

NATIONAL LABOR RELATIONS BOARD
Freedom of Information Act Annual Report
Fiscal Year 2004

I. Basic Information

- A.** For questions concerning this Report contact:
Jacqueline Young, FOIA Officer (jacqueline.young@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/nlrb/about/foia/foiadoc004.htm
- C.** Report may also be obtained by making a request to the address listed 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/nlrb/about/foia/reference.asp, details the different methods of making a FOIA request to the NLRB
- B.** The NLRB's median response time for responding to FOIA requests in FY 04 was 9.5 working days. For appeals, the median processing time was 15 working days.
- C.** All federal agencies, including the NLRB, are required under the FOIA to provide records upon receiving a written request, except for those documents that are protected from disclosure by the FOIA 's nine exemptions and three exclusions. 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):** protects 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), (b)(7)(D) and (b)(7)(E):** protects certain records in law-enforcement investigatory files, including records the release of which 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 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 (non-expedited) 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 set forth 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, in accordance with the Justice Department Guidelines, are given in 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 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.
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 working days.

IV. Exemption 3 Statutes

- A. The NLRB did not rely on any Exemption 3 statutes during the fiscal year covered by this report (FY 2004).

V. Initial FOIA Requests

A. Total Number of Requests

1. 256 requests were pending at the end of fiscal year 2003.
2. 5193 requests were received during fiscal year 2004.
3. 5295 requests were processed during fiscal year 2004.
4. 154 requests were pending as of the end of fiscal year 2004.

B. Disposition of Initial Requests in Fiscal Year 2004.

1. 3980 requests were granted in full.
2. 523 requests were denied in part based on FOIA Exemptions.
3. 136 requests were denied in full based on FOIA Exemptions.

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

(1) Exemption 1	<u>0</u>
(2) Exemption 2	<u>72</u>
(3) Exemption 3	<u>0</u>
(4) Exemption 4	<u>24</u>
(5) Exemption 5	<u>292</u>
(6) Exemption 6	<u>294</u>
(7) Exemption 7(A)	<u>350</u>
(8) Exemption 7(B)	<u>0</u>
(9) Exemption 7(C)	<u>345</u>
(10) Exemption 7(D)	<u>268</u>
(11) Exemption 7(E)	<u>56</u>
(12) Exemption 7(F)	<u>0</u>

(13) Exemption 8 0
 (14) Exemption 9 0

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

4. Other reasons for non-disclosure (total) 656
- (a) no records exist reflecting the requested information 189
 - (b) request referred 154
 - (c) request withdrawn 120
 - (d) fee-related reason 71
 - (e) records not reasonably described 10
 - (f) not proper FOIA request for some other reason 73
 - (g) not an Agency record 3
 - (h) duplicate request 2
 - (i) other: requested record destroyed 34

VI. Appeals of Initial Denials of FOIA Requests

A. Number of Appeals received and processed

- 1. Number of appeals received during fiscal year 2004 49
- 2. Number of appeals processed during fiscal year 2004 47

B. Disposition of appeals

- 1. Number granted in full 2
- 2. Number granted in part 11
- 3. Number denied in full 25

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

(1) Exemption 1	<u>0</u>
(2) Exemption 2	<u>4</u>
(3) Exemption 3	<u>0</u>
(4) Exemption 4	<u>3</u>
(5) Exemption 5	<u>12</u>
(6) Exemption 6	<u>5</u>
(7) Exemption 7(A)	<u>20</u>
(8) Exemption 7(B)	<u>0</u>
(9) Exemption 7(C)	<u>10</u>
(10) Exemption 7(D)	<u>7</u>
(11) Exemption 7(E)	<u>3</u>
(12) Exemption 7(F)	<u>0</u>
(13) Exemption 8	<u>0</u>
(14) Exemption 9	<u>0</u>

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

4. Other reasons for nondisclosure (total) 9
- (a) no records exist reflecting the requested information 0
 - (b) request referred 1
 - (c) request withdrawn 0
 - (d) fee-related reason 7
 - (e) records not reasonably described 0

- (f) not proper FOIA request for some other reason 0
- (g) not an Agency record 0
- (h) duplicate request 0
- (i) other, such as record destroyed 1

VII. Compliance with Time Limits/Status of Pending Requests

- A.** Median processing time for requests processed during fiscal year 2004: 9.5 working days (note: the NLRB does not have multi-track processing. No requester sought expedited processing).
- B.** Status of pending requests:
1. Number of requests pending as of the end of fiscal year 2004 154
 2. Median number of days that such requests were pending as of the end of fiscal year 2004 7 working days.

VIII. Comparison with Previous Fiscal Year

- A.** The number of requests received in FY 03 was **5306**; the number received in FY 04, **5193**, represents a decrease of **1.02%**.
- B.** The number of requests processed in FY 03 was **5256**; the number processed in FY 04 was **5295**.
- C.** The median number of days requests were pending as of the end of FY 03 was **7 days**. The median number of days that such requests were pending at the end of FY 04 is also **7 days**.
- D.** No requests for expedited processing were received in FY 04 and therefore none were granted.
- E.** Other narrative statements: **none**

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) **7.88 work-years**
3. Total number of personnel (in work-years) **8.88 work-years**

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

1. FOIA processing (including appeals) **\$706,148¹**
2. Litigation related activities **\$ 46,860**
3. Total costs **\$753,008**

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 **\$95,903**

- ### B. Percentage of total costs **12.7%**

XI. FOIA Regulations (Including Fee Schedule)

The NLRB's FOIA regulations, including the fee schedule, are codified at 29 C.F.R. 102.117.

¹ This sum includes costs associated with the classification and indexing of decisional material and the publication of indices thereto, and the processing of materials required to be posted on the Agency website.