certain types of records created by the agency on or after November 1, 1996. If you have internet access, you do not need to make a FOIA request to obtain access to the following (and other) NMB records:

- The Railway Labor Act
- NMB Rules and Regulations
- NMB Representation Manual
- Agency Determinations
- FOIA Annual and Quarterly Reports
- NMB Strategic Plan
- NMB Performance Reports
- Other NMB Policies, Plans and Reports
- NMB Notices

In 2005, the NMB established on its website a public information service known as "The NMB Knowledge Store." The Knowledge Store makes available to the public many categories of documents that were the subject of FOIA requests, such as collective bargaining agreements, arbitration awards, and Presidential Emergency Board reports.

III. Sending Your FOIA Request

A FOIA request for a copy of the NMB records can be made by any individual, private organization, or public organization, other than another federal agency. The request must: (1) be in writing; (2) reasonably describe the records sought (by name, date, and subject matter); and, (3) indicate a willingness to pay fees, (specify the amount that you are willing to pay) or ask for a fee waiver. There is no special form to file. Just send a written request to the General Counsel's office by email (at FOIA.nmb.gov) or regular mail (National Mediation Board, 1301 K St., NW., Suite 250E, Washington, DC 20005). Be sure to state your name,

address, and telephone number on your request. You need not say why you want the records.

IV. How to Make a FOIA Request

A FOIA request can be made for any agency record. This does not mean that the NMB will necessarily disclose any record sought. There are statutory exemptions that authorize withholding of information of a sensitive nature. When the NMB does withhold information, it must specify the FOIA exemption that permits the withholding. FOIA does not require agencies to do research, analyze data, answer written questions, or create records upon responding to a request.

V. Processing Your FOIA Request

The NMB will reply within 20 business days of receiving your written request. Under unusual circumstances, we may ask for an extension of ten business days.

You may request expedited processing if you demonstrate a compelling need for the information. "Compelling need" means: (1) that a failure to obtain requested records on an expedited basis could reasonably be expected to pose an imminent threat to an individual's life or physical safety; or (2) if the requester is primarily engaged in disseminating information, then there must be an urgency to inform the public about actual or alleged federal government activity. You must show a compelling need by submitting a statement certified by you as true and correct to the best of your knowledge and belief.

We will inform you within 10 business days from the date of your request whether expedited processing will be granted. If we deny your request for expedited processing, we will notify you on how to file an appeal with the Chairman of the NMB.

VI. Inspection or Duplication of Records

After the NMB decides to release the records, you may ask that a copy be made and sent to you at \$0.15 per page, in accordance with the schedule of fees in 29 CFR § 1208. The NMB will honor a requester's preference for receiving a record in a particular form or format where it can readily reproduce it in the form or format requested. Where photocopies are supplied, the NMB will provide one copy per request at the cost of 15 cents per page. For copies of records produced on tapes, disks, or other media, the NMB will charge the direct costs of producing the copy, including operator time. Where paper documents must be scanned in order to comply with a requester's preference to receive the records in an electronic format, the requester must also pay the direct costs associated with scanning those materials. For other forms of duplication, the NMB will charge the direct costs.

VII. Search, Review, and Duplication Fees

There is no initial fee to file a FOIA request, however, an agency is entitled to charge certain fees, depending on the applicable category of requester. Commercial requesters must pay all fees associated with the search, review, and duplication of records, except for the first 30 minutes of search and review. Educational institutions, representatives of the news media, and non-commercial scientific institutions must pay for duplication only, except for the first 100 pages. All others must pay for search and duplication, except for the first 100 pages and the first two hours of search. The NMB currently charges \$0.15 per page for photocopying. In all cases, if the total fee does not exceed a minimum amount, currently \$25.00, NMB will not charge any fee.

You may include in your request a specific statement limiting the amount that you are willing to pay in fees.

VIII. Fee Waivers

The FOIA permits a waiver of fees if release of the records is in the public interest because it:

(a) is likely to contribute significantly to public understanding of the operations or activities of the government, and (b) is not primarily in the requester's commercial interest. The U.S. Department of Justice, which provides guidance on FOIA compliance throughout the federal government, sets out six points for agencies to consider when deciding whether to grant a fee waiver. These factors are summarized as follows:

A. Disclosure of the Information "is in the Public Interest Because it is Likely to Contribute Significantly to Public Understanding of the Operations or Activities of the Government."

- 1) **The subject of the request:** Whether the subject of the requested records concerns "the operations or activities of the government";
- (2) **The informative value of the information to be disclosed:** Whether the disclosure is "likely to contribute" to an understanding of government operations or activities;
- (3) **The contribution to an understanding of the subject by the general public likely to result from disclosure:** Whether disclosure of the requested information will contribute to "public understanding"; and
- (4) **The significance of the contribution to public understanding:** Whether the disclosure is likely to contribute "significantly" to public understanding of government

operations or activities.

B. Disclosure of the Information "is Not Primarily in the Commercial Interest of the Requester."

(1) **The existence and magnitude of a commercial interest:** Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so

(2) **The primary interest in disclosure:** Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester."

IX. Initial Request Determination

Once the NMB has processed your request and all fee issues are resolved, we will send you a written determination. In most cases, we will also enclose any documents that can be disclosed. In some cases, the documents themselves may be sent within a reasonable time after the initial determination letter. The determination letter will advise you about any information withheld and will either specify the number of pages withheld or will make a reasonable effort to estimate the amount of withheld information. If any information is withheld pursuant to one or more of the FOIA exemptions, we will inform you as to which exemptions apply and how you may file an appeal.

X. Appeal Rights

You may file an administrative appeal if you are not satisfied with the NMB initial response. Ordinarily, your appeal must be received within 90 days of the receipt of the agency's determination letter. All appeals must be made in writing and addressed to:

Chairman
National Mediation Board
1301 K Street, NW., Ste
250E Washington, DC
20005

The Chairman of the NMB will make an independent determination on your administrative appeal within 20 business days. The Chairman may: (1) affirm the initial determination in full, in which case it will identify any exemptions that were appropriately claimed; (2) affirm part of the initial determination (identifying the applicable exemptions), but release to you other information previously withheld; or (3) reverse the initial determination and release to you all the information you requested.

XI. Judicial Review

After your administrative appeal has been decided, if you still believe that the NMB has not handled your FOIA request in accordance with the law, you have a right to challenge the agency's action in a lawsuit filed in federal court through the litigation process known as "judicial review." Before doing so, you ordinarily will be required to first file an administrative appeal and to have received a response. If the NMB fails to respond to either your initial request or your appeal within the time limits discussed above, you may file a lawsuit once the time limits have expired.

If you decide to bring a court action, you may file your lawsuit in a federal district court in any of the following places: (1) where you reside, (2) where you have your principal place of business (if any), (3) in the District of Columbia, or (4) where the records are located, if they are not located in the District of Columbia. If you have received an administrative appeal determination, that final administrative response letter will advise you of your right to seek judicial review. You have six years to file suit from the time your right to sue begins. Lastly, please understand that attorneys and employees of the NMB are prohibited from giving legal advice to members of the public on any matters, including FOIA litigation.