

2017 Chief FOIA Officer Report – Surface Transportation Board

Unless otherwise noted, agency 2017 Chief FOIA Officer Reports should address agency activities that have occurred since the filing of last year's Report, which was March 14, 2016, up until the filing of the 2017 Report (March 13, 2017). Thus, the general reporting period for the Chief FOIA Officer Report is March 2016 to March 2017.

Content of 2017 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 the President's [FOIA Memorandum](#) and the DOJ's [2009 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's FOIA Attorney Adviser attended a training session offered by the Department of Justice – the “Guidelines for 2017 Chief FOIA Officer Reports” held on December 12, 2016. The same attorney and the FOIA Officer watched a presentation entitled “Release of Ethics Documents under the FOIA, the Privacy Act, and the Ethics in Government Act.” This presentation was available live on the OGE Institute for Ethics in Government YouTube channel. They also viewed the short online training, “Executive Briefing on FOIA” on DOJ's website (and would encourage OIP to provide more online trainings (or youtube.com videos)). Finally, the Board's Chief FOIA Officer attended the Inaugural meeting of the CFO Council, which included the “release to all” presentation.

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.

100% (3 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.

N/A.

B. Outreach

5. *OPTIONAL*: 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?

The Board’s FOIA office created a PowerPoint presentation entitled, “FOIA Perspective for Record Keeping” and presented it to the entire Board, as part of a broader records presentation. The FOIA part of the presentation was designed to further inform staff about what FOIA required and how be prepared for a FOIA records search.

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 continues to proactively provide the public with a large number of records on its website. 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.

Other records are posted periodically. The Board 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/key_cases.html.) The Board also issues to the media and posts on our website press releases for significant decisions, hearing and other rulings (<http://www.stb.dot.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/mailing_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 varying levels of alternative dispute resolution to the public or industry participants. (https://www.stb.gov/stb/rail/consumer_asst.html.)

Moreover, during the reporting period, the Board undertook the following initiatives to further ensure that the presumption of openness is being applied:

- Through its Office of Economics, the Board has posted Railroad Carload and Tonnage Data, by state. This report provides annual carload and corresponding tonnage data for freight-rail transportation either originating, terminating, or traversing each state of the United States, as derived from the Board's Confidential Waybill Sample. (<https://www.stb.gov/stb/index.html>.) The report, which may be of interest to shippers and Board stakeholders, contains some data that has been redacted to protect confidentiality.
- During the reporting period, the Board released certain preliminary analysis that was created by the Board's Office of Economics at the request of a Board Commissioner and referenced by that Commissioner in a concurring opinion in EP 704 (Sub-No. 1), Review of Commodity, Boxcar, and TOFC/COFC Exemptions (STB served Mar. 23, 2016). Because the preliminary analysis was not adopted by the Board as a rationale for its decision, FOIA personnel found that record to be an internal, pre-decisional document, and thus protected under FOIA Exemption 5. Nonetheless, the FOIA staff exercised its discretion to release and post that record to ensure governmental openness. (<https://www.stb.gov/stb/rail/Exemption.html>.)
- In October 2016, the Board released to the public a June 2015 report, created by a team of STB staff and an outside contractor, that analyzed the agency's internal procedures and made several recommendations to improve the Board's internal processes. The report detailed ways in which the Board could improve its internal procedures for processing rate cases, which have voluminous and complex records, and which are extremely time-consuming and labor-intensive. The report provided

immediate recommendations, near-term recommendations to be considered over 3-12 months, and longer-term recommendations.

- In November 2016, the Board adopted a final rule in U.S. Rail Service Issues—Performance Data Reporting, EP 724 (Sub-No. 4) that requires all Class I railroads, and the Chicago Transportation Coordination Office, through its Class I members, to report certain service performance metrics on a weekly, semiannual, and occasional basis. Pursuant to the final rule, weekly reporting of service metrics is to be made via an Excel spreadsheet. As such, during the reporting period, the Board posted an excel spreadsheet for the documentation of railroad performance data reporting.
(https://www.stb.gov/stb/railserviceissues/rail_service_update.html.)

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

The DOJ's [2009 FOIA Guidelines](#) emphasized 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 that describes your agency's efforts in this area.

A. Processing Procedures

1. For Fiscal Year 2016, 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 2016 Annual FOIA Report.

N/A.

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. *OPTIONAL*: 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.

No.

4. Please provide an estimate of how many requests your agency processed in Fiscal Year 2016 that were from commercial use requesters. If your agency is decentralized, please identify any components within your agency that received a majority of their requests from commercial use requesters.

Five.

B. Requester Services

5. *OPTIONAL*: Does your agency provide a mechanism for requesters to provide feedback about their experience with the FOIA process at your agency? If so, please describe the methods used, such as making the FOIA Public Liaison available to receive feedback, using surveys posted on the agency's website, etc.

No. We receive between 35 and 65 FOIA requests a year, and the FOIA staff, including its FOIA Public Liaison, encourages communication and feedback informally.

6. 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 how often requesters sought assistance from your agency's FOIA Public Liaison.

Zero. (There have been no requests made seeking assistance from the Board's FOIA Public Liaison, but we believe this is a result of a responsive and available FOIA staff.)

7. The FOIA Improvement Act of 2016 requires agencies to make their reference material or guide for requesting records or information from the agency electronically available to the public. Please provide a link to your agency's FOIA reference guide.

https://www.stb.gov/stb/docs/FOIA/FOIA%20Reference%20Guide_files/FOIA_RefDoc.html.

C. Other Initiatives

8. 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.

FOIA staff continues to ensure that the Board's FOIA system operates efficiently by improving, specifically, the search process. For complicated FOIA requests, FOIA staff provides the appropriate Board staff with step-by-step instruction on how to efficiently complete searches for responsive records and, for electronic records, to use the text searching capabilities of Lotus Notes, Office 365, and Windows. The FOIA staff, in collaboration with the Board's IT Project Manager,

is also actively working to draft additional instructions for Board staff on how to best utilize the search function in Outlook.

By providing detailed instruction and one-on-one assistance, FOIA staff has facilitated faster, more efficient searches while increasing the thoroughness of the records located.

Section III: Steps Taken to Increase Proactive Disclosures

Both the [President's](#) and [DOJ's](#) FOIA memoranda 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.

A. Posting Material

1. Describe your agency's process or system for identifying "frequently requested" records that should be posted online.

If an item is requested three times, or if the Board anticipates that a record might be frequently requested (based upon staff's experience or its review of the Board's FOIA logs), the Board posts that record on its website.

2. Does your agency have a distinct process or system in place to identify other records for proactive disclosure? If so, please describe your agency's process or system.

Yes. When the FOIA office receives more than one request for records collected or created by a Board office that is not already posting them on the Board's website, FOIA staff initiates a discussion with that office about those records. This discussion may expand to related records. Using this analysis, the agency will post records on the Board's website whenever it makes sense to do so or when it is required by FOIA.

3. Has your agency encountered challenges that make it difficult to post records you otherwise would like to post?

No, but it is possible that the Board could encounter challenges in posting of a large database. If such circumstances arose, the Board would need to weigh the impact of posting a very large amount of data on the website with its importance to the public. The FOIA office would have significant input concerning this determination.

4. If so, briefly explain those challenges and how your agency is working to overcome them.

N/A.

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

As noted above, the Board has posted on its website a number of new records, including filings, correspondence, large datasets, and worksheets, that it believes are of interest to its stakeholders and the public. One example is the Board's posting of Railroad Carload and Tonnage Data, by State. This report provides annual carload and corresponding tonnage data for freight-rail transportation either originating, terminating, or traversing each state of the United States, as derived from the Board's Confidential Waybill Sample. (<https://www.stb.gov/stb/index.html>.)

Additionally, the Board released certain preliminary analysis that was created in EP 704 (Sub-No. 1) by the Board's Office of Economics at the request of a Board Commissioner. Although the record was an internal, pre-decisional document, the Board's FOIA staff exercised its discretion to release and post that record. (<https://www.stb.gov/stb/rail/Exemption.html>.)

6. 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 news releases of its proactive disclosures and posts them on its website. (https://www.stb.gov/stb/news/news_releases.html.) For instance, in October 2016, the Board posted a news release to notify the public of the proactive disclosure of an internal agency study. (See "Assessment of the Board's Internal Rate Case Processing Procedures Released" located at <https://www.stb.gov/newsrels.nsf/29d1486804c22b1785256e59005e7e87/6f3606092bc513ed85258050004e379d?OpenDocument>.) 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.

B. Other Initiatives

7. 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?

The Board's FOIA staff has worked with the Board offices that often develop data to make proactive disclosures in the past. We have also worked to inform these offices of the objective of proactive disclosures under FOIA.

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." 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.

A. Making Material Posted Online More Useful

1. 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.

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

In an effort to make our posted economic data more user-friendly, 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 (such as the Uniform Railroad Cost System; see <https://www.stb.gov/stb/industry/urcs.html>). This enables interested parties to independently follow and even evaluate the Board's work. The Board also posts to its website many of its worksheets as Excel spreadsheets.

B. Other Initiatives

3. Did your agency successfully post all four quarterly reports for Fiscal Year 2016?

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

4. 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 2017.

N/A.

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

The President's [FOIA Memorandum](#) and the DOJ's [2009 FOIA Guidelines](#) have 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 2016 Annual FOIA Report and, when applicable, your agency's 2015 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. The Board typically receives a relatively small number of requests, and, because most of the requests are relatively simple, there is no need to set up a separate track for simple and complex requests.

2. If so, for your agency overall in Fiscal Year 2016, 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 2016 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 2015 and Fiscal Year 2016 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 2016, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2015? If not, explain why and describe the causes that contributed to your agency not being able reduce its backlog.

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 2016.

N/A.

BACKLOGGED APPEALS

8. If your agency had a backlog of appeals at the close of Fiscal Year 2016, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2015? If not, explain why and describe the causes that contributed to your agency not being able reduce backlog.

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 2016. If your agency did not receive any appeals in Fiscal Year 2016 and/or has no appeal backlog, please answer with "N/A."

N/A.

C. 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 2015 and Fiscal Year 2016 when completing this section of your Chief FOIA Officer Report.

TEN OLDEST REQUESTS

11. In Fiscal Year 2016, did your agency close the ten oldest requests that were reported pending in your Fiscal Year 2015 Annual FOIA Report?

The Board had no pending requests reported at the end of the fiscal year in the Fiscal Year 2015 Annual FOIA Report.

12. 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 2015 Annual FOIA Report. If you had less than ten total oldest requests to close, please indicate that.

N/A.

13. 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

14. In Fiscal Year 2016, did your agency close the ten oldest appeals that were reported pending in your Fiscal Year 2015 Annual FOIA Report?

N/A.

15. 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 2015 Annual FOIA Report. If you had less than ten total oldest appeals to close, please indicate that.

N/A.

TEN OLDEST CONSULTATIONS

16. In Fiscal Year 2016, did your agency close the ten oldest consultations that were reported pending in your Fiscal Year 2015 Annual FOIA Report?

N/A.

17. 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 2015 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

18. Briefly explain any obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2015.

N/A.

19. 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.

20. 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

OPTIONAL: Out of all the activities undertaken by your agency since March 2016 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, these agency [success stories](#) will be highlighted during Sunshine Week by OIP. 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 made voluntary releases of two internal reports that were significant in nature. Each of these reports could be used, and may still be used, to challenge Board decisions, but, after significant debate, the Board decided to release them to provide greater transparency. The two reports were:

- The release of preliminary staff analysis requested by a Board Commissioner but not used as the basis of the Board's final decision in EP 704 (Sub-No. 1), Review of Commodity, Boxcar, and TOFC/COFC Exemptions (STB served Mar. 23, 2016).
- The release of a June 2015 report detailing ways in which the Board could improve its internal procedures for processing rate cases under the complex SAC methodology.