

2019 Chief FOIA Officer Report for the U.S. Railroad Retirement Board (RRB)

The RRB submits this report for 2019 in response to the request in the United States Department of Justice Office of Information Policy, "Guidelines for 2019 Chief FOIA Officer Reports." The report has been prepared by Ana M. Kocur, General Counsel/Chief FOIA Officer, RRB.

Section I: Steps Taken to Apply the Presumption of Openness

The guiding principle underlying the FOIA memoranda and Department of Justice FOIA Guidelines is the presumption of openness.

Describe the steps your agency has taken to ensure that the presumption of openness is being applied to all decisions involving the FOIA. To do so, you should answer the questions listed below and then include any additional information you would like to describe how your agency is working to apply 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. Is your Chief FOIA officer at or above this level?

Yes.

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

Ana M. Kocur, General Counsel/Chief FOIA Officer.

B. FOIA Training

3. 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.

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

During this reporting period, the RRB's General Counsel, Assistant General Counsel and a General Attorney, along with two Bureau of Human Resources personnel, attended "Freedom of Information Act Training for Attorneys and Access Professionals," provided by the Department of Justice in Washington, D.C.

Additionally, two General Attorneys on my staff attended a two and a half-day “FOIA and Privacy Act Workshop” provided by the American Society of Access Professionals (ASAP) in Chicago, Illinois.

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

All RRB FOIA staff were trained and refreshed on the FOIA and relevant policy guidance in FY 2018.

6. 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 training during the next reporting year.

We continue to monitor our FOIA training opportunities annually and provide for the necessary training as required. FOIA personnel are advised of training opportunities conducted by the Department of Justice as well as by other outside vendors.

C. Outreach

7. 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.

D. Other Initiatives

8. Describe any efforts your agency has undertaken to inform non-FOIA professionals of their obligations under the FOIA? In 2016, the Department publicized FOIA-related performance standards for employees that have any role in administering the FOIA, including non-FOIA professionals. Please also indicate whether your agency has considered including FOIA-related performance standards in employee work plans who have any role in administering the FOIA.

All agency employees participate in annual mandatory Privacy Awareness training and are trained on their obligations pursuant to the FOIA.

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

FOIA staff review all records that are responsive to a particular FOIA request. When there is a possibility of making a release under the foreseeable harm standard, they consult with the agency's General Counsel/ Chief FOIA Officer.

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

DOJ's 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 describes your agency's efforts in this area.

1. For Fiscal Year 2018, 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 2018 Annual FOIA Report.

The RRB did not adjudicate any requests for expedited processing in Fiscal Year 2018.

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 you 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.

During FY 2018, the RRB reviewed its previous FOIA Annual Report data and updated its FOIA website content to remain compliant with the FOIA Improvement Act of 2016.

4. The FOIA Improvement Act of 2016 requires additional notification to requestors about the services provided by the agency's FOIA Public Liaison. Please provide an estimate of the number of times requestors sought assistance from you agency's FOIA Public Liaison during FY 2018.

The RRB did not receive any requests for assistance from the agency's FOIA Public Liaison.

5. Please provide the best practices used to ensure that your FOIA system operates efficiently and effectively and any challenges your agency faces in this area.

We routinely review our entire FOIA processing system to identify any improvements and efficiencies which can be made.

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 both 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 disclosure of information.

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

We continue to monitor FOIA webpage content to make sure it remains timely and consistent with current law. FOIA staff have the responsibility and authority to update the RRB website as necessary. The website offers access to copies of the agency's procedure manuals, final decisions of the three-member Board which heads the agency, rulings of the Board and legal opinions. Other information is available to the public without filing a FOIA request in the Federal Register and the RRB Group Information Locator System (GILS) website. An example of additional material provided since the issuance of the new FOIA Guidelines include the Railroad Retirement Board's Office of General Counsel's online database of Legal Opinions and Board Coverage Decisions which was launched in FY 2016 located at <https://legallibrary.rrb.gov/Home.aspx>. (See also "Success Stories" below). Additionally, five data sets of statistical information have been added to the RRB's Open Government Initiative located at <http://www.rrb.gov/open/default.asp>.

High-Value Data Sets:

Active Employees and Railroad Retirement Act Beneficiaries by State, 2008	http://www.data.gov/details/1331
Longevity of Railroad Retirement Beneficiaries	http://www.data.gov/details/1332
Railroad Retirement Act Annuitants and Active Railroad Employees by Congressional District	http://www.data.gov/details/1330
Total Number of Railroad Employees by State and Last Railroad Employer, 2007	http://www.data.gov/details/455
Total Railroad Employment by State and County, 2007	http://www.data.gov/details/456
Open Government Webpage	www.rrb.gov/open
Freedom of Information Act Report Publishing	www.rrb.gov/open)

Agency Plans, Management and Reports

http://www.rrb.gov/general/plan_rpt_inv.asp#fair
http://www.rrb.gov/mep/agency_mgt.asp
http://www.rrb.gov/opa/AnnualRprt/Ann_Rpt_toc.asp

Agency Procedure Manuals

http://www.rrb.gov/general/admin_manuals_index.asp

Board Coverage Decisions http://www.rrb.gov/blaw/bcd/cov_introduction.asp

Congressional Requests ola@rrb.gov

Federal Register <http://www.gpoaccess.gov/fr/index.html>
http://www.rrb.gov/irm/fedreg_notices.asp
http://www.rrb.gov/irm/fedreg_regs.asp

Financial, Actuarial and Statistical Data

http://www.rrb.gov/mep/fin_act_stat.asp

Forms and Publications

<http://www.rrb.gov/general/handbook/toc.asp>
http://www.rrb.gov/mep/ben_forms.asp
http://www.rrb.gov/mmo/rail_forms.asp

Freedom of Information Act (FOIA)

<http://www.rrb.gov/blaw/foia/foia.asp>

Information Dissemination

<http://www.rrb.gov/bis/section515/introduction.asp>
<http://www.rrb.gov/bis/section515/guidelines.asp>
<http://www.rrb.gov/bis/section515/correct.asp>

IMPAC Credit Card Holders List

<http://www.rrb.gov/general/impac.asp>

News Releases http://www.rrb.gov/mep/news_releases.asp

Privacy Act - Privacy Act Systems of Records

http://www.rrb.gov/bis/privacy_act/introduction.asp
http://www.rrb.gov/bis/privacy_act/SORNList.asp

Records Management http://www.rrb.gov/rrbvision/video_library.asp

2. Please describe how your agency identifies records that have been requested and released three or more times (and are therefore required to be proactively disclosed pursuant to 5 U.S.C. § 552(a)(2)(D).

We routinely review repeat requests for those subject to proactive disclosure under 5 U.S.C. § 552(a)(2)(D).

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.

See answer to question 2 above.

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

We routinely review our entire FOIA processing system to identify any improvements and efficiencies which can be made.

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 describes your agency's efforts in this area.

1. Is your agency leveraging technology to facilitate efficiency, in conducting searches, including searches for emails? If so, please describe the type of technology used. If not, please explain why and please describe the typical search process used instead.

No. Manual search processes are used to effectuate document/record searches.

2. 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 this guidance?

Yes.

3. Did your agency successfully post all quarterly reports for Fiscal Year 2018?

The RRB successfully posted its FY 2018 4th Quarter Report on FOIA.gov and RRB.gov.

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 2019.

Due to unexpected delays caused by other agency priorities, specifically pending appeal and litigation cases, we were unable to comply with the quarterly reporting requirements. We plan to provide appropriate staffing and resources to achieve the quarterly reporting and raw statistical data reporting requirements in Fiscal Year 2019.

5. 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 2017 Annual FOIA Report and, if available, for your agency's Fiscal Year 2018 Annual FOIA Report.

FY 2017: <https://rrb.gov/sites/default/files/2018-04/FOIA2017.pdf> Raw statistical data not available.

FY 2018: https://rrb.gov/sites/default/files/2019-02/FY2018FOIA_RAW_DATA.xlsx

6. Please provide the best practices used in greater utilizing technology and any challenges your agency faces in this area.

We routinely review our entire FOIA processing system to identify any improvements and efficiencies which can be made.

Section V: Steps Taken to Improve Timeliness in Responding to Requests and Reduce 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.

A. Simple Track

Section VII.A of your agency's Annual FOIA Report, entitled "FOIA Requests – Response Time to All Processed Requests," includes figures that show your agency's response time 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? If your agency uses a multi-track system beyond simple, complex, and expedited to process requests, please describe the tracks you use and how they promote efficiency.

No.

2. If your agency uses a separate track for simple requests, was the agency overall average number of days to process simple requests twenty working days or fewer in 2018?

N/A.

3. Please provide the percentage of requests processed by your agency in Fiscal year 2018 that were placed in your simple track.

N/A.

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

No. The average number of days to process non-expedited requests was 24.17 days.

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.

5. If your agency had a backlog of requests at the close of Fiscal Year 2018, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2017?

No, the backlog of requests increased by 1 from 8 to 9 in FY 2018.

6. If not, did your agency process more requests during Fiscal Year 2018 than it did during Fiscal Year 2017?

No. Requests decreased from 99 in FY 2017 to 87 in FY 2018.

7. If your agency's request backlog increased during Fiscal Year 2018, 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
- 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

The number of backlogged requests reported by the agency are all cases being handled by the RRB's Office of Inspector General (OIG). The RRB's OIG backlogged requests increased from 8 reported in FY 2017 to 9 in FY 2018.

The agency's Office of Inspector General states that an increase in the complexity of the requests, voluminous document requests, and staffing issues have contributed to its request backlog.

8. 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 2018.

The percentage of requests that make up the backlog out of the total number of requests received by the RRB in FY 2018 is 10.34 percent.

BACKLOGGED APPEALS

9. If your agency had a backlog of appeals at the close of Fiscal Year 2018, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2017?

No backlog of appeals was reported by the RRB in FY 2017 or FY 2018.

10. If not, did your agency process more appeals during Fiscal Year 2018 than it did during Fiscal Year 2017?

No. Appeals decreased from 1 in FY 2017 to zero in FY 2018.

11. If your agency's appeal backlog increased during Fiscal Year 2018, 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
- 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.

12. 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 2018. If your agency did not receive any appeals in Fiscal Year 2018 and/or has no appeal backlog, please answer “N/A.”

N/A.

C. Backlog Reduction Plans

13. In the 2018 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 2018?

N/A.

14. If your agency had a backlog of more than 1,000 requests in Fiscal Year 2018, what is your agency’s plan to reduce this backlog during Fiscal Year 2019?

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.

OLDEST REQUESTS

15. In Fiscal Year 2018, did your agency close the ten oldest requests that were reported pending in your Fiscal Year 2017 Annual FOIA Report?

No.

16. 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 2017 Annual FOIA Report. If you had less than the ten total oldest requests to close, please indicate that.

Ten oldest requests increased from 8 reported in FY 2017 to 9 in FY 2018.

17. 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?

None of the 8 total oldest requests were withdrawn in FY 2018.

18. 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

19. In Fiscal Year 2018, did your agency close the ten oldest appeals that were pending in your Fiscal Year 2017 Annual FOIA Report?

No appeals were pending at the end of FY 2017 or FY 2018.

20. 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 2018 Annual FOIA Report. If you had less than ten total oldest appeals to close, please indicate that.

N/A.

21. 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

22. In Fiscal Year 2018, did your agency close the ten oldest consultations that were reported pending in your Fiscal Year 2017 Annual FOIA Report?

No consultations were reported pending in our FY 2017 Annual Report.

23. 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 2017 Annual FOIA Report. If you had less than ten oldest consultations to close, please indicate that.

N/A.

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

24. Briefly explain any obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2018.

The RRB's OIG reports that a lack of resources, as well as the complexity of the individual requests, contributed to its inability to close its ten oldest requests.

25. 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.

26. 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 2018.

In FY 2018, the RRB/OIG plans to ensure that proper resources and priority are given to the handling of the 9 pending requests reported at the end of FY 2018.

F. Success Stories

RRB Legal Opinion/Board Coverage Decision Digitization Project

Beginning in FY 2014 and continuing through FY 2017, the Railroad Retirement Board's Office of General Counsel's began a major research and preservation project, partnering with a private document preservation firm (National Business Systems, Inc.) to create an online, text-searchable, database of Legal Opinions and Board Coverage Decisions. The Library contains over 80 years of Legal Opinions issued by the Office of General Counsel and its predecessor Bureau of Law since the Railroad Retirement Board's (Board) founding in 1935. In addition, the Library contains all Board Coverage Decisions issued by the Board. The project was divided into six phases, broken down as follows:

1. Phase 1 legal opinions : (1935 – '37; '75 – '76; '94 – 2013)
2. Phase 2 legal opinions : (1938 – 1943)
3. Phase 3 legal opinions : (1973 – '74; 1977 – 1993)
4. Phase 4 legal opinions : (1944 – 1954)
5. Phase 5 legal opinions : (1955 – 1972)
6. Phase 6 Board Coverage Decisions (1993 – present)

The General Counsel has issued legal opinions on topics covering all aspects of the Railroad Retirement Act (RRA - 45 U.S.C. § 231 et. seq.) and the Railroad Unemployment Insurance Act (RUIA – 45 U.S.C. § 351 et. seq.) and the attendant Federal Regulations promulgated by the Board (20 CFR Parts 200 – 375). We are pleased to report that an additional 251 legal opinions and 2031 Board coverage decisions (2282 proactive disclosures) have been posted to the searchable database in FY 2018. Going forward, as new legal opinions and Board coverage decisions are issued, they will be posted to the searchable database.