

2019 Chief FOIA Officer Report
Surface Transportation Board

Content of 2019 Chief FOIA Officer Report

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 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 least at the Assistant Secretary or equivalent level. 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.

Craig M. Keats, General Counsel.

B. FOIA Training

3. Did your FOIA professionals or the personnel at your agency who have FOIA responsibilities attend any substantive 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 or conducted and the topics covered.

The Surface Transportation Board (STB or Board) has three employees working on FOIA part-time. The Board's FOIA Officer attended three trainings presented by the Department of Justice: (1) the "Advanced Freedom of Information Act Seminar" held on May 9, 2018; (2) the Chief FOIA Officers Council Meeting held on July 19, 2018; and (3) the "Annual FOIA Report" training session held on October 9, 2018. The Board's Attorney Adviser reviewed the training materials located on OIP's web interface,

<https://www.justice.gov/oip/training>, including “FOIA Processing Start to Finish,” “Proactive Disclosure,” and “Exemptions Overview.”

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.

66% (2 of 3 FOIA professionals).

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 FOIA training during the next reporting year.

During 2019, it is anticipated that the Board’s FOIA employees will attend DOJ-OIP formal FOIA training or complete OIP’s available e-learning modules contained on compact disk and available for direct upload into the Board’s Learning Management System (<https://www.justice.gov/oip/training>).

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? 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

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 for employees who have any role in administering the FOIA.

The Board’s FOIA officials consistently engage in ongoing conversations with Board staff on FOIA matters. These communications often include training, but more frequently provide notice of new FOIA-related matters that require the production of responsive records in a timely manner. To aid in faster, more efficient searches, FOIA officials frequently provide one-on-one support to Board employees who express difficulties in searching for responsive records.

9. 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 provides the public with a large number of records on its website, many of which are referenced below. 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.

The Board routinely posts environmental correspondence filed during an environmental review process overseen by the Board (<https://www.stb.gov/Ect1/ecorrespondence.nsf/Public%20Incoming%20By%20Docket%20Number?OpenView&Start=1&Count=30&Collapse=1>) and 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/sea.html>).

The Board issues to the media, and posts on the Board's website, press releases for significant decisions, hearings and other rulings (<https://www.stb.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/mailling_list.html).

The Board provides industry economic data by posting a large number of financial and statistical reports on its website (https://www.stb.gov/stb/industry/econ_reports.html). Additionally, the Board posts records pertaining to its two FACA committees, the National Grain Car Council (https://www.stb.gov/stb/rail/graincar_council.html) and Rail Energy Transportation Advisory Council (<https://www.stb.gov/stb/rail/RETAC.html>); and its statutorily-created non-FACA committee, the Railroad-Shipper Transportation Advisory Committee (https://www.stb.gov/stb/rail/railshipper_council.html).

Finally, the Board posts agency reports and independent studies, including its Fiscal Year 2019 budget request (<https://www.stb.gov/stb/docs/Budget/STB%20FY%202019%20Budget.pdf>).

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

DOJ's [FOIA Guidelines](#) emphasize 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 Board did not receive any requests for expedited processing that required adjudication during 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 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.

Yes. The Board's FOIA Officer conducted a self-assessment of the STB's FOIA program by reviewing the Board's Annual Report data. Additionally, in anticipation of migrating to a new agency web interface, the Board's FOIA Officials reviewed its processing procedures and agency FOIA regulations to ensure accuracy. The Board is currently working to develop a new, and hopefully improved, FOIA management tracking system.

4. 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 FY 2018 (please provide a total number or an estimate of the number).

Zero.

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

The Board's employees working on FOIA use SharePoint in Microsoft Office 365 to facilitate file sharing and collaboration among users. The program is useful to users when sending and storing records in response to search requests. The program also aids in the collaboration process during the search and review of potentially responsive records; the file-sharing tool allows users to have access to review documents—thereby reducing the number of duplicative records. The FOIA officials also track FOIA requests internally in Lotus Notes, and, as noted above, this system is expected to be replaced by a new FOIA management tracking system during fiscal years 2019-2020.

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 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.

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

The Board posts on its website records, including filings, correspondence, datasets, and worksheets, that it believes are of interest to its stakeholders and the public. The Board posts a large number of rail service issue reports (https://www.stb.gov/stb/railserviceissues/rail_service_reports.html#loaded), Rail Customer and Public Assistance statistics (https://www.stb.gov/stb/rail/consumer_asst.html), and industry economic data (<https://www.stb.gov/econdata.nsf/AllData?OpenView>). As a specific example, the Board posted, on a quarterly and year-to-date basis, rail carriers' net railway operating revenues, operating expenses, and income items in the Quarterly Revenue, Expense, and Income Report (<https://www.stb.gov/econdata.nsf/RE&I?OpenView>).

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)).

The Board's three FOIA officials are keenly aware of the Board's FOIA logs and whether a record has been requested three or more times. In such instances, 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. There were no records requested more than once during the last year.

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.

The Board posts many of its reports in both XML and searchable pdf (as it does with its annual FOIA reports). Also, the Board offers to the public the opportunity to use various programs that the Board itself uses in its cases and industry analysis (e.g., the Uniform Railroad Cost System; see <https://www.stb.gov/stb/industry/urcs.html>). In posting these records, interested parties are able to independently follow and evaluate the Board's work.

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

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). The Board also shares its proactive disclosures by sending emails to persons who have signed up to receive such releases.

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 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.

Yes. The Board's FOIA officials have leveraged technology to ensure that the Board's FOIA system operates efficiently by improving, specifically, the search process. FOIA staff provides the appropriate Board staff with detailed, written instructions on how to efficiently complete searches for responsive records; and, in searching for electronic records, such as emails, Board staff are instructed on how to use the text searching capabilities of Lotus Notes, Office 365, and Windows. As noted in Section II, the Board is also in the process of developing a new FOIA management tracking system.

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 the guidance?

Yes.

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

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 2019.

N/A

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

2017 raw statistical data used in STB 2017 Annual Report

<https://www.stb.gov/stb/docs/FOIA/2017%20Raw%20Data.xlsx>

2018 raw statistical data used in STB 2018 Annual Report

<https://www.stb.gov/stb/docs/FOIA/FY%202018%20FOIA%20Raw%20Data.xlsx>

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

As noted earlier, to allow the public to better use our data, the Board posts many of its reports in both XML and searchable pdf (as it does with its annual FOIA reports). Also, the Board offers to the public the opportunity to use various programs that the Board itself uses in its cases and industry analysis (e.g., the Uniform Railroad Cost System; see <https://www.stb.gov/stb/industry/urcs.html>). By affording these technologies to the public, interested parties are able to independently evaluate the Board's work.

The Board does not typically encounter challenges in using the technology detailed above; however, the Board could potentially encounter challenges in posting a large database. Under such circumstances, the Board would need to consider both the impact of posting a large amount of data on its website and the data's importance to the public.

Section V: Steps Taken to Improve Timeliness in Responding to Requests and Reducing 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 2018 Annual FOIA Report and, when applicable, your agency's 2017 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? 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.

The Board generally receives a small number of requests, many of which are simple in nature. Thus, the Board has determined that there is no need, at this time, to establish separate tracks for simple and complex requests.

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 Fiscal Year 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 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 2016 and Fiscal Year 2017 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 2018, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2017?

N/A

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

N/A

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.

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 2018. If your agency has no request backlog, please answer with "N/A."

N/A

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?

N/A

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

N/A

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 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

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 with "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 2017 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 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?

The Board had no pending requests reported at the end of the Fiscal Year 2017 Annual FOIA Report.

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 2016 Annual FOIA Report. If you had fewer than ten total oldest requests to close, please indicate that.

N/A.

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?

N/A.

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 reported pending in your Fiscal Year 2017 Annual FOIA Report?

N/A.

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 2017 Annual FOIA Report. If you had fewer 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?

N/A.

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 fewer than ten total oldest consultations to close, please indicate that.

N/A.

E. Additional Information on Ten Oldest Requests, 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.

N/A.

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.

N/A.

F. Success Stories

Over the years, it has become clear to the Board’s FOIA Officer that requesters often make their initial request overly broad or ask for records that do not have the information they seek. This can be costly for them, and it can delay the FOIA search process. The Board’s FOIA staff has made a concerted effort to quickly communicate with requesters to clarify, when necessary, what they want. The result has been that requesters are receiving the records they want more quickly and at a lower cost to them.

In one request, the requester sought “all documents” in a matter, but the requester did not actually want the large number of drafts that would have been included as responsive records. This is not an uncommon occurrence, and the back-and-forth between FOIA staff and the requester saved the requester both time and FOIA fees. In another request, it became clear that the requester sought information that went beyond the records responsive to their request. Once this became clear, the requester was referred to the Board’s Rail Consumer and Public Assistance (RCPA) program – https://www.stb.gov/stb/rail/consumer_asst.html. The RCPA program was able to provide the requester with the additional information he was seeking.

These anecdotes show how fostering communication with requesters leads to more transparency. They also show how FOIA staff works closely another agency office to provide requesters with additional information, when requested. With this growing relationship between Board offices, FOIA staff can comfortably provide requesters with RCPA’s contact information in its FOIA determinations, where helpful. This will give requesters an additional pathway to get what the information they want from the Board.