



Chief FOIA Officer Report 2012

I: Steps Taken to Apply the Presumption of Openness

Describe the steps your agency has taken to ensure that the presumption is being applied to all decisions involving the FOIA.

1. *Did your agency hold an agency FOIA conference, or otherwise conduct training during this reporting period?*

No.

2. *Did your FOIA professionals attend any FOIA training, such as that provided by the Department of Justice?*

No.

Additional Information - The National Mediation Board (NMB) is a small federal agency that typically receives between 20 and 30 FOIA requests a year. The NMB has a limited staff-size of 51 employees and does not have any full-time FOIA employees. The NMB's Office of Legal Affairs (OLA) processes all FOIA requests filed with the agency. In 2009, the agency's FOIA professionals—the in-house employees who have the training and experience to respond to FOIA requests—and the agency's Chief FOIA Officer met to discuss the presumption of openness and ensure that it was being considered prior to withholding any documents under applicable FOIA exemptions. The agency's FOIA professionals have consistently considered the presumption of openness in making recommendations regarding releases of records and will continue to do so in the future.

In his 2009 FOIA Guidelines, the Attorney General strongly encouraged agencies to make discretionary releases of information even when the information might be technically exempt from disclosure under the FOIA. OIP encourages agencies to make such discretionary releases whenever there is no foreseeable harm from release.

3. *Did your agency make any discretionary releases of otherwise exempt information?*

The agency releases almost all of the records requested under FOIA, with limited redactions, and does not formally track whether a release of information is discretionary. However, it is likely that several documents disclosed to requestors in the FY 2011 requests could have been withheld or redacted under Exemptions 2 or 5.

4. *What exemptions would have covered the information that was released as a matter of discretion?*

Exemptions 2 and 5.

5. *Describe your agency's process to review records to determine whether discretionary releases are possible.*

The FOIA professional assigned to the case collects the records covered by the request, reviews the records to determine whether exemptions apply, and then discusses possible withholdings and releases with the Chief FOIA Officer.

6. *Describe any other initiatives undertaken by your agency to ensure that the presumption of openness is being applied.*

The agency has not taken any other formal initiatives to ensure that the presumption of openness is being applied to decisions involving releases under FOIA. However, the agency has been successful in its efforts to implement the President's memo and the Attorney General's Guidelines regarding openness: in FY 2011, the agency only redacted or withheld information from five requestors.¹

In Section V.B.(1) of your agency's Annual FOIA Report, entitled "Disposition of FOIA Requests – All Processed Requests" the two columns list the "Number of Full Grants" and the "Number of Partial Grants/Partial Denials." Compare your agency's 2011 Annual FOIA Report with last year's Annual FOIA Report, and answer the following questions:

7. *Did your agency have an increase in the number of responses where records were released in full?*

No. In both FY 2010 and FY 2011, the number of responses in which the agency released records in full was seven.

8. *Did your agency have an increase in the number of responses where records were released in part?*

Yes. This number increased from five responses in FY 2010 to six responses in FY 2011.

¹ To date, two FY 2011 requests have not been fully processed. It is anticipated that some documents will be withheld and/or redacted in response to one of these requests, thus the total number of agency responses involving redactions or withholdings for FY 2011 will be six.

II: Steps Taken to Ensure that Your Agency has an Effective System in Place for Responding to Requests

Describe here the steps your agency has taken to ensure that its system for responding to requests is effective and efficient. To do so, answer the questions below and then include any additional information that you would like to describe how your agency ensures that your FOIA system is efficient and effective.

1. Do FOIA professionals within your agency have sufficient IT support?

The NMB FOIA professionals have the IT support necessary to make electronic proactive disclosures quickly, particularly if the requestor is requesting a specific document or group of documents. The NMB currently uses a central electronic case-tracking system to monitor deadlines for responding to FOIA requests. All NMB FOIA professionals have access to this system while working at agency headquarters or remotely. The FOIA professionals also have access to software applications to ensure that they are able to search for agency records thoroughly and efficiently.

2. Is there regular interaction between agency FOIA professionals and the Chief FOIA Officer?

Yes. Currently, the Chief FOIA Officer and the agency FOIA professionals discuss all FOIA requests, reviews, and responses.

3. Do your FOIA professionals work with your agency's Open Government Team?

No.

4. Describe the steps your agency has taken to assess whether adequate staffing is being devoted to FOIA administration.

Not applicable.

5. Describe any other steps your agency has undertaken to ensure that your FOIA system operates efficiently and effectively.

The FOIA professionals and other NMB staff have access to the NMB Corporate Memory system—an electronic records and documents management system containing official agency records—and the NMB Knowledge Store. Whenever possible, FOIA professionals search the electronic databases for records in order to process FOIA requests as soon as possible.

III: Steps Taken to Increase Proactive Disclosures

Describe here the steps your agency has taken to increase the amount of material that is available on your agency's website, and the usability of such information, including providing examples of proactive disclosures that have been made during this past reporting period (i.e., from March 2011 to March 2012). In doing so, answer the questions listed below and describe any additional steps taken by your agency to make and improve proactive disclosures of information.

- 1. Has your agency added new material to your agency website since last year?*

Yes. During the past year, the NMB added hundreds of documents to its website and the Knowledge Store.

- 2. Provide examples of the records, datasets, videos, etc., that have been posted this past year.*

The agency posted numerous types of records on its website and the Knowledge Store, including Board determinations in representation dispute cases, jurisdictional opinions, arbitration awards, press releases regarding mediation cases, collective bargaining agreements, and Presidential Emergency Board reports.

- 3. Describe the system your agency uses to routinely identify records that are appropriate for posting?*

Every week, the NMB proactively discloses on its website basic information regarding representation, arbitration, mediation, and alternative dispute resolution cases. Staff members working under the NMB Chief of Staff collaborate with other NMB employees to ensure that new information—such as Board notices, Board determinations, reports, and memoranda from directors—are posted on the website in a timely manner. For example, all Board determinations and notices are typically posted within two business days.

- 4. Beyond posting new material, is your agency taking steps to make the information more useful to the public, especially to the community of individuals who regularly access your agency's website, such as soliciting feedback on the content and presentation of the posted material, improving search capabilities, providing explanatory material, etc.?*

Yes. The NMB updated its on-line Lyceum during the reporting period. The NMB Lyceum was implemented to serve as an easily accessible resource, providing training and information on the daily activities of the NMB and how the agency operates. Through the Lyceum, the NMB offers on-line courses which provide information about the agency, provide training for air and rail carriers and labor organizations involved in mediation, and provide information about the Railway Labor Act. The Lyceum also provides other types of information to the community of individuals who frequent our website, such as information regarding the NMB's current face-to-face course offerings and instructional materials for arbitrators.

5. *Describe any other steps taken to increase proactive disclosures at your agency.*

For the second consecutive year, the agency published its Annual Performance and Accountability Report to Congress as an interactive HTML E-report.² The HTML format provides readers with the ability to navigate the report via detailed links so they can access information more quickly. Additionally, the agency continued to proactively disclose information—such as Board notices and published determinations—via the “What’s New” page on its website and via group e-mail to interested individuals and organizations.

IV: Steps Taken to Greater Utilize Technology

Electronic Receipt of requests:

1. *Can FOIA requests be made electronically to your agency?*

Yes. The NMB currently accepts FOIA requests via fax and e-mail.

2. *If your agency processes requests on a decentralized basis, do all components of your agency receive requests electronically?*

Not applicable.

Online tracking of FOIA requests:

3. *Can a FOIA requester track the status of his/her request electronically?*

No.

4. *If not, is your agency taking steps to establish this capability?*

Not at this time.

Use of technology to facilitate processing of requests:

5. *Beyond using technology to redact documents, is your agency taking steps to utilize more advanced technology to facilitate overall FOIA efficiency, such as improving record search capabilities, utilizing document sharing platforms for consultations and referrals, or employing software that can sort and de-duplicate documents?*

Not at this time.

² See <http://www.nmb.gov/documents/2011annual-report/index.html>

6. *If so, describe the technological improvements being made.*

Not applicable.

Additional Information – due to earlier advancements in Agency records management practices and policies, the Agency currently has the technological tools necessary to search for most Agency records efficiently and effectively. Agency FOIA professionals currently have access to several databases in order to search for records electronically; these databases are updated regularly during the course of the year. Every year, hundreds of agency records and documents are converted from paper to electronic format, are filed electronically and stored in the Agency's Corporate Memory System, or are put in an on-line database for the public to access; this makes it much easier for the FOIA professionals to locate documents and provide them to requestors.

Part V: Steps Taken to Improve Timelines in Responding to Requests and Reducing Backlogs

This section addresses both time limits and backlog reduction. Backlog reduction is measured both in terms of numbers of backlogged requests or appeals and by looking at whether agencies closed their ten oldest requests and appeals.

1. *Section VII.A of your agency's Annual FOIA report, entitled "FOIA Requests – Response Time for All Processed Requests," includes figures that show your agency's average response time for processed requests. If your agency does not utilize a separate track for processing simple requests, answer the question below using the figure provided in your report for your non-expedited requests.*

- a. *Does your Agency utilize a separate track for simple requests?*

No.

- b. *If so, for your agency overall, for FY 2011, was the average number of days to process simple requests twenty working days or fewer?*

Not applicable.

- c. *If your agency does not track simple requests separately, was the average number of days to process non-expedited requests twenty working days or fewer?*

No.

2. *Sections XII.D.(2) and XII.E.(2) of your agency's Annual FOIA Report, entitled "Comparison of Numbers of Requests/Appeals from Previous and Current Annual Report – Backlogged Requests/Appeals," show the numbers of any backlog of pending requests or pending appeals from FY 2011 as compared to FY 2010. You should refer to those numbers when completing this section of your Chief FOIA Officer Report. In addition, Section VII.E, entitled, "Pending Requests – Ten Oldest Pending Requests," and Section VI.C.(5), entitled "Ten*

Oldest Pending Administrative Appeals,” from both FY 2010 and FY 2011 should be used for this section.

- a. If your agency had a backlog of requests at the close of FY 2011, did that backlog decrease as compared with FY 2010?*

No. The backlog increased from one to five requests.

- b. If your agency had a backlog of administrative appeals in FY 2011, did that backlog decrease as compared to FY 2010?*

Not applicable.

- c. In FY 2011, did your agency close the ten oldest requests that were pending as of the end of FY 2010?*

Yes. The agency had one request pending at the end of FY 2010 and processed the request during the first quarter of FY 2011.

- d. In FY 2011, did your agency close the ten oldest administrative appeals that were pending as of the end of FY 2010?*

Not applicable.

3. *If you answered “no” to any of the above questions, describe why that has occurred. In doing so, answer the following questions then include any additional explanation:*

Request Backlog

- a. Was the lack of a reduction in the request backlog a result of an increase in the number of incoming requests?*

No.

- b. Was the lack of a reduction in the request backlog caused by a loss of staff?*

Yes, in part.

- c. Was the lack of a reduction in the request backlog caused by an increase in the complexity of the requests received?*

Yes, in part.

- d. What other causes, if any, contributed to the lack of a decrease in the request backlog?*

Other factors which likely contributed to an increase in the request backlog were an overall increase in workload for OLA personnel; the large number of documents

involved in certain requests; and that some of the older documents requested are not yet in electronic format.

Administrative Appeal Backlog

Not applicable.

All agencies should strive to reduce any existing backlogs or requests and appeals and to improve their timeliness in responding to requests and appeals. Describe the steps your agency is taking to make improvements in those areas. In doing so, answer the following questions and then also include any other steps being taken to reduce backlogs and to improve timeliness.

1. *Does your agency routinely set goals and monitor the progress of your FOIA caseload?*

No.

2. *Has your agency increased its FOIA staffing?*

No.

3. *Has your agency made IT improvements to increase timeliness?*

No.

4. *If your agency receives consultations from other agencies, has your agency taken steps to improve the efficiency of the handling of such consultations such as utilizing IT to share the documents or establishing guidelines or agreements with other agencies on the handling of particular information to speed up or eliminate the need for consultations?*

Not applicable.

Additional Information – the Agency’s backlog of cases from FY 2011 has been reduced to two cases.

Use of FOIA’s Law Enforcement “Exclusions”

In order to increase transparency regarding the use of the FOIA’s statutory law enforcement exclusions, which authorize agencies under certain exceptional circumstances to “treat the records as not subject to the requirements of [the FOIA],” 5 U.S.C. § 552(c)(1-3), please answer the following questions:

1. *Did your agency invoke a statutory exclusion during FY 2011?*

No.

2. *If so, what is the total number of times exclusions were involved?*

Not applicable.

Spotlight On Success

In May of 2011, agency FOIA professionals were able to use the Knowledge Store to respond to a FOIA case within 11 working days. The increasing number of documents posted on the Knowledge Store and in our electronic record-keeping system consistently helps speed up the agency's responses to simple and routine FOIA requests.