

**National Transportation Safety Board
Freedom of Information Act (FOIA)
Annual Report for Fiscal Year 2007
(October 1, 2006 through September 30, 2007)**

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I. Basic Information Regarding Report

- A. Name, title, address, and telephone number of person(s) to be contacted with questions about this report:

Melba D. Moyer - FOIA Officer
Joy White - FOIA Specialist
Tamara Pleasant Crawford - FOIA Specialist
National Transportation Safety Board
Attn: FOIA Requester Service Center (CIO-40)
490 L'Enfant Plaza, S.W.
Washington, D.C. 20594
(202) 314-6540

- B. Electronic address for this report on the World Wide Web:

<http://www.nts.gov/info/foia.htm>

- C. How to obtain a copy of this report in paper form:

Write to the following (include your mailing address in your request):

National Transportation Safety Board
Attn: FOIA Requester Service Center, (CIO-40)
490 L'Enfant Plaza, S.W.
Washington, D.C. 20594-2000
(202) 314-6540

II. How to Make a FOIA Request

For basic information on how to obtain FOIA information, visit our web site at nts.gov/info/foia.htm.

- A. Names, addresses, and telephone numbers of all individual agency components and offices that receive FOIA requests:

National Transportation Safety Board
Attn: FOIA Requester Service Center, (CIO-40)
490 L'Enfant Plaza, S.W.
Washington, D.C. 20594-2000
(202) 314-6540

- B. Brief description of NTSB's response-time ranges:

From one day to over a year, depending on the complexity of the request.

- C. Brief description of why some requests are not granted:
- request lacks information (accident date, location, etc.);
 - requested record is not reasonably described;
 - request poses a question;
 - no records were responsive to the request;
 - records had been previously destroyed and were no longer available;
 - request was withdrawn;
 - request was referred to another agency;
 - a duplicate request was submitted; or
 - one or more exemptions to the FOIA warranted withholding.

III. Definitions of Terms and Acronyms Used in this Report

A. Agency-specific acronyms or other items

NTSB - National Transportation Safety Board

CVR - Cockpit Voice Recorder

ICAO - International Civil Aviation Organization

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; the NTSB also considers each Privacy Act request under the FOIA to ensure the maximum releasable material is provided. (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.
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 – in accordance with regulations and case law, 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 (non-expedited) 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, redacting 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 record(s) 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 the 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. Day – working day.

IV. Exemption 3 Statutes

A. List of Exemption 3 statutes on which the NTSB relied during the 2007 fiscal year

1. Brief description of type(s) of information withheld under each statute:
 - a) 49 U.S.C. § 1114(c) and (d). Any portion of a cockpit voice recording (CVR), or the portions of a transcript of a CVR that the Board did not find relevant to an investigation.
 - b) 49 U.S.C. § 1136(d). Passenger lists.
 - c) 49 U.S.C. § 1114(e). Drug tests and medical information.
 - d) 49 U.S.C. § 1114(f). Any information relating to Board participation in foreign aircraft accidents, where the country conducting the investigation has not issued its report or 2 years have not elapsed from the date of the accident.
2. Statement of whether a court has upheld the use of each statute.

The agency has not needed to defend its assertion of the Exemption 3 statutes listed above in court.

V. Initial FOIA/PA Access Requests

A. Numbers of initial requests

1. Number of requests pending as of end of preceding fiscal year 1205¹
2. Number of requests received during current fiscal year 367
3. Number of requests processed during current fiscal year 1257
4. Number of requests pending as of end of current fiscal year 315
(Enter this number also in Line VII.B.1.)

B. Disposition of initial requests

1. Number of total grants 252
2. Number of partial grants 135
3. Number of denials 86
 - a. number of times each FOIA exemption used
(counting each exemption once per request)
 - (1) Exemption 1 0
 - (2) Exemption 2 88
 - (3) Exemption 3 11
 - (4) Exemption 4 41
 - (5) Exemption 5 184
 - (6) Exemption 6 94
 - (7) Exemption 7(A) 88
 - (8) Exemption 7(B) 0
 - (9) Exemption 7(C) 1
 - (10) Exemption 7(D) 0
 - (11) Exemption 7(E) 0

¹The NTSB closed one hundred twenty seven requests retroactively following the processing of the FOIA Annual Report for the preceding fiscal year. Manual review showed cases were closed, however, not closed in the database.

| | |
|--|------------|
| (12) Exemption 7(F) | <u>0</u> |
| (13) Exemption 8 | <u>0</u> |
| (14) Exemption 9 | <u>0</u> |
| 4 . Other reasons for nondisclosure(total) | <u>784</u> |
| a . No records | <u>121</u> |
| b . Referrals | <u>80</u> |
| c . Requests withdrawn | <u>456</u> |
| d . Fee-related reason | <u>0</u> |
| e . Records not reasonably described | <u>0</u> |
| f . Not a proper FOIA request for some other reason | <u>11</u> |
| g . Not an agency record | <u>0</u> |
| h . Duplicate request | <u>4</u> |
| i . Other (specify) | <u>112</u> |
| 1. Request poses a question | <u>4</u> |
| 2. No records responsive to request | <u>5</u> |
| 3. No other information | <u>18</u> |
| 4. ICAO investigation | <u>4</u> |
| 5. Records already publicly available | <u>20</u> |
| 6. Requester no longer resides at specified address | <u>45</u> |
| 7. Cannot comply with request | <u>3</u> |
| 8. Other than released records, no other records found | <u>13</u> |

VI. Appeals of Initial Denials of FOIA/PA Requests

A. Numbers of appeals

- 1 . Number of appeals received during fiscal year 7
- 2 . Number of appeals processed during fiscal year 8

B. Disposition of appeals

- 1 . Number completely upheld 3

| | | |
|----|---|----------|
| 2. | Number partially reversed | <u>3</u> |
| 3. | Number completely reversed | <u>0</u> |
| a. | Number of times each FOIA exemption used (counting each exemption once per appeal) | |
| | (1) Exemption 1 | <u>0</u> |
| | (2) Exemption 2 | <u>1</u> |
| | (3) Exemption 3 | <u>1</u> |
| | (4) Exemption 4 | <u>2</u> |
| | (5) Exemption 5 | <u>3</u> |
| | (6) Exemption 6 | <u>1</u> |
| | (7) Exemption 7(A) | <u>0</u> |
| | (8) Exemption 7(B) | <u>0</u> |
| | (9) Exemption 7(C) | <u>0</u> |
| | (10) Exemption 7(D) | <u>0</u> |
| | (11) Exemption 7(E) | <u>0</u> |
| | (12) Exemption 7(F) | <u>0</u> |
| | (13) Exemption 8 | <u>0</u> |
| | (14) Exemption 9 | <u>0</u> |
| 4. | Other reasons for nondisclosure (total) | <u>2</u> |
| a. | No records | <u>1</u> |
| b. | Referrals | <u>0</u> |
| c. | Request withdrawn | <u>0</u> |
| d. | Fee-related reason | <u>0</u> |
| e. | Records not reasonably described | <u>0</u> |
| f. | Not a proper FOIA request for some other reason | <u>0</u> |
| g. | Not an agency record | <u>0</u> |
| h. | Duplicate request | <u>0</u> |
| i. | Other (specify) | <u>1</u> |
| | 1. Located records not found during initial search | <u>1</u> |

VII. Compliance with Time Limits/Status of Pending Requests

A. Median processing time for requests processed during the year

- 1. Simple requests (if multiple tracks used).
 - a. Number of requests processed 792
 - b. Median number of days to process 428
- 2. Complex requests(specify for any and all tracks used)
 - a. Number of requests processed 465
 - b. Median number of days to process 620
- 3. Requests accorded expedited processing
 - a. Number of requests processed 0
 - b. Median number of days to process 0

B. Status of pending requests.

- 1. Number of requests pending as of end of current fiscal year 315
- 2. Median number of days that such requests were pending as of that date 389

VIII. Comparisons with Previous Year(s) (Optional)

Other statistics significant to agency.

The NTSB did not receive any requests for expedited processing.

Other narrative statements describing agency efforts to improve timeliness of FOIA performance and to make records available to the public: See § XII, Report on FOIA Executive Implementation, below.

IX. Costs/FOIA Staffing

A. Staffing levels.

- 1. Number of full-time FOIA personnel 5
- 2. Number of personnel with part-time or occasional FOIA duties 1.95
- 3. Total number of personnel (in work years) 6.95

- B. Total costs (including staff and all resources).
1. FOIA processing (including appeals) (estimated)
\$689,227
 2. Litigation-related activities (estimated)
\$24,127
 3. Total costs
\$713,354

X. Fees

- A. Total amount of fees collected by agency for processing requests 0
- B. Percentage of total costs 0.00%

XI. FOIA Regulations:

- [49 C.F.R. Part 801](#)

Fee Schedule: See 49 C.F.R. Part 801, subpart G.

XII. Report on FOIA Executive Order Implementation

- A. Description of supplementation/modification of agency improvement plan

In Fiscal Year 2007, the NTSB did not amend any goals or milestones in its FOIA Improvement Plan under Executive Order 13,392.

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

In Fiscal Year 2007, the NTSB continued its implementation of the NTSB FOIA Improvement Plan. As a result of the variety of changes to the NTSB FOIA Program, as described in the FOIA Improvement Plan, the NTSB significantly reduced its backlog of FOIA requests, trained the vast majority of NTSB employees regarding the requirements of the FOIA and the agency's FOIA Program, and significantly amended its regulations regarding the FOIA. The NTSB also made several additional changes to its FOIA Program in order to improve response times to FOIA requests, prepared a standard organization process for all requests using specialized software, and was more responsive to all requesters' inquiries regarding their requests. In sum, the NTSB continues to realize several benefits as the result of the many steps the NTSB has taken in enacting the changes in its FOIA Improvement Plan; each accomplishment is described in detail below.

First, the NTSB continued to reduce its backlog of FOIA requests. At the end of Fiscal Year 2006, the NTSB had a backlog of 1205 FOIA requests; at the end of Fiscal Year 2007, the NTSB had a backlog of 315 FOIA requests. Moreover, the NTSB continues to reduce its backlog of requests with each passing week. In accordance with the NTSB FOIA Improvement Plan, by December 29, 2006, the NTSB contacted all requesters who sought records prior to June 1, 2005. In corresponding with these requesters, the NTSB determined that many requesters merely sought information that the NTSB had already made publicly available. Therefore, in the instances in which the NTSB contacted these requesters, the NTSB explained to requesters the agency's process for making information available, and described the NTSB FOIA Program in detail. Such correspondence has aided requesters' understanding of the NTSB FOIA Program.

In accordance with the NTSB FOIA Improvement Plan, the NTSB also researched and acquired a new software program especially for the tracking, evaluation, and processing of FOIA requests. The NTSB focused several hours and multiple resources on customizing the specialized software program to ensure that the program would adequately meet the unique needs of the NTSB FOIA Program. The NTSB is confident that the agency's implementation of the software program will result in accurate organization and tracking of all FOIA requests, and more efficient use of employees' time for fulfilling upcoming annual report requirements. With regard to the NTSB FOIA Program's electronic reading room, the NTSB posted frequently requested records on the NTSB FOIA web page on the NTSB web site by March 1, 2007, at <http://www.nts.gov/info/foia.htm>. The NTSB's act of posting these records has resulted in fewer FOIA requests for the records; moreover, the NTSB FOIA Office directs requesters to the web page for certain records, and requesters are pleased to have immediate access to the records on the web page.

The NTSB also made significant improvements in reducing its backlog of FOIA requests by continuing the agency's use of additional human capital resources from an outside contractor. The NTSB closely evaluated the progress of its FOIA contractors to ensure advancement in the reduction of the FOIA backlog. By April 1, 2007, the NTSB noted that it had significantly reduced its backlog of FOIA requests for records from large investigations, pursuant to the NTSB FOIA Improvement Plan.

Furthermore, the NTSB has simplified its policy on handling requests for information from ongoing investigations. The NTSB had previously held FOIA requests for information from ongoing investigations open for lengthy periods of time. In the interest of clearly responding to each FOIA

request for such information in compliance with the FOIA and in a timely manner, the NTSB now provides each requester who seeks information from an ongoing investigation with a timely response indicating that the investigation is ongoing, and detailing how the requester can obtain information from the NTSB regarding the investigation once the investigation has concluded. Such a policy has aided in requesters' understanding of the NTSB FOIA Program, and has helped to bring the NTSB in compliance with the FOIA, rather than holding requests open for extended periods of time. As the NTSB anticipated in its FOIA Improvement Plan, this policy has assisted in the reduction of the backlog of requests.

The NTSB has also realized an additional reduction in its backlog, and has provided information to requesters regarding the processing of requests and availability of information by updating its regulations concerning the FOIA. The NTSB proceeded through the informal rulemaking process in enacting these regulations, and has posted the regulations on its public web site. The NTSB frequently refers requesters to these updated regulations, and requesters find the detailed, updated description and instructions in its updated regulations helpful. Moreover, the NTSB updated its fee schedule in the new version of the regulations to ensure that the fee schedule is compliant with requirements from the Office of Management and Budget. Overall, the NTSB's updates to its regulations have provided helpful information to requesters, and have assisted in reducing the number of incoming improper FOIA requests as a result of the availability of this information.

In the interest of ensuring that all NTSB employees were aware of the requirements of the FOIA and their obligations under the FOIA the NTSB has also trained NTSB employees pursuant to the FOIA Improvement Plan. Such training has resulted in more timely responses from NTSB employees to the NTSB FOIA Office, especially with regard to records employees may have that are within the scope of a FOIA request. In addition, the NTSB's training of employees regarding the FOIA has ensured that employees are aware of the statutory requirements of the FOIA and how the FOIA applies to records that each individual office may have. Given the diversity of the NTSB's mission, the NTSB FOIA Office and Office of General Counsel engaged in training sessions that were unique to each office and FOIA requests that may seek records from each office. The NTSB FOIA Office has received numerous responses that such training has assisted offices' understanding of the FOIA, and clarified the NTSB's uniform policy regarding the NTSB's implementation of the FOIA. For example, the NTSB FOIA Office now receives responsive records from offices in a uniform, organized fashion, which allows for timelier processing of requests and better use of FOIA Office employees' time.

In addition, the NTSB memorialized the aforementioned, uniform fashion in which the NTSB FOIA Office receives responsive records from employees by drafting and distributing policy guidance that details the NTSB FOIA Program, and the manner in which the FOIA Office accepts responsive records. Such guidance has ensured standard practices for organization of records, and has allowed for timelier, more efficient processing of FOIA requests. Employees have responded that such guidance has been helpful in standardizing the manner in which they provide records to the FOIA Office for processing.

The NTSB also continues to utilize designated points of contact in each NTSB office for all inquiries regarding obtaining records that are responsive to FOIA requests. The NTSB's use of this structure has resulted in adequate oversight of the handling of FOIA requests for which the NTSB FOIA Office must obtain records. For example, the NTSB FOIA Office utilizes central points of contact in each regional office in order to obtain the status of records that may be responsive to a request; the NTSB has found that such a structure is particularly helpful when an employee who may have records is unavailable, because the NTSB FOIA Office no longer must wait until the employee returns to the office prior to receiving a response to their query on the status or existence of records. The NTSB FOIA Office met with and provided specialized training to all central points of contact, to ensure a uniform standard of overseeing and handling administrative aspects of FOIA requests.

The NTSB also selected a new Chief Information Officer, who reported to duty in February 2007 and became the NTSB's Chief FOIA Officer. The NTSB FOIA Office and Office of General Counsel met with the Chief Information Officer and familiarized him with the NTSB FOIA Program. As anticipated, the NTSB's new Chief Information Officer has greatly increased employees' awareness and responsiveness to the needs of the NTSB FOIA Program. Moreover, the NTSB Chief Information Officer has continued to emphasize that the success of the agency's FOIA Program is a priority to the agency. Such leadership has been effective in ensuring continuing reduction of the backlog of FOIA requests and compliance with the agency's FOIA policies.

- C. Identification and discussion of any deficiency in meeting plan milestones
 - 1. FOIA Improvement Plan area to which the deficient milestone relates:

Improve use of human capital resources by holding training sessions for all NTSB staff regarding the NTSB's FOIA procedures.

Update FOIA regulations.

2. Deficient milestone and the original target date from the FOIA improvement plan:

Two non-modal offices did not receive training by August 1, 2007.

The agency did not publish the Final Rule implementing its FOIA regulations by January 2, 2007.

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

The NTSB has scheduled both non-modal offices for FOIA training.

The NTSB published its regulations in the Federal Register on April 16, 2007, and the regulations became effective on May 23, 2007.

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

Training for one non-modal office is scheduled for January 31, 2008, and training for the other non-modal office is scheduled for February 14, 2008.

As stated above, the NTSB has updated and published its regulations, which have been effective since May 23, 2007. Therefore, no future remedial steps regarding this goal are necessary.

- D. Additional narrative statement regarding other executive order-related activities (optional)

As stated in the above narrative description, the NTSB has experienced tremendous improvements in the FOIA program due to the implementation of the FOIA Improvement Plan. The NTSB looks forward to continuing to improve its FOIA Program, and eliminating its backlog of FOIA requests in 2008.

- E. Concise descriptions of FOIA exemptions

There are nine exemptions to the FOIA which 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 of 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 (as of 1/1/08)

| Calendar Year | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 |
|---------------|------|------|------|------|--------|---|------|------|
| Requests | 0 | 0 | 0 | 0 | Nov 1* | Jan 26* Jan 28 Feb 22* March 9 Mar 19 (4 reqs) May 12 | 0 | 0 |

*Closed January 7, 2008

2. Consultations

a.) Number of Consultations Received, Processed, and Pending:

| Consultations Received From Other Agencies During FY07 | Consultations Received From Other Agencies That Were Processed by NTSB During FY07 (Includes those received prior to FY07) | Consultations Received From Other Agencies That Were Processed at NTSB as of October 1, 2007 (Includes those received prior to FY07) |
|--|--|--|
| 0 | 0 | 0 |

b.) Ten Oldest Pending Consultations Received From Other Agencies:

| Calendar Year | 1998 | 1999 | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 |
|-------------------|------|------|------|------|------|------|------|------|------|------|
| Consults Received | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |

G. The FOIA Improvement Plan for the National Transportation Safety Board http://www.nts.gov/info/FOIAPlan_Exec_Order_13,392.pdf