

NATIONAL LABOR RELATIONS BOARD
Freedom of Information Act Annual Report
Fiscal Year 1998

I. Basic Information

- A.** For questions concerning this Report contact:
John W. Hornbeck, FOIA Officer (jhornbeck@nlrb.gov)
National Labor Relations Board
1099 14th Street, NW, Suite 10600
Washington, DC 20570
- B.** Report may be obtained through the Internet at:
www.nlrb.gov/foia/reading.html
- C.** Report may also be obtained by making a request to the address listed in **A** above

II. How to Make a FOIA Request

- A.** Our FOIA Reference Guide, located on the NLRB's FOIA Home Page at www.nlrb.gov/foia/reference.html, details the different methods of making a FOIA Request to the NLRB
- B.** The NLRB's median response time for responding to FOIA requests was 10 working days. For appeals, the median processing time was 16 working days.
- C.** Like all federal agencies, the NLRB is required under FOIA to provide records upon receiving a written request for them, except for those records that are protected from disclosure by the nine exemptions and three exclusions of the FOIA. 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):** protect 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) and (b)(7)(D):** protect certain records in law-enforcement investigatory files, including records whose release 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 denial 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 (nonexpedited) track based on the volume and/or simplicity of records requested. As noted above, the NLRB does not have multi-track 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 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 are, in accordance with the Justice Department Guidelines, given in calendar days; the overall working day equivalent can be approximately calculated by multiplying the calendar day total by .7 (e.g. 10 calendar days equates to about 7 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 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 calendar days (the number of "working days" being about a third less).

IV. Exemption 3 Statutes

- A. The NLRB did not rely on any Exemption 3 statutes during the fiscal year covered by this report (FY 98).

V. Initial FOIA Requests

A. Total Number of Requests

1. 121 requests were pending at the end of fiscal year 1997.
2. 6268 requests were received during fiscal year 1998.
3. 6133 requests were processed during fiscal year 1998.
4. 162 requests were pending as of the end of fiscal year 1998.

B. Disposition of Initial Requests in Fiscal Year 1998

1. 5342 requests were granted in full
2. 180 requests were granted in part
3. 471 requests were denied

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

(1) Exemption 2	<u>29</u>
(2) Exemption 3	<u>none</u>
(3) Exemption 4	<u>11</u>
(4) Exemption 5	<u>301</u>
(5) Exemption 6	<u>60</u>
(6) Exemption 7(A)	<u>423</u>

(7) Exemption 7(C)	<u>326</u>
(8) Exemption 7(D)	<u>351</u>
(9) Exemption 7(E)	<u>21</u>

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

4. Total number of other reasons for non-disclosure 733
- (a) no records exist reflecting the requested information 339
 - (b) request referred to another office within the Agency 127
 - (c) request withdrawn 81
 - (d) fee-related reason 72
 - (e) records not reasonably described 31
 - (f) not an agency record 1
 - (g) requested records destroyed 47
 - (h) record not in possession of agency 37
 - (i) other: in 2 instances, requesters sought information pursuant to a state FOIA

C. The names, titles, and instances of participation of those responsible for initial denials (in part and in full) of requested records are as follows:

Rosemary Pye Director, Region 1	<u>31</u>
Daniel Silverman Director, Region 2	<u>41</u>
Sandra Dunbar Director, Region 3	<u>15</u>

Dorothy L. Moore-Duncan Director, Region 4	<u>15</u>
Louis J. D'Amico Director, Region 5	<u>33</u>
Gerald Kobell Director, Region 6	<u>26</u>
William C. Schaub Director, Region 7	<u>13</u>
John Kollar Acting Director, Region 8	<u>12</u>
Richard L. Ahearn Director, Region 9	<u>20</u>
Martin M. Arlook Director, Region 10	<u>17</u>
Willie L. Clark Director, Region 11	<u>8</u>
Rochelle Kentov Director, Region 12	<u>22</u>
Elizabeth Kinney Director, Region 13	<u>12</u>
Ralph R. Tremain Director, Region 14	<u>56</u>
Curtis A. Wells Acting Director, Region 15	<u>6</u>
Michael M. Dunn Director, Region 16	<u>8</u>
F. Rozier Sharp Director, Region 17	<u>18</u>
Ronald M. Sharp Director, Region 18	<u>12</u>

Paul Eggert Director, Region 19	<u>14</u>
Robert H. Miller Director, Region 20	<u>23</u>
Victoria E. Aguayo Director, Region 21	<u>14</u>
William A. Pascarell Director, Region 22	<u>10</u>
Mary Z. Asseo Director, Region 24	<u>2</u>
Robert G. Chavarry Director, Region 25	<u>37</u>
Gerald P. Fleischut Director, Region 26	<u>32</u>
B. Allen Benson Director, Region 27	<u>16</u>
Cornele A. Overstreet Director, Region 28	<u>4</u>
Alvin B. Blyer Director, Region 29	<u>7</u>
Phillip Bloedorn Director, Region 30	<u>4</u>
James J. McDermott Director, Region 31	<u>32</u>
James S. Scott Director, Region 32	<u>11</u>
Glenn A. Zipp Director, Region 33	<u>16</u>
Peter B. Hoffman Director, Region 34	<u>3</u>
John J. Toner	<u>6</u>

Associate Executive Secretary

John W. Hornbeck 64
 Freedom of Information Officer

VI. Appeals of Initial Denials of FOIA Requests

A. Number of Appeals

1. Number of appeals received during fiscal year 1998 39

2. Number of appeals processed during fiscal year 1998 40

B. Disposition of appeals

1. Number granted in full 3

2. Number granted in part 3

3. Number denied in full 31

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

(1) Exemption 2 3

(2) Exemption 3 --

(3) Exemption 4 3

(4) Exemption 5 24

(5) Exemption 6 5

(6) Exemption 7(A) 17

(7) Exemption 7(C) 18

(8) Exemption 7(D) 13

(9) Exemption 7(E) --

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

4. Total number of other reasons for nondisclosure 5
- (a) no records exist reflecting the requested information none
- (b) referred to another office within the Agency 1
- (c) request withdrawn 2
- (d) fee-related reason 1
- (e) records not reasonably described 1
- (f) record not in possession of agency 1
- (g) other: denied under Privacy Act

C. The name, title, and instances of participation of the Agency official responsible for determinations on appeal is:

Fred Feinstein
Acting General Counsel

John Truesdale
Chairman

VII. Prior annual FOIA reports of this Agency have emphasized the extent to which requests for documents are from parties to agency proceedings seeking to utilize the FOIA as a discovery tool. That interest as a basis for FOIA requests remained essentially the same during this report period, as indicated by the fact that 823, or approximately 13.1% of the initial requests for documents received were from parties to a proceeding requesting documents from the case files in that proceeding. For calendar year 1997, 13.4% of requests were from parties to a proceeding, and for calendar year 1996, 11.5% of requests were of that nature. Moreover, 85% of appeals from an initial denial of access to records were from parties to proceedings. In calendar year 1997, 98% of appeals were from parties.

VIII. Compliance with Time Limits/Status of Pending Requests

- A.** Median processing time for requests processed during fiscal year 1998 10 calendar days (note: the NLRB does not have multi-track processing. No requesters sought expedited processing).

B. Status of pending requests:

1. Number of requests pending as of end of current fiscal year 162
2. Median number of days that such requests were pending as of the end of the current fiscal year 5

IX. Costs/FOIA Staffing**A. Staffing levels:**

1. Number of full-time FOIA personnel none
2. Number of personnel with part-time or occasional FOIA duties (in total work-years) 10.2 staff years
3. Total number of personnel (in work-years) 10.2 staff years

B. Total costs (including staff and all resources):

1. FOIA processing (including appeals) \$112,072
2. Litigation related activities \$45,178
3. Costs associated with the classification and indexing of decisional material and the publication of indices thereto, which are being performed under court mandate resulting from FOIA litigation \$232,569
4. Total costs \$389,819

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 \$81,856
- B.** Percentage of total costs 20.9%

XI. FOIA Regulations (Including Fee Schedule)

The NLRB's FOIA regulations, including the fee schedule, are codified at 29 C.F.R. 102.117. An update to these regulations is scheduled for the spring of 1999.