



## 2023 Chief FOIA Officer Report

# 2023 CHIEF FOIA OFFICER REPORT

## NATIONAL TRANSPORTATION SAFETY BOARD

### Section I: FOIA Leadership and Applying the Presumption of Openness

The guiding principle underlying the Attorney General's [FOIA Guidelines](#) is the presumption of openness. The Guidelines also highlight the importance of agency leadership in ensuring effective FOIA administration.

#### **A. Leadership Support for FOIA**

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

- *Yes.*

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

- *Michael Anthony, Chief Information Officer*

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?

- *The NTSB initiated a "Get Well" FOIA plan which is successful in reducing historical case backlogs. Milestones:*
  - *Hiring additional FOIA support*
  - *Agency FOIA training*
  - *Accountability for responses to requests for documents*

*We continue to monitor the program and implement changes as needed.*

#### **B. Presumption of Openness**

4. 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?

- *As stated in the Attorney General's 2022 FOIA Guidelines concerning foreseeable harm, the NTSB will confirm in response letters to FOIA requesters that we considered the foreseeable harm standard when reviewing records and applying FOIA exemptions by March 2023.*

5. 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. With respect to these responses, please answer the below questions:

- a. In addition to tracking the asserted exemption, does your agency specifically track whether a request involved a *Glomar* response?
  - o *No.*
- b. If yes, please provide:
  - i. the number of times your agency issued a full or partial *Glomar* response (separate full and partial if possible);
  - ii. the number of times a *Glomar* response was issued by exemption (e.g., Exemption 7(C) – 20 times, Exemption 1 – 5 times).
- c. If your agency does not track the use of *Glomar* responses, what would your agency need to do to track in the future? If possible, please describe the resources and time involved.
  - o *The agency does not maintain records that would necessitate the need to use the Glomar response.*

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

## SECTION II: ENSURING FAIR AND EFFECTIVE FOIA ADMINISTRATION

The Attorney General's [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.

- *FOIA training is part of the on-boarding process for new employees. Existing staff are required to complete training annually.*

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?

- *Yes.*

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

- *Department of Justice – Quarterly and Annual reporting requirements*
- *AINS – FOIA processes and updates on FOIA Case Laws*
- *USDA – FOIA & Privacy Act Training*
- *Westlaw – Legal search for FOIA Case Laws*

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.

- *100%*

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.

- *N/A*

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?

- *All NTSB staff, which includes non-FOIA professionals, received agency-wide virtual FOIA training and the training is available on demand.*
- *Senior leaders received FOIA briefings which included the type of resources or efforts needed to aid in enhancing the FOIA program.*
- *Individual FOIA guidance is provided as needed.*

## **B. Outreach**

7. Did your FOIA professionals engage in any outreach or dialogue, outside of the standard request process, with the requester community or open government groups regarding your administration of the FOIA? 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.*

8. 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. We've spoken to requesters and were able to narrow the scope of the request. In one instance, responsive documents were quite voluminous (19,000+ pages). The requester determined that the public docket would be sufficient and withdrew their request. In another instance, the requester modified their request for less records.*

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 2022 (please provide a total number or an estimate of the number).

- 0

### **C. 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.

- *If a surge in current or anticipated FOIA demands occurs, a process is in place to add contractual resources, if needed and if funds are available.*

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.

- *Metrics are available through the FOIA software. Reports produced assist in managing FOIA workload for the FOIA staff.*

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 [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 NTSB provides transportation accident dockets which contain factual reports, and the evidence investigators consider in developing a probable cause. This is available in a search tool that the public can access.*
- *The NTSB developed a Case Analysis and Reporting Online (CAROL) query tool, which allows individuals to make comprehensive searches of surface modal accident data, aviation accident data and safety recommendation data.*
- *The NTSB provides Accident Reports as one of the main products of an NTSB investigation. Reports provide details about the accident, analysis of the factual data, conclusions and the probable cause of the accident, and the related safety recommendations.*
- *The NTSB provides a public website with information about the agency, some of its policies, and its key mission work. NTSB monitors accident investigations and where safety recommendations are warranted and developed, these records are also posted to the NTSB public website.*
- *Opinions and orders are written and when completed these records are posted to the NTSB public website.*

2. 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.

- *Accident Investigation Records: <https://data.nts.gov/Docket/Forms/searchdocket>*
- *Published Reports: <https://www.nts.gov/publications/Pages/default.aspx>*
- *FOIA Reading Room: <https://foiarequest.nts.gov/App/ReadingRoom.aspx>*

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. 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.

- *The NTSB developed a Case Analysis and Reporting Online (CAROL) query tool, which allows individuals to make comprehensive searches of surface modal accident data, aviation accident data and safety recommendation data: <https://data.nts.gov/carol->*

[main-public/basic-search 4](#). CAROL enables users to download data in JSON and CSV format both are open, machine-readable, and machine-actionable formats.

- NTSB also provides datasets containing all aviation investigation data from 1983 to the present, updated monthly in Microsoft Access format. <https://data.nts.gov/carol-main-public/basic-search 4>

5. 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. The Office of the Chief Information Officer and the Office of Safety Recommendations and on management and dissemination of data via external agency website.*

6. 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 [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.

- *N/A*

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.

- *N/A*

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 2022 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 2023.

- *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 2021 Annual FOIA Report and, if available, for your agency's Fiscal Year 2022 Annual FOIA Report.

- *FY2021 FOIA Raw Data:*  
[https://www.nts.gov/about/foia/Documents/NTSB-FY21-FOIA-Annual\\_Report\\_Raw\\_Data\\_10012020\\_09302021.xls.xlsx](https://www.nts.gov/about/foia/Documents/NTSB-FY21-FOIA-Annual_Report_Raw_Data_10012020_09302021.xls.xlsx)
- *FY2022 FOIA Raw Data:*  
[https://www.nts.gov/about/foia/Documents/FY%2022%201%20Annual\\_Report\\_Raw\\_Data\\_10012021\\_09302022.xls.xlsx](https://www.nts.gov/about/foia/Documents/FY%2022%201%20Annual_Report_Raw_Data_10012021_09302022.xls.xlsx)
- *FOIA Annual Reports:* [http://www.nts.gov/about/foia/Pages/foia\\_reports.aspx](http://www.nts.gov/about/foia/Pages/foia_reports.aspx)

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?

- *Yes.*

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 [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 FOIA process?

- *No.*

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

- *N/A*

## **B. Timeliness**

3. For Fiscal Year 2022, 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 2022 Annual FOIA Report.

- *31.33 days*

4. 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 2022 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.

*Requests will be monitored for expedited processing and appropriate steps taken to accurately indicate the expedited processing request.*

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

- *Yes.*

6. 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 2022?

- *No.*

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

- *No.*

8. Please provide the percentage of requests processed by your agency in Fiscal Year 2022 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.

- 53%

9. 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

10. If your agency had a backlog of requests at the close of Fiscal Year 2022, 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 2021?

- *No.*

11. If not, according to Annual FOIA Report Section XII.D.1, did your agency process more requests during Fiscal Year 2022 than it did during Fiscal Year 2021?

- *No.*

12. If your agency's request backlog increased during Fiscal Year 2022, 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:

- An increase in the number of incoming requests
- *A loss of staff*
  - *Vacancy of 1 FOIA Analyst position and 1 FOIA Assistant*
  - *Vacancy of 2 FOIA contractor positions*
- 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)
  - *Responsive records totaling 19, 836 pages*
  - *Technology: acquiring software to review responsive records (tapes, videos, etc.); document file size too large to load or send electronically*
- Impact of COVID-19 and workplace and safety precautions
- *Any other reasons – please briefly describe or provide examples when possible*
  - *Training new contractors on the NTSB FOIA process slowed down the processing of the FOIA requests.*

13. 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 2022. 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."

- 32%

#### **BACKLOGGED APPEALS**

14. If your agency had a backlog of appeals at the close of Fiscal Year 2022, 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 2021?

- *There was no backlog of appeals at the close of FY22.*

15. If not, according to section XII.E.1 of the Annual FOIA Report, did your agency process more appeals during Fiscal Year 2022 than it did during Fiscal Year 2021?

- *No.*

16. If your agency's appeal backlog increased during Fiscal Year 2022, 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*

17. 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 2022. 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 2022 and/or has no appeal backlog, please answer with "N/A."

- *N/A*

#### **D. Backlog Reduction Plans**

18. In the 2022 guidelines for Chief FOIA Officer Reports, any agency with a backlog of over 1000 requests in Fiscal Year 2021 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 2022?

- *N/A*

19. If your agency had a backlog of more than 1,000 requests in Fiscal Year 2022, please explain your agency's plan to reduce this backlog during Fiscal Year 2023.

- *N/A*

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

### **TEN OLDEST REQUESTS**

20. In Fiscal Year 2022, did your agency close the ten oldest pending perfected requests that were reported in Section VII.E. of your Fiscal Year 2021 Annual FOIA Report?

- *No.*

21. 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 2021 Annual FOIA Report. If you had less than ten total oldest requests to close, please indicate that.

- *9 of the 10 oldest requests listed in the FY21 Annual FOIA Report were closed.*

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

- Prioritized cases using the multi-tracking system.
- Confirmed with requesters if response to request was still required.
- Ensured receipt of responses from staff to process FOIA request.

### **TEN OLDEST APPEALS**

23. In Fiscal Year 2022, did your agency close the ten oldest appeals that were reported pending in Section VI.C.5 of your Fiscal Year 2021 Annual FOIA Report?

- *0 pending oldest appeals*

24. 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 2021 Annual FOIA Report. If you had less than ten total oldest appeals to close, please indicate that.

- *0 pending oldest appeals*

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

**TEN OLDEST CONSULTATIONS** 26. In Fiscal Year 2022, did your agency close the ten oldest consultations that were reported pending in Section XII.C. of your Fiscal Year 2021 Annual FOIA Report?

- *There were no pending consults at the end of FY21.*

27. 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 2021 Annual FOIA Report. If you had less than ten total oldest consultations to close, please indicate that.

- *N/A*

#### **ADDITIONAL INFORMATION REGARDING TEN OLDEST**

28. 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 2023.

- *The NTSB investigates many accidents that garner public attention. Hundreds of FOIA requests are received each year for a substantial number of records related to accident investigations and the requests have become increasingly complex.*
- *Voluminous records and file size contribute to complex cases. Software is needed to review many of the documents and collaboration takes place with staff (IT)/stakeholders to determine a more efficient way to process the cases.*
- *The FOIA Office is now fully staffed, and our goal is to decrease the backlog which includes closing the “ten oldest” requests.*

#### **F. Additional Information about FOIA Processing**

29. 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 the number and nature of requests subject to litigation, common causes leading to litigation, and any other information to illustrate the impact of litigation on your overall FOIA administration.

- None.

30. How many requests during Fiscal Year 2022 involved unusual circumstances as defined by the FOIA? (This information is available in your agency’s FY22 raw data).

- 303