

Chief FOIA Officer Report

U.S. Department of Transportation

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I am pleased to explain in this fourth annual Chief FOIA Officer Report that the U.S. Department of Transportation's (DOT or the Department) activities continue to demonstrate its commitment to applying the presumption of openness, ensuring that DOT has effective systems in place to respond to FOIA requests, making proactive disclosures, using technology to increase the timeliness of our disclosures, and reducing backlogs.

DOT's FOIA Structure

As DOT's Chief FOIA Officer, I provide executive-level oversight and support to the Department's FOIA programs and recommend adjustments to practices, personnel, and funding as may be necessary to improve FOIA administration.

The Departmental FOIA Office, led by DOT's FOIA Officer, provides direction, leadership, guidance, and assistance to the FOIA offices throughout DOT. This office hosts a monthly DOT-wide meeting for FOIA personnel and coordinates the FOIA Annual Report and the Chief FOIA Officer Report. The Departmental FOIA Officer also serves as the FOIA Officer for the Office of the Secretary.

The following DOT components receive and respond to FOIA requests:

- Federal Aviation Administration (FAA)
- Federal Highway Administration (FHWA)
- Federal Motor Carrier Safety Administration (FMCSA)
- Federal Railroad Administration (FRA)
- Federal Transit Administration (FTA)
- Office of Inspector General (OIG)
- Office of the Secretary (OST)
- Maritime Administration (MARAD)
- National Highway Traffic Safety Administration (NHTSA)
- Pipeline and Hazardous Materials Safety Administration (PHMSA)
- Research and Innovative Technology Administration (RITA)
- Saint Lawrence Seaway Development Corporation (SLSDC)

Many components, including FMCSA, FRA, FTA, MARAD, NHTSA, OIG, OST, PHMSA, and SLSDC, have centralized programs, where FOIA administration is conducted by a single FOIA office. These centralized FOIA offices obtain records from their various program offices, review the documents, and make determinations regarding release of the documents. The RITA's FOIA responsibilities and activities are primarily shared between a headquarters FOIA Office and one field office (Volpe National Transportation Systems Center, Cambridge, MA), with the headquarters FOIA office coordinating RITA's portion of the annual report.

For FAA and FHWA, FOIA responsibilities and activities are shared among numerous field and headquarters program offices. Each of the decentralized offices receives FOIA requests, searches for records, reviews records, and makes releasability determinations. In FAA and FHWA, there is an office at headquarters that oversees the implementation of the FOIA program and coordinates its component's portion of the Department's Annual FOIA Report.

FOIA Public Liaisons serve throughout the Department as officials to whom FOIA requesters can raise concerns about service they have received from the FOIA offices. Serving as a FOIA Public Liaison is a collateral duty. FOIA Public Liaisons report to the Chief FOIA Officer on their FOIA liaison-related activities.

Section I: Steps Taken to Apply the Presumption of Openness

The guiding principle underlying the President's FOIA Memorandum and the Attorney General's FOIA Guidelines is the presumption of openness. DOT conducts a wide range of activities to educate employees to ensure that the presumption of openness is applied broadly.

Agency FOIA Conferences/Training Provided

The DOT was one of the many agencies that sponsored a multi-agency one-day FOIA training conference at the Department of Commerce Auditorium on September 11, 2012. The conference was well-attended and, according to feedback from participants, well-received.

The Departmental FOIA Office held interactive monthly meetings with FOIA specialists and attorneys throughout the Department to provide guidance, address current FOIA issues, and share best practices.

In June 2012, the FAA Central Region conducted a two-day internal training session for 30 of its employees involved in FOIA processing activities. In September 2012, headquarters and Air Traffic Organization FOIA staff provided training to 35 FOIA specialists and managers nationwide. In November 2012, FAA headquarters FOIA program staff trained approximately 75 unmanned aerial systems staff nationwide. In October 2012, the FAA FOIA System Development Team conducted several training sessions for approximately 100 FOIA staff nationwide on the FAA's new web-based FOIA Tracking System.

In June 2012, FHWA FOIA staff presented a FOIA overview at a Chief Counsel workshop for FHWA attorneys. Also in June 2012, FHWA FOIA staff presented a FOIA refresher training webinar to FOIA liaisons and attorneys throughout the country. In July 2012, the FHWA FOIA team coordinated with the Department of Justice to provide a Fee Waiver Training webinar to FOIA liaisons and attorneys throughout the country.

The PHMSA developed a mandatory FOIA Overview Training through DOT's on-line training system, which was completed by all PHMSA employees. The FOIA Overview Training is also provided to all new PHMSA employees during new-hire orientations. In December 2012,

PHMSA's FOIA Program Manager and FOIA Attorney briefed the Region Directors from the Office of Pipeline Safety during their meetings at DOT headquarters on different aspects of the FOIA. The PHMSA's Office of Chief Counsel has begun including a "FOIA News" feature in its general law newsletter sent to all PHMSA staff and posted on PHMSA's internal SharePoint site.

Many DOT components conducted on-the-job training for FOIA professionals, program office staff, managers, FOIA Public Liaisons, honors attorneys, and summer interns.

FOIA Training Attended

The DOT employees attended a wide variety of FOIA-related training this past year, including: (1) FOIA for Attorneys and Access Professionals, Advanced FOIA Training for Attorneys and Access Professionals, FOIA Administrative Forum, and various two-hour topic-related sessions sponsored by DOJ; (2) symposiums, training, and seminars sponsored by the American Society of Access Professionals; (3) a week-long Freedom of Information and Privacy Act Workshop sponsored by the U.S. Department of Agriculture Graduate School; (4) various programs offered by the Collaboration on Government Secrecy at American University Washington College of Law; (5) a multi-agency sponsored one-day FOIA Conference; and (6) the Privacy Compliance Workshop sponsored by the Department of Homeland Security.

Information released as a matter of discretion

DOT does not track, by case, the number of discretionary disclosures made. However, as shown in our FOIA Annual Report, DOT again this past year reduced its use of Exemptions 2, 5, and 7(A), which demonstrates our commitment to making discretionary disclosures. The following are examples of discretionary releases made during the past year:

- NHTSA has disclosed deliberative records such as internal presentations, internal e-mails, and investigatory materials related to agency activities involving motor vehicle recalls and agency investigations of safety related defects.
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- PHMSA released a Logistics Management Report on the Hazardous Materials Emergency Preparedness Grants Program under FOIA that could have been withheld under Exemption 5.
- When reviewing investigative records, OIG frequently released redacted copies of its investigative intake form, which were previously fully withheld under Exemption 5.
- FHWA has released drafts of certain environmental documents where the work on the project is either complete or at a very mature stage.

Other Initiatives to Ensure that the Presumption of Openness is Being Applied

Several components reported examining requests on a case-by-case basis to determine what can be segregated and released with the presumption of openness in mind. Routine discussions with

program offices to emphasize the presumption of openness are also used by several components. Following are several component-specific examples:

- When meeting with staff on FOIA issues, the PHMSA FOIA staff distributes the President's and Attorney General's memoranda to remind staff of the presumption of openness. This guidance is also included in PHMSA's FOIA training.
- The FAA is developing an on-line training module that will reinforce basic FOIA principles, and will focus strongly on reinforcing the presumption of openness.
- The FHWA FOIA Office reviews Exemption 5 material to determine whether withheld documents that can be released due to age or other underlying factors without harm to interests protected by exemptions.

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

As the Attorney General emphasized in his FOIA Guidelines, “[a]pplication of the proper disclosure standard is only one part of ensuring transparency. Open government requires not just a presumption of disclosure, but also an effective system for responding to FOIA requests.” One-on-one meetings between the Chief FOIA Officer and the head of each component to discuss their respective FOIA program's strengths and areas for improvement is one way that DOT ensures we have an effective system in place.

IT Support

FOIA professionals throughout the Department report that they have sufficient IT support.

Interaction with Open Government Team

The Chief FOIA Officer and Assistant General Counsel for Operations (who oversees the Departmental FOIA Office) are on DOT's Open Government Executive Steering Committee. In addition, the Departmental FOIA Officer works closely with DOT's Open Government Team in updating FOIA portions of the plan and measuring success.

Assessment of Adequacy of FOIA Staffing

In response to increased demands, the FAA National FOIA Program Office backfilled one FOIA position and added an additional position.

An assessment conducted by OIG in 2009 identified its need for a second full-time FOIA professional. The additional person was hired, and OIG has maintained that staffing level despite new budget constraints.

The Departmental FOIA Officer last conducted comprehensive reviews of DOT's FOIA programs in 2010. Since that time, component progress in reducing backlogs and improving timeliness has been monitored. Appropriate recommendations, including those addressing the adequacy of staffing, are shared with the heads of components during their annual one-on-one meetings with the Chief FOIA Officer. I have directed the Departmental FOIA Officer to conduct another comprehensive review of each of DOT's twelve components' FOIA programs over a three-year period. The first reviews, to be conducted in calendar year 2013, will include our largest component (FAA) and one other component. In calendar year 2014, reviews will include four medium FOIA volume components. In calendar year 2015, reviews will be conducted on the remaining six smaller FOIA volume components. The reviews will be conducted with representatives from the Departmental FOIA Office along with representative(s) of other DOT component(s). Each of the reviews will produce findings and recommendations intended to enhance the effectiveness and efficiency of DOT's FOIA programs.

Other Steps Taken to an Ensure an Effective and Efficient FOIA System

In FHWA, regular meetings are held with senior managers and the FOIA Officer to discuss FOIA processing. One example of an improved efficiency that was recently implemented is the multi-tracking of appeals to reduce the overall processing time of appeals.

The NHTSA continually conducts self-assessments to ensure that its FOIA system operates efficiently and effectively. The NHTSA has employed existing software to reduce redundancies and improve efficiency by eliminating duplicate e-mails, creating shared network drives with custodian offices, and initiating measures to improve and document custodian searches.

The FAA is upgrading its FOIA Training/Management Systems to a web-based version, which is anticipated to significantly improve the efficiency of FOIA processing as well as ad hoc reporting. The FAA is also in the process of developing a procedure pertaining to multi-assignment of complex FOIA requests, which is anticipated to streamline the review of common records and thereby reduce redundancy.

In FMCSA, template response letters were reviewed. Based on the review, the letters were revised and customized.

Section III: Steps Taken to Increase Proactive Disclosures

Both the President and Attorney General focused on the need for agencies to work proactively to post information online without waiting for the receipt of individual requests. During the past year, DOT has posted a great deal of new material and made a significant effort to make the material more usable to the public.

Examples of New Material Posted This Past Year

New material is regularly posted on Fast Lane (<http://fastlane.dot.gov/>), the official blog of the Secretary of Transportation. The OST also actively uses Facebook, Twitter, and YouTube to get information from the Secretary out to the public.

On a bi-weekly basis, copies of applications for participation in the Mexican carrier program have been provided to the FMCSA FOIA Office for review and redaction, then posted on its public website. The FOIA Office also works closely with the Public Affairs office, often coordinating upload efforts that are of current interest with News Releases.

Examples of material recently posted by FRA includes: (1) Rail Funds Interactive Map (<http://www.fra.dot.gov/Page/P0554>); (2) Regional Offices Map (<http://www.fra.dot.gov/Page/P0244>); (3) eLibrary and tutorial (<http://www.fra.dot.gov/eLib/Find>); and (4) Administrator welcome message, walkthrough video, and Twitter feed (<http://www.fra.dot.gov/Page/P0001>).

FAA TV (<http://www.faa.gov/tv/>) is a website where videos on a range of topics are available to the public. Real-Time Airport Delay Information (<http://www.fly.faa.gov>) is a web-based application that displays up-to-the-minute ground delay, ground stop, deicing, and general airport delay information. The FAA has also introduced a new web page (<http://www.faa.gov/go/laserinfo>) that provides information about reported incidents of cockpit laser intrusion and allows the public to report new laser strike incidents.

The FHWA has posted a variety of new documents, datasets, and videos over the past year. A few examples include: (1) Federal-Aid Essentials for Local Public Agencies in August 2012, which contains 80 videos covering the basics of the Federal-aid highway program (<http://www.fhwa.dot.gov/federal-aidessentials/>); (2) the Highway Statistics Series (<http://www.fhwa.dot.gov/policyinformation/statistics.cfm>); (3) N4510.759 Apportionment of Federal-Aid Highway Program Funds for Fiscal Year 2012; (4) Monthly Motor Fuel Reported by States (http://www.fhwa.dot.gov/policyinformation/motorfuelhwy_trustfund.cfm); and (5) Operations Performance Management (http://ops.fhwa.dot.gov/perf_measurement/index.htm).

The NHTSA continually updates the following web pages, which include a wealth of information, including documents, databases, videos, libraries, and maps: www.NHTSA.gov; www.SafeCar.gov; www.911.gov; www.TrafficSafetyMarketing.gov; and www.Distracton.gov.

Recent PHMSA postings available through its home page (<http://www.phmsa.dot.gov/>) include monthly registration reports, monthly pipeline statistics, National Transportation Safety Board recommendations, grant information, special permits/approvals, interpretation letters, standards and rulemakings, technical advisories, an emergency response handbook and video (<http://www.phmsa.dot.gov/hazmat/library/erg>), and a veterans recruitment portal (<http://phmsa.dot.gov/vet-recuit>).

Some examples of recently posted material from the OIG include: (1) newly posted audit and investigation findings (<https://www.oig.dot.gov/>); (2) DOT/OIG Wanted Fugitives

(<http://www.oig.dot.gov/wanted-fugitives>); and (3) *IMPACT* – a magazine that provides an annual behind-the-scenes look at some of the more significant investigations conducted by DOT OIG special agents (<http://www.oig.dot.gov/library-item/6011>).

Examples of Steps Taken to Make Posted Information More Useful to the Public

In order to reach its target satisfaction score from website users, RITA's Bureau of Transportation Statistics (BTS) underwent a website redesign to improve the customer experience accessing BTS data through the website. The key objectives for the BTS website redesign, which were crafted from a review of feedback, were improved access to information, enhanced search, better navigation, updated content, and enriched look and feel.

The NHTSA's most important and visible effort is launching and maintaining a robust social marketing presence on Facebook (<http://www.facebook.com/NHTSA>), Twitter (<http://www.twitter.com/@nhtsagov>), and YouTube (<http://www.youtube.com/user/usdotnhtsa>). The NHTSA is also developing a SaferCar mobile application, and supporting data APIs will be released to the developer community at the same time.

The FMCSA developed a mobile application for the Pre-Employment Screening program participants. Additionally, as support for this program, version 2.0 was created to allow access for third party participants. The participants have instant access to records without having to submit a FOIA request.

The FRA conducted extensive customer feedback surveys throughout 2012 and is actively engaged in improving the overall customer experience based on feedback from surveys. FRA is also currently researching and employing new techniques and technologies to improve search capabilities.

The FAA's Special Traffic Management Program (e-STMP) is a mobile application designed so that pilots can make arrival and departure reservations at airports participating in special traffic management events.

Feedback to the FHWA Webmaster is reviewed daily. Also, FHWA has an ongoing customer satisfaction survey that randomly samples visitors.

The OIG's website was designed to provide a wide variety of ways to keep the public informed of both new and historical information about the work of the OIG. The following tools are actively maintained and updated: advanced search functions, RSS feeds, social media integration, and a mobile-friendly site.

The main PHMSA home pages were redesigned last year to make the layout more user friendly, and PHMSA is now working to push that template to other pages within the site. In addition, PHMSA continues to provide internal customer reports via web trends on the relevance of their content, and flag outdated content for archival/deletion. The PHMSA is also working with its Public Affairs office to complete content audits for each program to clean up the site and

continue to provide fresh content to its users. A Twitter account has also been implemented to direct the public to important information on a daily basis.

Other Steps Taken to Increase Proactive Disclosures

The FRA's Buy America program website was redesigned in 2012 to offer site visitors the opportunity to view and comment on ongoing waiver requests and procedures. The FRA is also moving into social media avenues, such as Twitter and Facebook, in order to improve and expand its information dissemination methods. Links to the social media sites were implemented in the new website when it launched in November 2012.

Due to high public interest, FHWA posts, and will continue to post, a wide range of information (e.g., documents, webinars, funding tables) regarding MAP-21, the recently enacted long-term highway authorization (<http://www.fhwa.dot.gov/map21/factsheets.cfm>).

The FHWA's Federal Lands field division offices maintain updated web pages (<http://www.wfl.fhwa.dot.gov>; <http://www.cflhd.fhwa.dot.gov>; <http://www.epl.fhwa.dot.gov>) with links to current and future construction projects which answer many questions that would otherwise arrive as FOIA requests.

In 2012, SLSDC instituted a Facebook page that provides information daily regarding activities at the Seaway.

Section IV: Steps Taken to Greater Utilize Technology

A key component of the President's FOIA Memorandum was the direction to "use modern technology to inform citizens about what is known and done by their Government." The Department is currently exploring several opportunities in this area.

Electronic Receipt of FOIA Requests

FOIA requesters may make requests electronically to all components and sub-components, where applicable.

Online Tracking of FOIA Requests

FOIA requesters are not currently able to track their requests online, and DOT does not have immediate plans to offer that capability. Rather, DOT provides contact information in our acknowledgement letters, and requesters may contact the FOIA Requester Service Center in the respective DOT component to obtain status information for their requests.

Use of Technology to Facilitate Processing of Requests

The FAA is studying the feasibility of implementing an e-discovery tool which has the potential to improve the efficiency of the search processes related to FOIA.

The PHMSA continues to use network drives and databases to review and maintain responsive records electronically. The PHMSA investigators load the completed records into a database and a contractor saves those records to a network drive for review. Redactions are made using Adobe and most records are now released on CD, DVD or via electronic mail.

In addition to using existing software/technology to improve overall efficiency, NHTSA expects to roll out a commercial off-the-shelf (COTS) FOIA product in 2013. It is believed that with the additional capabilities of the COTS product, NHTSA will be able to improve its processes.

The FHWA has implemented the capability to upload documents onto its relational database, which facilitates processing of similar requests and reduces search time with similar subject matter requests. The FHWA also continues to improve its FOIA database. For example, FHWA recently implemented the ability to upload documents, such as incoming requests and response letters, and added search parameters to allow the user to further define certain report criteria.

FOIA Online, a FOIA module jointly developed by the Environmental Protection Agency, the Office of Government Information Services within the National Archives and Records Administration, and the Department of Commerce was recently launched and should expand transparency and increase public access to information for the partner agencies. FOIA Online supports the public's ability to submit FOIA requests, track the progress of requests, and search and access previously released FOIA responses in the system. FOIA Online may streamline and lower the costs of FOIA processing activities as well as provide an electronic records repository for released records, support the referral and transfer of FOIA requests and responsive documents, and facilitate other processing needs. The DOT recognizes the potential value and benefits of participating in a system such as FOIA Online. Therefore, DOT began closely watching the deployment of this end-to-end system as soon as it was launched. Between that time and December 31, 2013, we will watch the system's performance and analyze and assess FOIA Online for possible use by DOT. We plan to make a decision on whether FOIA Online meets our requirements by December 31, 2013.

Section V: Steps Taken to Improve Timeliness in Responding to Requests and Reduce Backlogs

The President and the Attorney General have emphasized the importance of improving timeliness in responding to requests. 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. Although DOT worked diligently on reducing backlogs and improving timeliness during the reporting period, we did not meet all of our goals by the end of the fiscal year (9/30/12).

Processing Simple Requests

Although DOT uses a separate track to process simple requests, we were not able to process those simple requests within an average of twenty working days.

Backlogs of Initial Requests and Appeals

The DOT's backlog of initial requests increased very slightly (by 13 cases or 1 percent) from FY 2011 to FY 2012. The increase was due to the complexity of cases received and staff vacancies.

The DOT's backlog of appeals decreased by 27 percent.

10 Oldest Initial Requests and Appeals

During FY 2012, DOT closed out 9 of the 10 oldest initial requests that were pending at the end of FY 2011. Since that time, the remaining request has been closed out.

During FY 2012, DOT closed out 9 of the 10 oldest appeals that were pending at the end of FY 2011. Since that time, the remaining appeal has been closed out.

By their nature, the 10 oldest initial requests and appeals are more voluminous and complex than typical cases. Although we were not able to close all of them by the end of FY 2012, they are now all closed.

Interim Releases

Many DOT components provide documents to requesters on a rolling basis. Many of FAA's FOIA requests are sent to multiple program offices for response, and its FOIA database does not record a request as closed until all offices have responded. In many instances, FAA requesters may have received substantive responses from some program offices, but not others, by the end of the fiscal year. However, we do not track data in either the rolling production scenario or the partial response scenario mentioned above.

Use of FOIA's Law Enforcement "Exclusions"

The DOT did not invoke a law enforcement statutory exclusion during Fiscal Year 2012.

Spotlight on Success

Our "Spotlight on Success" falls under the "Proactive Disclosure" category, and describes an effort to make information posted on DOT's home page more useful to the public.

In October 2012, DOT re-energized www.dot.gov to make it easier for the public to find information. DOT's online gateway was redesigned with the people who visit our site in mind. The DOT team used direct public feedback and usability testing to build a site designed around what visitors want to do when they visit us online.

We want the public to be able to rely on www.dot.gov as a useful transportation resource, so the new www.dot.gov has three main goals:

- To help find information as easily as possible;
- To make the most popular resources more accessible; and
- To arrange our resources in line with how the public thinks about transportation.

More recently, our web team launched a truly responsive design, so when the public visits our site using a mobile device, they won't just benefit from a page that scales to your smaller screen-- instead, they'll see a page that rearranges itself to fit their device.

Our new [topic pages](#) and [audience pages](#) are among the most visited on the site. With these topic landing pages, we tried to organize our resources around the kind of transportation a visitor to our site might be interested in, instead of organizing it around DOT offices and agency acronyms. Our web team is testing the site regularly and reviewing the results to be sure visitors can find what they need, when they need it, and on whatever device they want to use. There's also a feedback button on every single page so visitors can let us know what's working and what isn't.