



National Mediation Board
Freedom of Information Act Annual Report
Fiscal Year 2006

I. Basic Information Regarding Report

A. Questions about the report should be directed to:

Judy A. Femi
FOIA Officer
National Mediation Board
1301 K Street, NW., Suite 250E
Washington, DC 20572
Tel: (202) 692-5040

B. The electronic address for this report on NMB's World Wide Web site is:
<http://www.nmb.gov/>

C. A copy of this report in paper form may be obtained by contacting the NMB's FOIA Officer (see I. A. above).

II. How to Make a FOIA Request

A. FOIA requests should be sent to: Mary L. Johnson, General Counsel, National Mediation Board, 1301 K Street, N.W., Suite 250E, Washington, DC 20572. The telephone number is (202) 692-5040. The formal rules for the making of FOIA requests to the National Mediation Board are set forth in Chapter 10, Volume 29, of the Code of Federal Regulations.

B. Under the FOIA, all federal agencies are required to respond to a FOIA request within twenty business days.

C. Some requests are not granted based upon the exemptions from disclosure under the FOIA. In some other instances, the record sought does not exist; the request was withdrawn; or the document sought is not an agency record.

III. Definitions of Terms and Acronyms Used in this Report

1. NMB - National Mediation Board
FOIA - Freedom of Information Act
2. Basic Terms:

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 a Federal agency for access to records under the Freedom of Information Act.
3. Appeal -- a request to a Federal agency asking that it review at a higher administrative level a full denial or partial denial of access to records under the Freedom of Information Act, or any other FOIA determination such as a matter pertaining to fees.
4. Processed Request or Appeal -- a request or appeal for which an agency 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 relatively minimal review 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. A requester who has an urgent need for records may request expedited processing (see below).
6. Expedited processing -- an agency will process a FOIA request on an expedited basis when a requester has shown an exceptional need or urgency for the records which 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 (nonexpedited) track based on the volume and/or simplicity of records requested.
8. Complex request -- a FOIA request that an agency using multi-track processing places in a slower track based on the volume and/or complexity of records requested.
9. Grant -- an agency decision to disclose all records in full in response to a FOIA request.
10. Partial grant -- an agency 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 entirety, but to withhold others in whole or in part.
11. Denial -- an agency 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 agency 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 in the Freedom of Information Act for an agency to respond to a FOIA request (ordinarily 20 working days from proper receipt of a "perfected" FOIA request).

13. "Perfected" request -- a FOIA request for records which adequately describes the records sought, which has been received by the FOIA office of the agency or agency 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.

IV. Exemption 3 Statutes

No Exemption 3 statute was relied upon during fiscal year 2005.

V. Initial FOIA Access Requests

A. Numbers of initial requests.

1. Number of requests pending as of end of preceding fiscal year: 0
2. Number of requests received during current fiscal year: 23
3. Number of requests processed during current fiscal year: 23
4. Number of requests pending as of end of current fiscal year: 0

B. Disposition of initial requests

1. Number of total grants: 19
2. Number of partial grants: 2
3. Number of denials: 0
 - a. Number of times each FOIA exemption used (counting each exemption once per request)

- (1) Exemption 1: 0
- (2) Exemption 2: 0
- (3) Exemption 3: 0
- (4) Exemption 4: 0
- (5) Exemption 5: 0
- (6) Exemption 6: 2
- (7) Exemption 7(A): 0

- (8) Exemption 7(B): 0
- (9) Exemption 7(C): 2
- (10) Exemption 7(D): 0
- (11) Exemption 7(E): 0
- (12) Exemption 7(F): 0
- (13) Exemption 8: 0
- (14) Exemption 9: 0

- 4. Other reasons for nondisclosure (total): 2
 - a. no records: 2
 - b. referrals:
 - c. request withdrawn:
 - d. fee-related reason:
 - e. records not reasonably described:
 - f. not a proper FOIA request for some other reason:
 - g. not an agency record:
 - h. duplicate request:
 - i. other:

VI. Appeals of Initial Denials of FOIA Requests

A. Numbers of appeals.

- 1. Number of appeals received during fiscal year: 1
- 2. Number of appeals processed during fiscal year: 1

B. Disposition of appeals.

- 1. Number completely upheld: 1
- 2. Number partially reversed: 0
- 3. Number completely reversed: 0
 - a. Number of times each FOIA exemption used (counting each exemption once per request)
 - (1) Exemption 1: 0
 - (2) Exemption 2: 0
 - (3) Exemption 3: 0
 - (4) Exemption 4: 0
 - (5) Exemption 5: 0
 - (6) Exemption 6: 1
 - (7) Exemption 7(A): 0
 - (8) Exemption 7(B): 0
 - (9) Exemption 7(C): 0
 - (10) Exemption 7(D): 0
 - (11) Exemption 7(E): 0
 - (12) Exemption 7(F): 0
 - (13) Exemption 8: 0
 - (14) Exemption 9: 0

4. Other reasons for nondisclosure (total): 0
 - a. no records: N/A
 - b. referrals: N/A
 - c. request withdrawn: N/A
 - d. fee-related reason: N/A
 - e. records not reasonably described: N/A
 - f. not a proper FOIA request for some other reason: N/A
 - g. not an agency record: N/A
 - h. duplicate request: N/A
 - i. other: N/A

VII. Compliance with Time Limits/Status of Pending Requests

- A. Median processing time for requests processed during the year.
 1. Total for all requests (noted: The NMB does not have multi-track processing).
 - a. Number of requests processed: 23
 - b. Median number of calendar days to process: 8
- B. Status of pending requests.
 1. Number of requests pending as of end of current fiscal year: 0
 2. Median number of days that such requests were pending as of that date: N/A

VIII. Comparisons With Previous Year(s) Optional

No requests were received for expedited processing in FY 2006. Therefore, no requests for expedited processing were granted.

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): 0.1 (approx. one tenth of one work year)
 3. Total number of personnel (in work-years): 1.1
- B. Total costs (including staff and all resources).
 1. FOIA processing (including appeals): \$109,733
 2. Litigation-related activities (estimated): \$0
 3. Total costs: \$109,733
- C. Statement of additional resources needed for FOIA compliance (optional)

X. Fees

A. Total amount of fees collected by agency for processing requests: Records were made available during this fiscal year without charging fees.

XI. FOIA Regulations (Including Fee Schedule)

NMB's FOIA regulations are located at 29 CFR § 1208 (effective August 19, 1998).

XII. Report on Executive Order 13,392 IMPLEMENTATION

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 improvement area.

The NMB has successfully completed the goals in two improvement areas established in the report it submitted on June 14, 2006, in response to Executive Order 13,392.

1) The NMB's FOIA Officer has prepared a training manual for agency staff. One attorney newly assigned to the FOIA area has attended the DOJ's Introduction to the Freedom of Information Act course and the FOIA Public Liaison attended the Department's FOIA Guide Seminar; and 2) An invoice has been created specifically for FOIA to improve billing and tracking of collections of FOIA fees.

In the area of electronic FOIA, the NMB has determined that an electronic FOIA system is not necessary for its FOIA operations. The NMB does not receive a significant number of FOIA requests during any one year. The NMB believes the small number of requests received over the past three years is largely attributable to the quantity and quality of information on the Agency's website known as the "The NMB Knowledge Store."

C. Identification and discussion of any deficiency in meeting plan milestones.

The NMB was unable to accomplish the goals concerning the area of Web site improvement and the FOIA reference guide. The NMB has one staff member assigned as the primary FOIA Officer. The FOIA Officer also provides litigation support to NMB attorneys. Due to the various litigation activities with tight deadlines among other priorities in heavy workload situations these goals were not completed by the reporting period. The FOIA Officer will work with the NMB's information technology staff and expects to accomplish these goals by June 2007.

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, but only to the extent that the production of such law enforcement records or information (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, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by 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 if such disclosure could reasonably be expected to risk circumvention of the law, 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. Time range of requests pending, by date of request (or, where applicable, by date of referral from another agency)

None pending

2. Time range of consultations pending with other agencies, by date of initial interagency communication.

None pending.

G. Attachment: Agency Improvement Plan:

The FOIA Improvement Plan for the NMB is attached.

ATTACHMENT



**National Mediation Board
Freedom of Information Act Improvement Plan
Pursuant to Executive Order 13392**

Pursuant to requirements of Executive Order 13392 and guidance issued by the Office of Information and Privacy of the U. S. Department of Justice the National Mediation Board's (NMB) plan to improve its FOIA operations, is set forth below.

A. The NMB's FOIA Operations

The National Mediation Board (NMB), established by the 1934 amendments to the Railway Labor Act of 1926, is an independent agency that performs a central role in facilitating harmonious labor-management relations within two of the nation's key transportation modes--the railroads and airlines. FOIA requests submitted to the NMB are processed by the Office of Legal Affairs (OLA). The FOIA program staff consist of the General Counsel, Associate General Counsel, and the Primary FOIA Officer. The General Counsel is the Chief FOIA Officer and signs off on all FOIA responses. The Chief Officer has designated the Associate General Counsel to serve as the NMB's Public Liaison.

The NMB staff currently includes approximately 52 employees with a single headquarters location in Washington, DC. The agency's small size result in between 30-40 FOIA requests annually. In 2005, the NMB established a new public information service on its website known as "The NMB Knowledge Store." The Knowledge Store makes publicly available many of the categories of documents that were the subject of FOIA requests, such as collective bargaining agreements, arbitration awards, and Presidential Emergency Board reports. Internet availability of these documents has reduced the number of FOIA requests by one-third so far this year. This allows us to focus on the remaining requests, which tend to be more complex. Complex requests can involve participation by, and consultation with, any number of program personnel.

B. Areas Selected for Review

We reviewed the FOIA program and considered specifically the following areas:

1. Affirmative disclosure.
2. Proactive disclosure of information.
3. Timeliness in responding to FOIA requests.
4. Communication with requesters.
5. FOIA website improvement.
6. FOIA Reference Guide.
7. Electronic FOIA – Receiving/responding to requests electronically.

8. Process of coordinating with program personnel who are familiar with responsive agency records.
9. Staff training.
10. Billing and collection.

C. Results of Review

Review of the NMB's FOIA operations are consistent with the guidelines and directives of the Executive Order. The NMB gives significant effort to complying with the statutory time periods for responding to FOIA requests. Simple requests are processed within a few days of receipt. The FOIA Officer's commitment to regular communication with requesters has led to narrowing or withdrawal of many requests.

D. Areas chosen for improvement:

1. FOIA website improvement.
2. FOIA Reference Guide.
3. Electronic FOIA – receiving/responding to requests electronically.
4. Training.
5. Billing and Collection.

E. Improvement Areas:

1. Website improvement.

Goals:

Enhance the NMB's FOIA webpage to increase public awareness of and access to information by December 31, 2006.

2. FOIA Reference Guide.

Goal: The agency's goal is to create a guide to inform the public of the NMB's program by September 30, 2006.

3. Electronic FOIA – receiving/responding to requests electronically.

Goal: The agency will encourage electronic submission of FOIA requests. and to the extent possible, the agency will respond to requests electronically.

4. Training.

Goal: Prepare an agency-specific training manual for staff personnel by September 30, 2006.

5. Billing and Collection.

Goal: Improve billing and tracking of collections to ensure the agency is assessing and collecting the appropriate fees by December 31, 2006.