

2018 Chief FOIA Officer Report – Surface Transportation Board

Unless otherwise noted, agency 2018 Chief FOIA Officer Reports should address agency activities that have occurred since the posting deadline of last year's Report, which was March 13, 2017, up until the filing of the 2018 Report (March 12, 2018). Thus, the general reporting period for the Chief FOIA Officer Report is March 2017 to March 2018.

Content of 2018 Chief FOIA Officer Reports

Name of agency: Surface Transportation Board

Name and Title of agency Chief FOIA Officer:

Craig M. Keats, General Counsel

Section 1: Steps Taken to Apply the Presumption of Openness

The guiding principle underlying DOJ's FOIA Guidelines is the presumption of openness.

Please answer the following questions in order to describe the steps your agency has taken to ensure that the presumption of openness is being applied to all decisions involving the FOIA. You may also include any additional information that illustrates how your agency is working to apply the presumption of openness.

A. FOIA Training

1. Did your FOIA professionals or the personnel at your agency who have FOIA responsibilities attend any FOIA training or conference during the reporting period such as that provided by the Department of Justice?

Yes.

2. If yes, please provide a brief description of the type of training attended and the topics covered.

The Board is a small agency (< 120 employees) with only three part-time FOIA employees, The Board's FOIA Attorney Adviser attended the Department of Justice's "Annual FOIA Report Refresher" training session held on October 10, 2017, and the Board's FOIA Officer attended the Department's "Chief FOIA Officer Report Refresher" training session held on December 11, 2017.

3. Provide an estimate of the percentage of your FOIA professionals and staff with FOIA responsibilities who attended substantive FOIA training during this reporting period.

66% (2 of 3 FOIA professionals).

4. OIP has directed agencies to “take steps to ensure that all of their FOIA professionals attend substantive FOIA training at least once throughout the year.” If your response to the previous question is that less than 80% of your FOIA professionals attended training, please explain your agency’s plan to ensure that all FOIA professionals receive or attend substantive FOIA training during the next reporting year.

The only FOIA professional who did not attend formal training last year was the Chief FOIA Officer. He has been in the FOIA business for about 30 years, and he and the FOIA Officer spoke frequently about FOIA issues throughout the year. Nevertheless, during 2018, it is expected that all of the Board’s FOIA employees will attend DOJ-OIP formal FOIA training (<https://www.justice.gov/oip/blog/oip-announces-upcoming-training-dates>) or complete OIP’s available e-learning modules contained on CD and available for direct upload into the Board’s Learning Management System (<https://www.justice.gov/oip/training>).

B. Outreach

5. Did your FOIA professionals engage in any outreach or dialogue with the requester community or open government groups regarding your administration of the FOIA?

No.

C. Other Initiatives

6. Describe any efforts your agency has undertaken to inform non-FOIA professionals of their obligations under the FOIA?

FOIA staff works closely with its non-FOIA professional staff on FOIA requests, providing one-on-one support to all Board employees when they are involved in a FOIA request. More generally, the FOIA Officer provides a FOIA training segment as part of the Board’s records training for staff. These agency-wide trainings are given about every other year and are particularly effective because they combine the requirements to retain agency records under the Board’s records schedule with the potential need for staff to search for those records in response to a FOIA request.

7. If there are any other initiatives undertaken by your agency to ensure that the presumption of openness is being applied, please describe them here.

The Board provides the public with a large number of records on its website, many of which are referenced below. Specifically, the Board posts all pleadings filed with the Board (except materials containing sensitive personal or commercial information) (<https://www.stb.gov/filings/all.nsf/WebFilingDate?openform>). It also posts all recordations required to be filed with the Board (i.e., documents filed with the Board to perfect a security interest in rail or water carrier equipment) (<https://www.stb.gov/recordations.nsf>). These records are posted daily on the Board’s website.

The Board also posts other records periodically. Specifically, the Board posts environmental correspondence filed during an environmental review process (<https://www.stb.gov/Ect1/ecorrespondence.nsf/Public%20Incoming%20By%20Docket%20Number?OpenView&Start=1&Count=30&Collapse=1>), and provides links to important environmental documents, including large Environmental Assessments and Environmental Impact Statements related to proceedings before the Board (<https://www.stb.gov/stb/environment/sea.html>). The Board also issues to the media and posts on the Board's website press releases for significant decisions, hearings and other rulings (<https://www.stb.gov/stb/news/whatsnew.html>), posts testimony and speeches (https://www.stb.gov/stb/news/speeches_testimony.html), and allows the public to sign up to receive press releases by email (https://www.stb.gov/stb/news/mailling_list.html).

The Board provides industry economic data by posting a significant number of financial and statistical reports on its website (https://www.stb.gov/stb/industry/econ_reports.html). The website also provides a section for Rail Customer Assistance, which facilitates both informal and formal alternative dispute resolution services to the public or industry participants (https://www.stb.gov/stb/rail/consumer_asst.html).

Additionally, the Board posts records pertaining to its two FACA committees [National Grain Car Council (https://www.stb.gov/stb/rail/graincar_council.html) and Rail Energy Transportation Advisory Council (<https://www.stb.gov/stb/rail/RETAC.html>)]; and its statutorily-created non-FACA committee [Railroad-Shipper Transportation Advisory Committee (https://www.stb.gov/stb/rail/railshipper_council.html)].

Finally, the Board posts agency reports and independent studies, including its Fiscal Year 2018 budget request (<https://www.stb.gov/stb/docs/Budget/STB%20FY%202018%20Budget.pdf>), its Annual Report to Congress covering the Board's activities in federal Fiscal Year 2016 (<https://www.stb.gov/stb/about/annual.html>), a Study on Rate Case Methodology Alternatives (<https://www.stb.gov/stb/elibrary/IndependentStudy.html>), and an Assessment of STB's Internal Rate Case Processing Procedures (<https://www.stb.gov/stb/elibrary/InternalRate-CaseProcessing.htm>).

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

The DOJ's FOIA Guidelines emphasize that "[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." It is essential that agencies effectively manage their FOIA program.

Please answer the following questions to describe the steps your agency has taken to ensure that the management of your FOIA program is effective and efficient. You should also include any additional information that describes your agency's efforts in this area.

1. For Fiscal Year 2017, what was the average number of days your agency reported for adjudicating requests for expedited processing? Please see Section VIII.A. of your agency's Fiscal Year 2017 Annual FOIA Report.

Seven days.

2. If your agency's average number of days to adjudicate requests for expedited processing was above ten calendar days, please describe the steps your agency will take to ensure that requests for expedited processing are adjudicated within ten calendar days or less.

N/A.

3. During the reporting period, did your agency conduct a self-assessment of its FOIA program? If so, please describe the methods used, such as reviewing Annual Report data, using active workflows and track management, reviewing and updating processing procedures, etc.

Yes. The FOIA Officer reviewed the Annual Report data to identify areas where improvements may be needed. He also updated search instructions to reflect the Board's migration away from Lotus Notes to Office 365 and Outlook.

4. The FOIA Improvement Act of 2016 requires additional notification to requesters about the services provided by the agency's FOIA Public Liaison. Please provide an estimate of the number of times requesters sought assistance from your agency's FOIA Public Liaison during FY 2017 (please provide a total number or an estimate of the number).

Zero.

5. Optional Survey Question: If possible, please provide an estimate of the average number of pages that your agency processes for each request. You may provide estimates for each track.

The Board does not track the number of pages provided to each requester. Some agency records do not lend themselves to such counting, such as XML data and large spreadsheets. (The Board uses a single track for FOIA requests.)

6. If there are any other steps your agency has undertaken to ensure that your FOIA system operates efficiently and effectively, such as improving search processes, eliminating redundancy, etc., please describe them here.

During the reporting period, the Board migrated from Lotus Notes to Microsoft Office 365. In response to this change, the Board's FOIA staff focused on improving and updating the FOIA search process. For large FOIA requests, FOIA staff provided Board staff with updated step-by-step instructions on how to effectively and efficiently complete searches for responsive records, especially for electronic records. By giving detailed instructions on how to use the text searching functionalities of Office 365, Outlook and Windows, and providing one-on-one assistance for staff who expressed difficulties in searching records, FOIA staff facilitated faster, more efficient searches while increasing the thoroughness of the records found.

Section III: Steps Taken to Increase Proactive Disclosures

The Department of Justice has long focused on the need for agencies to work proactively to post information online without waiting for individual requests to be received.

Please answer the following questions to describe the steps your agency has taken to increase the amount of material that is available on your agency websites. In addition to the questions below, you should also describe any additional steps taken by your agency to make and improve proactive disclosures of information.

1. Provide examples of material that your agency has proactively disclosed during the past reporting year, including links to the posted material.

In addition to the records posted daily by the Board described in section I, paragraph C.7., the Board undertook the following significant disclosures during the reporting period:

- Recently, the Board posted its Performance and Accountability Report (PAR) for fiscal year 2017. This report describes the performance measures, results, and accountability processes for the Board, pursuant to the Government Performance and Results Modernization Act of 2010 (Pub.L.103-62) (<https://www.stb.gov/stb/docs/PAR/STBFY2017PAR.pdf>).
- During the reporting period, the Board posted records related to its Regulatory Reform Task Force, which was established to comply with the spirit of Executive Order 13,777, issued February 24, 2017. The initial goals of the RRTF were to: (i) improve implementation of regulatory reform initiatives and policies pursuant to the EO; and (ii) evaluate existing regulations to identify regulations for repeal, replacement, or modification, consistent with applicable law (<https://www.stb.gov/stb/about/RRTF.html>). The Board also posts periodic status reports detailing the activities of the RRTF (as referenced in link above).
- Throughout the reporting period, the Board posted summaries of weekly calls that are being held between STB staff and CSX senior management, allowing the Board and the public to closely monitor the rail service problems on the CSX Transportation, Inc. railroad network (https://www.stb.gov/stb/railserviceissues/rail_service_update.html).
- In May 2017, the Board, through its Office of Environmental Analysis, issued and posted a Cultural Resources Identification Report for a pending rail-line abandonment proceeding, Consolidated Rail Corporation—Abandonment Exemption—in Hudson County, N.J., Docket No. AB 167 (Sub-No. 1189X), in which a rail carrier seeks to abandon a 1.36-mile rail line in Jersey City, N.J. Prepared pursuant to Section 106 of the National Historic Preservation Act, the report identifies historic properties in the project area that are listed in or eligible for listing in the National Register of Historic Places

<https://www.stb.gov/decisions/readingroom.nsf/9855c1fb354da09b85257f1f000b5f79/258688f3efadee3985258116006ee98e?OpenDocument>).

In August 2017, through its Office of Economics, the Board posted Employee, Service, & Compensation Data for Class I Railroads and Amtrak. This report reflects each railroad's number of employees, service hours and compensation, by employee group. The report, which may be of interest to shippers and Board stakeholders, contains some data that has been redacted to protect confidentiality (<https://www.stb.gov/econdata.nsf/QuarterlyWageABData?OpenView&Start=1&Count=300&Expand=1.3#1.3>).

2. Did your agency use any means to publicize or highlight important proactive disclosures for public awareness? If yes, please describe these efforts.

Yes. The Board commonly prepares public news releases for its proactive disclosures and posts the releases on its website (https://www.stb.gov/stb/news/news_releases.html). The Board also uses social media (i.e. Facebook and Twitter) to publicize its proactive disclosures and sends emails to persons that have signed up to receive such releases.

3. Beyond posting new material, is your agency taking steps to make the posted information more useful to the public, especially to the community of individuals who regularly access your agency's website?

Yes.

4. If yes, please provide examples of such improvements.

The Board strives to make its posted economic data more user-friendly by posting some of its reports in both XML and searchable pdf. Additionally, the Board provides complicated programs that it uses in its large complaint cases and industry analysis (i.e. the Uniform Railroad Cost System (<https://www.stb.gov/stb/industry/urcs.html>)). This enables interested parties to independently verify the Board's work.

5. If there are any other steps your agency has taken to improve proactive disclosures, please describe them here. For example, has your agency engaged requesters in determining how and what to post? Has your agency used web analytics to inform your proactive disclosures?

No.

Section IV: Steps Taken to Greater Utilize Technology

A key component of FOIA administration is using technology to make information more accessible. In addition to using the internet to make proactive disclosures, agencies should also be exploring ways to utilize technology in responding to requests.

Please answer the following questions to describe how your agency is utilizing technology to improve its FOIA administration and the public's access to information. You should also include any additional information that that describes your agency's efforts in this area.

1. Has your agency identified any best practices to leverage 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? If yes please describe the best practices, the types of technology used and the impact on your agency's processing.

Yes. The Board's FOIA office has utilized a shared document platform that allows Board staff working on a FOIA request to place responsive records in individual folders on a single shared network drive. This mechanism allows, among other things, (1) the search staff to see all of the records found regarding a particular FOIA request, and (2) the FOIA staff to more easily identify and review records responsive to a submitted FOIA request.

As noted above, the Board posts many reports in both XML and searchable pdf (as it does with its annual FOIA reports). Additionally, the Board provides complicated programs that it uses in its cases and industry analysis (i.e. the Uniform Railroad Cost System; see <https://www.stb.gov/stb/industry/urcs.html>). This enables interested parties to independently follow and evaluate the Board's work. The Board also posts to its website many of its worksheets as Excel spreadsheets.

2. Did your agency successfully post all four quarterly reports for Fiscal Year 2017?

Yes (<https://www.stb.gov/stb/docs/FOIA/foia.html>).

3. If your agency did not successfully post all quarterly reports, with information appearing on FOIA.gov, please explain why and provide your agency's plan for ensuring that such reporting is successful in Fiscal Year 2018.

N/A.

4. The FOIA Improvement Act of 2016 requires all agencies to post the raw statistical data used to compile their Annual FOIA Reports. Please provide the link to this posting for your agency's Fiscal Year 2016 Annual FOIA Report and, if available, for your agency's Fiscal Year 2017 Annual FOIA Report.

Fiscal Year 2016 Annual FOIA Report (Raw Statistical Data):
<https://www.stb.gov/stb/docs/FOIA/2016%20Raw%20Data.pdf>.

Fiscal Year 2017 Annual FOIA Report (Raw Statistical Data):
<https://www.stb.gov/stb/docs/FOIA/2017%20Raw%20Data.pdf>.

5. If there are any other steps your agency has taken to improve use of technology in FOIA, please describe them here.

N/A

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

The Department of Justice has emphasized the importance of improving timeliness in responding to requests. This section of your Chief FOIA Officer Report 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, appeals, and consultations.

For the figures required in this Section, please use the numbers contained in the specified sections of your agency's 2017 Annual FOIA Report and, when applicable, your agency's 2016 Annual FOIA Report.

A. Simple Track

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 times for processed requests. For agencies utilizing a multi-track system to process requests, there is a category for "simple" requests, which are those requests that are placed in the agency's fastest (non-expedited) track, based on the low volume and/or simplicity of the records requested.

1. Does your agency utilize a separate track for simple requests?

No. Because the Board generally receives a small number of requests annually and most of the requests are fairly simple, the Board sees no need to establish separate tracks for simple and complex requests.

2. If so, for your agency overall in Fiscal Year 2017, was the average number of days to process simple requests twenty working days or fewer?

N/A.

3. Please provide the percentage of requests processed by your agency in Fiscal Year 2017 that were placed in your simple track.

N/A.

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

Yes.

B. Backlogs

Section XII.A of your agency's Annual FOIA Report, entitled "Backlogs of FOIA Requests and Administrative Appeals" shows the numbers of any backlogged requests or appeals from the

fiscal year. You should refer to these numbers from your Annual FOIA Reports for both Fiscal Year 2016 and Fiscal Year 2017 when completing this section of your Chief FOIA Officer Report.

BACKLOGGED REQUESTS

5. If your agency had a backlog of requests at the close of Fiscal Year 2017, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2016?

N/A.

6. If not, explain why and describe the causes that contributed to your agency not being able to reduce its backlog. When doing so, please also indicate if any of the following were contributing factors:

- An increase in the number of incoming requests.
- A loss of staff.
- An increase in the complexity of the requests received. If possible, please provide examples or briefly describe the types of complex requests contributing to your backlog increase.
- Any other reasons – please briefly describe or provide examples when possible.

N/A.

7. If you had a request backlog please report the percentage of requests that make up the backlog out of the total number of requests received by your agency in Fiscal Year 2017.

N/A.

BACKLOGGED APPEALS

8. If your agency had a backlog of appeals at the close of Fiscal Year 2017, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2016?

N/A.

9. If not, explain why and describe the causes that contributed to your agency not being able to reduce its backlog. When doing so, please also indicate if any of the following were contributing factors:

- An increase in the number of incoming appeals.
- A loss of staff.
- An increase in the complexity of the requests received. If possible, please provide examples or briefly describe the types of complex requests contributing to your backlog increase.
- Any other reasons – please briefly describe or provide examples when possible.

N/A.

10. If you had an appeal backlog please report the percentage of appeals that make up the backlog out of the total number of appeals received by your agency in Fiscal Year 2017. If your agency did not receive any appeals in Fiscal Year 2017 and/or has no appeal backlog, please answer with "N/A."

N/A.

C. Backlog Reduction Plans

11. In the 2017 guidelines for Chief FOIA Officer Reports, any agency with a backlog of over 1000 requests in Fiscal Year 2016 was asked to provide a plan for achieving backlog reduction in the year ahead. Did your agency implement a backlog reduction plan last year? If so, describe your agency's efforts in implementing this plan and note if your agency was able to achieve backlog reduction in Fiscal Year 2017?

N/A

12. If your agency had a backlog of more than 1,000 requests in Fiscal Year 2017, what is your agency's plan to reduce this backlog during Fiscal Year 2018?

N/A

D. Status of Ten Oldest Requests, Appeals, and Consultations

Section VII.E, entitled "Pending Requests – Ten Oldest Pending Requests," Section VI.C.(5), entitled "Ten Oldest Pending Administrative Appeals," and Section XII.C., entitled "Consultations on FOIA Requests – Ten Oldest Consultations Received from Other Agencies and Pending at Your Agency," show the ten oldest pending requests, appeals, and consultations. You should refer to these numbers from your Annual FOIA Reports for both Fiscal Year 2016 and Fiscal Year 2017 when completing this section of your Chief FOIA Officer Report.

TEN OLDEST REQUESTS

13. In Fiscal Year 2017, did your agency close the ten oldest requests that were reported pending in your Fiscal Year 2016 Annual FOIA Report?

The Board had no pending requests reported at the end of the fiscal year in the Fiscal Year 2016 Annual FOIA Report.

14. If no, please provide the number of these requests your agency was able to close by the end of the fiscal year, as listed in Section VII.E of your Fiscal Year 2016 Annual FOIA Report. If you had less than ten total oldest requests to close, please indicate that.

N/A.

15. Of the requests your agency was able to close from your ten oldest, please indicate how many of these were closed because the request was withdrawn by the requester. If any were

closed because the request was withdrawn, did you provide any interim responses prior to the withdrawal?

N/A.

TEN OLDEST APPEALS

16. In Fiscal Year 2017, did your agency close the ten oldest appeals that were reported pending in your Fiscal Year 2016 Annual FOIA Report?

N/A.

17. If no, please provide the number of these appeals your agency was able to close by the end of the fiscal year, as listed in Section VII.C.(5) of your Fiscal Year 2016 Annual FOIA Report. If you had less than ten total oldest appeals to close, please indicate that.

N/A.

TEN OLDEST CONSULTATIONS

18. In Fiscal Year 2017, did your agency close the ten oldest consultations that were reported pending in your Fiscal Year 2016 Annual FOIA Report?

N/A.

19. If no, please provide the number of these consultations your agency was able to close by the end of the fiscal year, as listed in Section XII.C. of your Fiscal Year 2016 Annual FOIA Report. If you had less than ten total oldest consultations to close, please indicate that.

N/A.

E. Additional Information on Ten Oldest Requests, Appeals, and Consultations & Plans

20. Briefly explain any obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2017.

N/A.

21. If your agency was unable to close any of its ten oldest requests because you were waiting to hear back from other agencies on consultations you sent, please provide the date the request was initially received by your agency, the date when your agency sent the consultation, and the date when you last contacted the agency where the consultation was pending.

N/A.

22. If your agency did not close its ten oldest pending requests, appeals, or consultations, please provide a plan describing how your agency intends to close those “ten oldest” requests, appeals, and consultations during Fiscal Year 2017.

N/A.

F. Success Stories

Out of all the activities undertaken by your agency since March 2017 to increase transparency and improve FOIA administration, please briefly describe here at least one success story that you would like to highlight as emblematic of your agency's efforts. The success story can come from any one of the five key areas. As noted above, OIP will highlight these agency success stories during Sunshine Week. To facilitate this process, all agencies should use bullets to describe their success story and limit their text to a half page. The success story is designed to be a quick summary of key achievements. A complete description of all your efforts will be contained in the body of your Chief FOIA Officer Report.

- During the reporting year, the Board began the process of converting its large trove of microfiche, microfilm, paper records, VHS tapes, and cassette tapes into searchable electronic files. The Board has hired a contractor to make the conversion of an estimated (1) 9,000,000 images from the Board's microfiche cabinets, (2) 500,000 pages from hard-copy folders, (3) 650,000 images from microfilm, (4) 1,200 hours of video from historical VHS tapes, and (5) 120 hours of audio recordings from historical cassette tapes. This project's goal is divided into three phases – conversion, agency availability, and then public availability. The Board is currently in the conversion phase. The ultimate goal is the make these records available to the public.