

2024 Chief FOIA Officer Report Surface Transportation Board

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Section I: FOIA Leadership and Application of 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.

The Surface Transportation Board (STB or Board) senior leadership is committed to a robust FOIA program and the presumption of openness.

A. FOIA Leadership

1. The FOIA requires each agency to designate a Chief FOIA Officer who is a senior official at the Assistant Secretary or equivalent level. See 5 U.S.C. §552(j)(1)(2018). Is your agency's Chief FOIA Officer at this level?

Yes. During FY2023 and beyond, the Chief FOIA Officer has been either the General Counsel or the Acting General Counsel. As of January 21, 2024, the Board's Acting General Counsel is the Chief FOIA Officer.

2. Please provide the name and title of your agency's Chief FOIA Officer.

Anika Cooper, Acting General Counsel.

3. What steps has your agency taken to incorporate FOIA into its core mission? For example, has your agency incorporated FOIA milestones into its strategic plan?

FOIA is an important part of the Board's activities, and the agency has expended resources to improve its FOIA processing. Although it is not specifically listed in the Board's strategic plan, one of the agency's core strategies in that plan is to "[p]rovide for transparency and public participation in Board decisions and policymaking to the extent practicable."

B. Presumption of Openness

1. The Attorney General's 2022 FOIA Guidelines provides that "agencies should confirm in response letters to FOIA requesters that they have considered the foreseeable harm standard when reviewing records and applying FOIA exemptions." Does your agency provide such confirmation in its response letters?

Yes, where relevant.

2. In some circumstances, agencies may respond to a requester that it can neither confirm nor deny the existence of requested records if acknowledging the existence of records would harm an interested protected by a FOIA exemption. This is commonly referred to as a *Glomar* response. If your agency tracks Glomar responses, please provide:

N/A. The Board has not provided any *Glomar* responses in the last ten years and therefore has not tracked them.

Section II: Ensuring Fair and Effective FOIA Administration

The Attorney General’s 2022 [FOIA Guidelines](#) provide that “[e]nsuring fair and effective FOIA administration requires . . . proper training, and a full understanding of FOIA obligations by the entire agency workforce.” The Guidelines reinforce longstanding guidance to “work with FOIA requesters in a spirit of cooperation.” The Attorney General also “urge[s] agency Chief FOIA Officers to undertake comprehensive review of all aspects of their agency’s FOIA administration” as part of ensuring fair and effective FOIA administration.

A. FOIA Training

1. The FOIA directs agency Chief FOIA Officers to ensure that FOIA training is offered to agency personnel. See 5 U.S.C. § 552(a)(j)(2)(F). Please describe the efforts your agency has undertaken to ensure proper FOIA training is made available and used by agency personnel.

In past years, the Board has incorporated FOIA training in its records training for all employees. The Board’s FOIA Officer provides training to agency personnel, as needed.

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

No. It should be noted that, during FY 2023, the Board’s only FOIA employees, the Chief FOIA Officer and the FOIA Officer, both had over 10 years of experience running a FOIA office/program. They did attend the following meetings:

Chief FOIA Officers Council Meetings
FOIA Advisory Committee Meeting (December 1, 2022)

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

N/A.

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

Zero.

5. 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.

In FY 2024, the Board’s FOIA officials will resume their usual attendance of DOJ-OIP virtual FOIA trainings through Eventbrite.

6. Describe any efforts your agency has undertaken to inform non-FOIA professionals of their obligations under the FOIA. In particular, please describe how often and in what formats your agency provides FOIA training or briefings to non-FOIA staff; and if senior leaders at your agency received a briefing on your agency’s FOIA resources, obligations and expectations during the FOIA process?

Internal training is provided as needed by the Board’s FOIA Officer. As our agency has fewer than 125 employees, the Board’s FOIA officer works directly with all Board employees whenever they are involved in a FOIA search. This includes working directly with senior leaders, who have become well acquainted with our FOIA request process.

B. Outreach

7. As part of the standard request process, do your FOIA professionals proactively contact requesters concerning complex or voluminous requests in an effort to clarify or narrow the scope of the request so requesters can receive responses more quickly? Please describe any such outreach or dialogue and, if applicable, any specific examples.

Yes. The FOIA Officer proactively communicates with requesters, offering to help them narrow voluminous requests, clarify vague requests (when necessary), and provide requesters with other necessary direction. For example, in FY 2023, the FOIA Officer spent a good bit of time working with requesters who sought records of their entry to, and exit from, the United States. It was important to let these requesters know that the Board does not create or maintain such information and to refer them to the appropriate agencies.

8. Outside of the standard request process or routine FOIA Liaison or FOIA Requester Service Center interactions, did your FOIA professionals engage in any outreach or dialogue, with the requester community or open government groups regarding your administration of the FOIA? For example, did you proactively contact frequent requesters, host FOIA-related conference calls with open government groups, or provide FOIA training to members of the public? Please describe any such outreach or dialogue and, if applicable, any specific

examples of how this dialogue has led to improvements in your agency's FOIA administration.

No. We did not experience the situations that give rise to these opportunities. For example, the Board did not have any duplicate requests for the same general records during the reporting period.

9. 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 Fiscal Year 2023 (please provide a total number or an estimate of the number for the agency overall).

Zero.

Other Initiatives

10. Has your agency evaluated the allocation of agency personnel resources needed to respond to current and anticipated FOIA demands? If so, please describe what changes your agency has or will implement.

Yes. The FOIA officer and the Chief FOIA officer meet periodically to discuss the Board's FOIA work. We are currently implementing FOIAXpress to support the Board's FOIA request processing.

11. How does your agency use data or processing metrics to ensure efficient management of your FOIA workload? For example, case management reports, staff processing statistics, etc. In addition, please specifically highlight any data analysis methods or technologies used.

Other than our quarterly and annual FOIA reports, the Board does not presently have a system to evaluate its FOIA metrics or how efficiently we manage our FOIA workload. But the Board is currently implementing a new FOIA request processing system, FOIAXpress, and expects that it will provide more full and immediate metrics.

12. Optional -- If there are any other initiatives undertaken by your agency to ensure fair and effective FOIA administration, please describe them here.

Section III: Proactive Disclosures

The Attorney General's 2022 [FOIA Guidelines](#) emphasize that "proactive disclosure of information is . . . fundamental to the faithful application of the FOIA." The Guidelines direct agencies to post "records online quickly and systematically in advance of any public request" and reiterate that agencies should post records "in the most useful, searchable, and open formats possible."

1. Please describe what steps your agency takes to identify, track, and post (a)(2) proactive disclosures.

The STB daily posts all non-sensitive pleadings and all recordations (i.e., documents filed with the Board to perfect a security interest in rail or water carrier equipment) on its website, www.stb.gov. The Board also provides the public with a large number of other records through five major pulldown menus for proceedings & actions, reports & data, resources, news & communications, and other information in about STB.

The Board issues to the media, and posts on the Board's website, press releases for significant decisions, hearings, and other rulings. The Board also posts testimony and speeches by its Board Members, and information about Board meetings, hearings, and task force matters. Additionally, the Board can live-stream its meetings and hearings, including oral arguments, listening sessions, and technical workshops. These videos, audio recordings and/or transcripts remain available for public viewing after the event, thereby giving the public greater access to the Board's activities.

The Board provides industry economic data by posting a large number of financial and statistical reports its website. The Board also posts agency reports and independent studies, as well as the Board's fiscal year budget requests.

The Board routinely posts environmental correspondence filed during any environmental review process overseen by the Board and provides the ability to search and access electronically important environmental documents, including large Environmental Assessments and Environmental Impact Statements related to proceedings before the Board.

Additionally, the Board posts reports on rail service issues and records pertaining to its two existing FACA committees, National Grain Car Council and Rail Energy Transportation Advisory Council, its existing statutorily-created non-FACA committee, the Railroad-Shipper Transportation Advisory Committee, and its new FACA committee, the Passenger Rail Advisory Committee.

2. How long after identifying a record for proactive disclosure does it take your agency to post it?

Posting varies with the type of record, but most agency records are posted daily. Filings and decisions are posted daily, as are recordings. In contrast, large analysis or studies from the Board's Office of Economics often take time to review and format, so may take a week or more to be posted.

3. Does your agency post logs of its FOIA requests?

No. In lieu of daily logs, the Board posts its annual raw FOIA request data on its [FOIA webpage](#), containing much of the same information.

- If so, what information is contained in the logs?

Request Number, Consultations, Days Allowed, Initially Received, Perfected, Completed, Exemption(s) Applied, Date Received, Date Closed, and Disposition

- Are they posted in CSV format? If not, what format are they posted in?

Yes.

4. Provide examples of any material that your agency has proactively disclosed during the past reporting year, including records that have been requested and released three or more times in accordance with 5 U.S.C. § 552(a)(2)(D). Please include links to these materials as well.

Please see the records described in Section III, Paragraph 1.

5. 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. The Board is adept at providing records relevant to the rail industry in the formats most useful given the nature of the records.

6. If yes, please provide examples of such improvements. In particular, please describe steps your agency is taking to post information in open, machine-readable, and machine-actionable formats, to the extent feasible. If not posting in open formats, please explain why and note any challenges.

As part of the Board's oversight efforts regarding urgent rail service issues, the Board is currently posting certain employment data received in its Form C in a compilation with the employment data received in STB Docket No. EP_770_1. That employment data can be found [here](#). There are also data compiled for EP_724 and EP_770_1 [here](#).

7. Does your proactive disclosure process or system involve any collaboration with agency staff outside the FOIA office, such as IT or data personnel? If so, describe this interaction.

Yes. For routine disclosures, there is an administrative branch within the Board's Office of Proceedings that receives and posts daily filings and decisions. For other non-routine disclosures, the posting goes through the office that does the substantive analysis for those records, and those offices may work with the Board's Office of Public Assistance, Governmental Affairs, and Compliance or the Board's IT office to post those records.

8. Optional -- Please describe the best practices used to improve proactive disclosures and any challenges your agency faces in this area.

Section IV: Steps Take to Greater Utilize Technology

A key component of FOIA administration is using technology to make information available to the public and to gain efficiency in FOIA processing. The Attorney General's 2022 [FOIA Guidelines](#) emphasize the importance of making FOIA websites easily navigable and complying with the [FOIA.gov](#) interoperability requirements. Please answer the following questions to describe how your agency is using technology to improve its FOIA administration and the public's access to information.

1. Has your agency reviewed its FOIA-related technological capabilities to identify resources needed to respond to current and anticipated FOIA demands?

Yes.

2. Please briefly describe any new types of technology your agency uses to support your FOIA program.

The Board is presently implementing FOIAXpress for its administration and processing of FOIA requests, organizing responsive records, and preparing its periodic reports. This system is expected to be public and processing agency requests by June 30, 2024.

3. Does your agency currently use any technology to automate record processing? For example, does your agency use machine learning, predictive coding, technology assisted review or similar tools to conduct searches or make redactions? If so, please describe and, if possible, estimate how much time and financial resources are saved since implementing the technology.

No.

4. OIP issued [guidance](#) in 2017 encouraging agencies to regularly review their FOIA websites to ensure that they contain essential resources and are informative and user-friendly. Has your agency reviewed its FOIA website(s) during the reporting period to ensure it addresses the elements noted in the guidance?

Yes.

5. Did all four of your agency's [quarterly reports](#) for Fiscal Year 2023 appear on FOIA.gov?

Yes.

6. If your agency did not successfully post all quarterly reports on FOIA.gov, please explain why and provide your agency's plan for ensuring that such reporting is successful in Fiscal Year 2024.

N/A.

7. 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 2022 Annual FOIA Report and, if available, for your agency's Fiscal Year 2023 Annual FOIA Report.

<https://www.stb.gov/wp-content/uploads/FOIA-2022-STB-raw-data-file.xlsx>

8. In February 2019, DOJ and OMB issued joint [Guidance](#) establishing interoperability standards to receive requests from the National FOIA Portal on FOIA.gov. Are all components of your agency in compliance with the guidance?

No. The Board was interoperable via API while we were using FOIAonline.gov to process our requests. That system was sunset as of the end of the fiscal year 2023, and, due to contracting issues, we were required to use its email through FOIA.gov, which is not interoperable. We have already contracted for, and are presently training and testing, FOIAXpress and expect to be fully interoperable again within the next 60 days or so.

9. Optional -- Please describe the best practices used in greater utilizing technology and any challenges your agency faces in this area.

Section V: Steps Taken to Remove Barriers to Access, Improve Timeliness in Responding to Requests, and Reduce Backlogs

The Attorney General's 2022 [FOIA Guidelines](#) instruct agencies "to remove barriers to requesting and accessing government records and to reduce FOIA processing backlogs." Please answer the following questions to describe how your agency is removing barriers to access, improving timeliness in responding to requests, and reducing FOIA backlogs.

A. Remove Barriers to Access

1. Has your agency established alternative means of access to first-party requested records, outside of the typical FOIA or Privacy Act process?

Yes.

2. If yes, please provide examples. If no, please indicate why not. Please also indicate if you do not know.

The Board has a records specialist, who will provide records upon request for the fee under agency regulations.

3. Please describe any other steps your agency has taken to remove barriers to accessing government information.

N/A.

B. Timeliness

4. For Fiscal Year 2023, 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 2023 Annual FOIA Report.

1.9.

5. If your agency's average number of days to adjudicate requests for expedited processing was above ten calendar days, according to Section VIII.A. of your agency's Fiscal Year 2023 Annual FOIA Report, 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.

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

Yes.

7. If your agency uses a separate track for simple requests, according to Annual FOIA Report section VII.A, was the agency overall average number of days to process simple requests twenty working days or fewer in Fiscal Year 2023?

Yes.

8. If not, did the simple track average processing time decrease compared to the previous Fiscal Year?

Yes.

9. Please provide the percentage of requests processed by your agency in Fiscal Year 2023 that were placed in your simple track. Please use the following calculation based on the data from your Annual FOIA Report: (processed simple requests from Section VII.C.1) divided by (requests processed from Section V.A.) x 100.

Based on our annual report section VII.C.1 divided by requests processed in section V.A, our rate is 65.14%.

10. 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?

N/A.

C. Backlogs

Backlogged Requests

The Board had no requests backlogged at the end of FY 2023.

11. If your agency had a backlog of requests at the close of Fiscal Year 2023, according to Annual FOIA Report Section XII.D.2, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2022?

N/A.

12. If not, according to Annual FOIA Report Section XII.D.1, did your agency process more requests during Fiscal Year 2023 than it did during Fiscal Year 2022?

N/A.

13. If your agency's request backlog increased during Fiscal Year 2023, please 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:

N/A.

- 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)
- Litigation
- Any other reasons – please briefly describe or provide examples when possible

14. 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 2023. Please use the following calculation based on data from your Annual FOIA Report: (backlogged requests from Section XII.A) divided by (requests received from Section V.A) x 100. This number can be greater than 100%. If your agency has no request backlog, please answer with "N/A."

N/A.

Backlogged Appeals

15. If your agency had a backlog of appeals at the close of Fiscal Year 2023, according to Section XII.E.2 of the Annual FOIA Report, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2022?

N/A.

16. If not, according to section XII.E.1 of the Annual FOIA Report, did your agency process more appeals during Fiscal Year 2023 than it did during Fiscal Year 2022?

N/A.

17. If your agency's appeal backlog increased during Fiscal Year 2023, please 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:

N/A.

- 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)
- Litigation
- Any other reasons – please briefly describe or provide examples when possible

18. 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 2023. Please use the following calculation based on data from your Annual FOIA Report: (backlogged appeals from Section XII.A) divided by (appeals received from Section VI.A) x 100. This number can be greater than 100%. If your agency did not receive any appeals in Fiscal Year 2023 and/or has no appeal backlog, please answer with "N/A."

N/A.

D. Backlog Reduction Plans

19. In the 2023 guidelines for Chief FOIA Officer Reports, any agency with a backlog of over 1000 requests in Fiscal Year 2022 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 2023?

N/A.

20. If your agency had a backlog of more than 1,000 requests in Fiscal Year 2023, please explain your agency's plan to reduce this backlog during Fiscal Year 2024.

N/A.

E. Reducing the Age of Requests, Appeals, and Consultations

Ten Oldest Requests

21. In Fiscal Year 2023, did your agency close the ten oldest pending perfected requests that were reported in Section VII.E. of your Fiscal Year 2022 Annual FOIA Report?

N/A.

22. 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 2022 Annual FOIA Report. If you had less than ten total oldest requests to close, please indicate that.

N/A.

23. Beyond work on the ten oldest requests, please describe any steps your agency took to reduce the overall age of your pending requests.

N/A.

Ten Oldest Appeals

24. In Fiscal Year 2023, did your agency close the ten oldest appeals that were reported pending in Section VI.C.5 of your Fiscal Year 2022 Annual FOIA Report?

N/A.

25. 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 2022 Annual FOIA Report. If you had less than ten total oldest appeals to close, please indicate that.

N/A.

26. Beyond work on the ten oldest appeals, please describe any steps your agency took to reduce the overall age of your pending appeals.

N/A.

Ten Oldest Consultations

27. In Fiscal Year 2023, did your agency close the ten oldest consultations that were reported pending in Section XII.C. of your Fiscal Year 2022 Annual FOIA Report?

N/A.

28. 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 2022 Annual FOIA Report. If you had less than ten total oldest consultations to close, please indicate that.

N/A.

Additional Information Regarding Ten Oldest

29. If your agency did not close its ten oldest pending requests, appeals, or consultations, please explain why and provide a plan describing how your agency intends to close those “ten oldest” requests, appeals, and consultations during Fiscal Year 2024. **F. Additional Information about FOIA Processing**

N/A.

30. Were any requests at your agency the subject of FOIA litigation during the reporting period? If so, please describe the impact on your agency’s overall FOIA request processing and backlog. If possible, please indicate:

N/A.

- The number and nature of requests subject to litigation
- Common causes leading to litigation
- Any other information to illustrate the impact of litigation on your overall FOIA administration