

# Surface Transportation Board

2011 Chief FOIA Officer Report

Through 2/1/2011

## **I. Steps Taken to Apply the Presumption of Openness**

1. The Surface Transportation Board has taken the steps listed below to ensure that the presumption is being applied to all decisions involving the FOIA.

a. Modified the form requesting staff searches in response to FOIA requests to include the following language:

Please note that an agency has the discretion to release documents even though a FOIA exemption may apply to them. It is the policy of the Obama administration to encourage agencies to release such records whenever it is determined that such release will not result in actual harm.

Distributed updated and revised guidance to all staff. A cover memo advised staff that the guidance had been specifically revised to reflect the policy of the Obama administration to encourage agencies to release otherwise exempt records under certain circumstances. The guidance included the following language:

It is the policy of the Obama administration to encourage agencies to release otherwise exempt records whenever it is determined that release will not result in actual harm. [For this and other reasons explained above], copies of all responsive documents should be turned over to the FOIA Officer for review, even when you think an exemption applies.

b. The STB's FOIA Officer attended several DOJ trainings concerning the new FOIA Guidelines, including training on 12/7/2009, 1/12/2010, and 6/15/2010.

c. See *I.I.a.* above.

d. Looking at FOIA activity in FY 2010 and 2011 (through 2/1/2011), the agency has exercised its discretion to release otherwise exempt records in 50% of the instances in which an exemption applied.

e. The records that were released would have been covered under exemption 5.

f. The FOIA Officer reviews all requests covered by exemptions to determine whether discretionary releases are possible.

- g. The STB has adopted an informal policy of granting administrative FOIA appeals where the only reasons to deny the appeal would have been technical, e.g., appeal received after the deadline. For example, the agency granted an appeal regarding a fee-waiver denial even though the appeal was filed after the deadline and the requester had previously agreed to pay FOIA fees. The agency granted the appeal because the appeal included information that would have justified granting the waiver if the appeal had been timely filed.

The agency also adopted an informal policy to work with requesters, where reasonable, to deliver the actual information sought in the most cost-effective and expedient manner even when doing so requires the agency to “create” a record or provide “information” in the absence of a record. For example, in response to a request for a list of agency SES employees, such a list was “created” to avoid copying and redacting several records. And in response to another FOIA request, we arranged for a member of the Board’s environmental staff to phone the requester to provide the simple answers to the requester’s concerns when there were no responsive “records” addressing those concerns.

2. Because of the small number of requests that the STB has received in the last two years (14 requests in the FY 2009 and 7 requests in FY 2010), we cannot report a statistically significant difference in the agency’s discretionary releases. In FY 2009, the agency reported eight full releases, zero partial release/denials, and zero full denials; in FY 2010, we reported two full releases, two partial release/denials, and zero full denials. In both years, the other requests resulted primarily in a finding of “no records” although a few were withdrawn.

## **II. Steps Taken to Ensure an Effective System for Responding to Requests**

- a. At the STB the FOIA Officer has long enjoyed the support of the CIO and IT staff in responding to FOIA requests. An efficient and low-cost database, including templates for staff-search requests and responses to requesters, was developed in-house to track the relatively small number of FOIA requests received by the agency. And the IT staff worked with the FOIA Officer to develop detailed instructions to help staff perform thorough and efficient electronic searches of email and hard drives. In addition, IT staff helps to format responsive documents for the most cost-effective transmittal to requesters.
- b. The FOIA Officer recently joined the Agency’s Open Government Team, which has been working to identify additional information that should be posted on our website, as well as increasing the usability of the information that is already posted there. In this regard, the Team has identified several quarterly and annual reports submitted by the railroads (e.g., the R-1 Annual Reports) that, in the future, can be posted on our website in an open format.

- c. The FOIA Officer is able to respond within the statutory time-limits to the relatively small number of FOIA requests that the agency receives. Nevertheless, the agency has recently taken steps (described in *II.d.* below) to further ensure the efficiency of its FOIA operations.
- d. The agency has begun training a second FOIA professional to provide more consistent coverage when the FOIA Officer is on leave and to ensure a smooth succession when the current FOIA Officer retires. In addition, after a FOIA request was caught in the agency's spam filter, the IT office increased access to the spam reports for the FOIA/Privacy mailbox so that others can see and check these reports when the FOIA Officer is on leave.

### **III. Steps Taken to Increase Proactive Disclosures**

- a. During the past year, a number of task forces have been working to increase transparency by adding new material to the STB website.
- b. Specifically, the agency is now posting all Congressional correspondence in a database that can be accessed through the agency's website. In addition, we are presently redesigning our website so that all correspondence relating to cases will be easier to access.
- c. Most Congressional correspondence and certain other correspondence related to cases were previously only available through a FOIA request.
- d. The STB's Management Information and Legal Support Services (MILSS) paralegals and legal technicians routinely identify records that are appropriate for posting on the website. The MILSS staff post original and subsequent filings in cases brought to the Board, as well as all recordations (documents filed with the Board to perfect a security interest in rail or water carrier equipment). MILSS staff also posts Congressional correspondence to the website as soon as it is received.

The paralegals in MILSS use the STB's case management software (Case) to identify documents and post them to the website. This software is not FOIA-specific. The process is as follows: MILSS paralegals enter data about a document into Case; Case generates an ID number for each document; MILSS legal technicians use the ID number to scan the document and create a PDF; MILSS legal technicians validate the document (i.e., review the document for quality control); and, once validated, the document automatically propagates to the website.

The STB's Office of Economics places useful economic data (except data that includes confidential commercial information) on the website as received, or as compiled by the Board. That Office also participates in the agency's Open Government Team, as described in *III.f.* below.

- e. Currently, the STB is not utilizing social media. With the launch of our new website later this year, we will begin to use social media to educate the public about the mission of our agency as well as the activities we are undertaking to fulfill our congressional mandate. The agency's website is now accessible to users of portable devices, such as blackberries and mobile phones.
- f. As noted above, the redesign of the agency's website will enable users to access more readily the information that we post. We aim for transparency in all of our proceedings by posting all pleadings that do not contain sensitive personal or commercial information. With this in mind, the agency's Open Government Team is working to identify additional useful economic data that can be posted on the website. In addition, this team is working to identify records currently posted on the website that can be reformatted and posted in a more useful open format. Finally, a working group is reviewing the feasibility of scanning and posting on the web older microfiche documents that are currently available to the public only at the agency's headquarters.

#### **IV. Steps Taken To Greater Utilize Technology**

1. Electronic receipt of FOIA requests
  - a.-b. The STB is a relatively small agency with only one, agency-wide FOIA Office. As indicated in the STB's last CFO report, the STB's FOIA Office is capable of receiving requests electronically.
  - c. The STB accepts FOIA requests electronically through the STB website and via email.
2. Electronic tracking of FOIA requests
  - a.-b. See *III.1.a.* above. As indicated in the STB's last CFO report, the STB's FOIA Office is cable of tracking requests electronically.
  - c. The STB tracks requests electronically via email and through a database developed in-house.
3. Electronic processing of FOIA requests
  - a.-b. See *III.1.a.* above. As indicated in the STB's last CFO report, the STB's FOIA Office is capable of processing requests electronically.
  - c. The STB uses technology to process requests. Where possible, the FOIA Officer communicates with requesters electronically, confirming and clarifying requests, and resolving fee issues by email. Additionally, the STB's FOIA database tracks requests and includes templates to facilitate staff requests and responses to FOIA requesters.

4. Electronic preparation of STB's Annual FOIA Report
  - a. The STB uses technology to prepare the Annual FOIA Report. The FOIA Officer compiles the report using data stored in the agency's FOIA database. A template for the FOIA report is stored in a computer file and the draft and final reports are submitted via email. The FOIA database is the only FOIA-specific technology employed by the STB.
  - b. The CFO is satisfied with the STB's existing system.

#### **V. Steps Taken to Reduce Backlogs and Improve Timeliness in Responses**

- 1.– 2. As noted above, the STB is able to respond to all FOIA Requests within the statutory time limits. Therefore, we have no backlog.
3. Steps taken to reduce any backlogs and improve timeliness
  - a. The STB monitors the progress of our FOIA caseload using the agency's FOIA database. Given the STB's limited size and small FOIA case load, the STB is able to comply with FOIA deadlines without routinely setting goals. However, the STB's FOIA Office routinely discusses ways to better facilitate FOIA searches, improve our response time, and increase transparency. In addition, the STB is in the process of training a second attorney to serve as a second FOIA professional for the agency.
  - b. After a FOIA request was caught in the FOIA mailbox's spam filter while the FOIA Officer was on leave, the agency's IT staff took steps to ensure access to the FOIA spam log by the attorneys who cover for the FOIA Officer.
  - c. As noted above, the STB is able to process FOIA requests in a timely manner due to the small number of FOIA requests that it receives. Therefore, the involvement of the Chief FOIA Officer in processing-capacity issues has not been required.

#### **Spotlight on Success**

The STB has committed to the redesign of the Board's website with the sole purpose of increasing our transparency. Every decision that has been made regarding the website involves improving the user experience and making the STB's public records more accessible to the public.

#### ***Submitted by***

Craig Keats, Chief FOIA Officer  
Surface Transportation Board  
March 8, 2011