

## **2022 Chief FOIA Officer Report for the U.S. Railroad Retirement Board (RRB)**

The RRB submits this report for 2021 in response to the request in the United States Department of Justice Office of Information Policy, “Guidelines for 2022 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 DOJ’s FOIA Guidelines is the presumption of openness.

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

#### **A. FOIA 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 Chief FOIA officer at 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. The FOIA directs agency Chief FOIA Officers to ensure that FOIA training is offered to agency personnel. See 5 U.S.C. § 552(a)(9)(j)(2)(F). Please describe the efforts your agency has undertaken to ensure proper FOIA training is made available and used by agency personnel.

Due to the COVID-19 pandemic, the RRB engaged in limited FOIA training in FY 2021.

4. 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.

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

During this reporting period, one General Attorney participated in FOIA training provided by the Department of Justice concerning overview and completion of the Annual FOIA Report. Four additional staff attorney's attended virtual FOIA training provided by the Department of Justice- Office of Information Policy.

6. 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.

Due to the COVID-19 pandemic, approximately 50 percent of FOIA professionals attended substantive FOIA training.

7. 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.

Due to the ongoing COVID-19 pandemic, we are not able to engage in in-person training at this time. However, we have attempted to take advantage of Department of Justice virtual trainings, although the availability of "seats" at such trainings appears to unfortunately be rather limited. We will also continue to explore the availability of other web-based trainings in order once again fulfill this requirement in FY 2022.

8. Did the personnel at your agency who have FOIA responsibilities attend training in federal records management during this reporting period?

Yes.

### **C. Outreach**

9. Did your FOIA professionals engage in any outreach or dialogue 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.

### **D. Other Initiatives**

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

11. Optional. 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 2021, 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 2021 Annual FOIA Report.

The RRB did not adjudicate any requests for expedited processing in Fiscal Year 2021.

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. The FOIA Improvement Act of 2016 required all agencies to update their FOIA regulations within 180 days. In 2016, OIP issued Guidance for Agency FOIA Regulations and the accompanying Template for Agency FOIA Regulations to assist agencies in updating their regulations in accordance with the statute. Has your agency updated its FOIA regulations in accordance with the FOIA Improvement Act of 2016? If not, what is your agency's plan to update your regulations?

Yes. See 86 FR 35221.

4. Standard Operating Procedures (SOPs) generally document your agency's internal processes for administering the FOIA beyond your FOIA regulations and FOIA Reference Guide. As noted in OIP's guidance, having SOPs can improve the consistency and quality of an agency's FOIA process. SOPs can also serve as a significant resource for incoming FOIA professionals and a way to preserve much of the agency's institutional knowledge on administering the FOIA from how to handle requests from start-to-finish, to identifying and making proactive disclosures, to maintaining a FOIA website. Does your agency have up-to-date internal SOP's for your FOIA administration?

Yes, the RRB's SOP's are formalized in the agency's Administrative Circular IRM-2, *Management of Information Privacy for Individuals*.

5. If not, please provide a timeline for when your agency plans to develop or update its SOPs.

N/A.

6. Has your agency established alternative means of access to first-party requested records outside of the FOIA process?

Yes.

7. If yes, please provide examples. If no, please explain if such opportunities exist at your agency and whether there are challenges in establishing alternative means of access.

The RRB receives numerous requests from railroad employees for copies of the records maintained by the RRB concerning them. The RRB processes these requests pursuant to the Privacy Act, along with a signed authorization from the individual, or a representative of the deceased individual's estate, without requiring a FOIA request.

8. Did your agency conduct a self-assessment of its FOIA administration during the reporting period? 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. In addition, please specifically highlight any data analysis methods or technologies used to assess your agency's FOIA program.

During FY 2021, 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.

9. 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 your agency's FOIA Public Liaison during FY 2021 (please provide a total number or an estimate of the number)..

The RRB received zero requests for assistance from the agency's FOIA Public Liaison.

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

Yes. The RRB reviews its staffing levels annually to determine appropriate resources necessary to execute its FOIA processing.

11. Optional—Please describe:

- Best practices used to ensure that your FOIA system operates efficiently and effectively
- Any challenges your agency faces in this area.

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

The RRB routinely evaluates its responsibility to identify, track, and post proactive disclosures. If a document is requested at least three times, it is required to be posted proactively on the agency's website.

2. Provide examples of 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.

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, along with some guidance documents. 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, Board Coverage Decisions, and Guidance Documents, which is located on the U.S. Government Printing Office's website at [www.govinfo.gov](http://www.govinfo.gov). (See also "Success Stories" below). Additional information, including those items listed below, is available

on the RRB's website at <https://www.rrb.gov/Resources/Guidance> and <https://www.rrb.gov/FOIA>.

- Descriptions of agency organization
- Procedures for the public to obtain information
- Statements of agency function
- Rules of procedure
- Description of agency forms
- Substantive rules of general applicability and standards of general policy
- Any changes in material required to be published
- Agency procedure manuals
- Final decisions of the three-member Board
- Rulings of the Board
- Legal opinions
- IMPAC Credit Card Holders List
- General Information about the RRB
- An inventory of the RRB's automated information systems
- How information is dispersed to other government agencies
- Privacy Act System of Records
- Agency statistical information

3. Does your agency disseminate common types of material outside of FOIA, including in online databases where the public may access them? If yes, please provide examples and, if applicable, statutory authority.

Yes. See response to Question 2 above.

4. 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?

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

5. 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.

See answer to question 2 above.

6. Does your proactive disclosure process or system involve any collaboration with agency staff outside the FOIA office? If so, please describe this interaction.

Optional. Please describe:

-Best practices used to improve proactive disclosures.

-Any challenges your agency faces in this area.

We routinely reach out to other bureaus within the agency to determine suitable documents for proactive disclosure.

#### **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. 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 the types of technology your agency began using during the reporting period to support your FOIA program.

In addition to the internet, the RRB routinely utilizes email to electronically respond to FOIA requests.

3. 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.

4. Did all four of your agency's quarterly reports for Fiscal Year 2021 appear on your agency's website and on FOIA.gov?

The RRB successfully posted all quarterly reports for FY 2021 on FOIA.gov and RRB.gov.

5. 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 2022.

N/A.

6. 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 2019 Annual FOIA Report and, if available, for your agency's Fiscal Year 2021 Annual FOIA Report.

FY 2020:

<https://www.rrb.gov/sites/default/files/2021-02/FY2020ANNUALFOIAREPORT.pdf>

<https://www.rrb.gov/node/5252>

FY 2021:

<https://rrb.gov/sites/default/files/2022-03/FY2021RRBANNUALFOIAREPORT.pdf>

<https://www.rrb.gov/sites/default/files/2022-03/FY2021FOIA.xlsx>

7. Optional. Please describe:

- Best practices used in greater utilizing technology.
- 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.

For the figures required in this Section, please use the numbers contained in the specified sections of your agency's FY 2020 and 2021 Annual FOIA Reports.

#### **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?

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 2021?

N/A.

3. Please provide the percentage of requests processed by your agency in Fiscal year 2021 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.

100 percent.

4. 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?

Yes. The average number of days to process non-expedited requests was 17.9 days.

## **B. BACKLOGS**

When answering these questions, please refer to your Fiscal Year 2021 Annual FOIA Report, Sections XII.D-E, which compare the numbers of requests and appeals received, processed, and backlogged between Fiscal Years 2020 and 2021.

5. If your agency had a backlog of requests at the close of Fiscal Year 2021, according to Annual FOIA Report Section XII.D.2, did the backlog decrease as compared with the backlog reported at the end of Fiscal Year 2020?

The backlog of requests remained constant, with one backlogged request in FY 2020 and FY 2021.

6. If not, according to Annual FOIA Report Section XII.D.1, did your agency process more requests during Fiscal Year 2021 than it did during Fiscal Year 2020?

N/A.

7. If your agency 's request backlog increased during Fiscal Year 2021, 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.
- Impact of COVID-19 and workplace and safety precautions
- Any other reasons – please briefly describe or provide examples when possible

N/A

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 2021. 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.”

The percentage of requests that make up the backlog out of the total number of requests received by the RRB in FY 2021 is 1.428 percent.

## **BACKLOGGED APPEALS**

9. If your agency had a backlog of appeals at the close of Fiscal Year 2021, 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 2020?

N/A.

10. If not, according to section X.II.E.1 did your agency process more appeals during Fiscal Year 2021 that it did during Fiscal Year 2020?

N/A.

11. If your agency’s appeal backlog increased during Fiscal Year 2021, 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.
- Impact of COVID-19 and workplace and safety precautions
- 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 2021. 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 V.A.) x 100. This number can be greater than 100%. If your agency did not receive any appeals in Fiscal Year 2021 and/or has no appeal backlog, please answer with “N/A.”

N/A.

### **C. Backlog Reduction Plans**

13. In the 2021 guidelines for Chief FOIA Officer Reports, any agency with a backlog of over 1000 requests in Fiscal Year 2020 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 2020?

N/A.

14. If your agency had a backlog of more than 1,000 requests in Fiscal Year 2021, what is your agency’s plan for achieve 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 2021.

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 2010 and Fiscal Year 2021 when completing this section of your Chief FOIA Officer Report.

### **OLDEST REQUESTS**

15. In Fiscal Year 2021, did your agency close the ten oldest requests that were reported pending in your Fiscal Year 2020 Annual FOIA Report?

Yes; we closed 1 out of 1.

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 2020 Annual FOIA Report. If you had less than the ten total oldest requests to close, please indicate that.

N/A.

17. 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**

18. In Fiscal Year 2021, did your agency close the ten oldest appeals that were pending in your Fiscal Year 2020 Annual FOIA Report?

The FY 2020 Annual Report did not report any oldest appeals.

19. 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 2020 Annual FOIA Report. If you had less than ten total oldest appeals to close, please indicate that.

N/A.

20. 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**

21. In Fiscal Year 2021, did your agency close the ten oldest consultations that were reported pending in your Fiscal Year 2020 Annual FOIA Report?

The FY 2020 Annual Report did not report any oldest consultations.

22. 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 2020 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**

23. Briefly explain any obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2020.

The RRB's OIG reports that a lack of resources, as well as the complexity of the individual requests, in addition to the COVID-19 pandemic and work safety protocols, contributed to its inability to close its one pending request.

24. If you 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.

25. 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 2022.

The RRB OIG plans and expects to close the one remaining ten oldest pending request in FY 2022.

#### **F. Success Stories**

Out of all the activities undertaken by your agency since March 2021 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, but should not be something that you have reported in a prior year. 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.

RRB Legal Opinion/Board Coverage Decision and Guidance Documents

In FY 2020, the RRB transferred the agency's online, text-searchable, database of Legal Opinions, Board Coverage Decisions, and Guidance Documents to [www.govinfo.gov](http://www.govinfo.gov). 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 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 C.F.R. §§ 200 - 375 (2020)). In FY 2021, one legal opinion and eleven Board coverage decisions were uploaded to the database. Going forward, as new legal opinions and Board coverage decisions are issued, they will be posted to the searchable database.