

## **2015 Chief FOIA Officer Report – Surface Transportation Board**

Unless otherwise noted, your 2015 Chief FOIA Officer Report should address agency activities that have occurred since the filing of last year's Report, which was March 17, 2014, up until the filing of the 2015 Report (March 15, 2015). Thus, the general reporting period for the Chief FOIA Officer Reports is March 2014 to March 2015.

### **Content of 2015 Chief FOIA Officer Reports**

**Name of agency: Surface Transportation Board**

**Name and Title of agency Chief FOIA Officer:**

**Craig M. Keats, General Counsel**

### **Section I: Steps Taken to Apply the Presumption of Openness**

*The guiding principle underlying the President's FOIA Memorandum and the Attorney General'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.*

*FOIA Training:*

1. *Did your FOIA professionals or the personnel at your agency who have FOIA responsibilities attend any FOIA training or conference during the reporting period such as that provided by the Department of Justice?*

**Answer:**

Yes. The Board's FOIA Attorney Adviser attended the training session offered by the Department of Justice entitled "Refresher Training for FY 2015 Annual FOIA Reports and CFO Reports" on October 7, 2014. He also attended the FOIA IT Working Group Meeting "Examining the Road Forward after Five Years of Work" on March 20, 2014.

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

**Answer:**

33% (1 of 3 FOIA professionals).

3. *In the 2014 Chief FOIA Officer Report Guidelines, OIP asked agencies to provide a plan for ensuring that core, substantive FOIA training is offered to all agency FOIA professionals at least once each year. Please provide the status of your agency's implementation of this plan.*

**Answer:**

None of the three employees working on FOIA do so full time. Each of them has significant other duties. Thus, to a large extent, the Board relies on DOJ-OIP to provide FOIA training. For the last few years, however, as part of the Board's succession planning, the Board's FOIA Officer, an Attorney in the Office of the General Counsel, has been providing continuous on-the-job training to the FOIA Attorney Advisor, who will replace her when she retires. In addition, the FOIA Officer receives informal training through numerous consultations with DOJ's FOIA attorney's through use of the FOIA hotline.

*Discretionary Releases:*

4. *Does your agency have a distinct process or system in place to review records for discretionary release?*

**Answer:**

Yes. Due to the limited number of requests we receive each year (34 perfected FOIA requests received during FY 2014 and 32 in FY 2013), we are able to review each FOIA request with a proactive view toward providing additional discretionary releases. Thus, we consider discretionary release whenever a requested record may be covered by a FOIA exemption.

5. *During the reporting period, did your agency make any discretionary releases of information?*

**Answer:**

No. As described in more detail in the answer to question 8, the Board had no opportunity during the FY 2014 reporting year to make discretionary releases. Although technically not discretionary releases, the Board did grant requests that were arguably requests for information, rather than for records (as technically required by FOIA).

6. *What exemption(s) would have covered the material released as a matter of discretion? For a discussion of the exemptions that allow for discretionary releases, please see OIP's guidance on implementing the President's and Attorney General's [FOIA Memoranda](#)?*

**Answer:**

N/A.

7. *Provide a narrative description, as well as some specific examples, of the types of information that your agency released as a matter of discretion during the reporting year.*

**Answer:**

N/A.

8. *If your agency was not able to make any discretionary releases of information, please explain why.*

**Answer:**

Although the Board affirmatively seeks to make discretionary releases of exempt records, the Board did not have the opportunity to do so during the reporting period. The Board denied records only four times in FY 2014 (out of 34 requests completed by the Board), and all four of the denials were partial denials, withholding personal information under Exemption 6. Thus, while the Board reviews each denial or partial denial for an opportunity to make a discretionary disclosure, none of the four partial denials in FY 2014 lent itself to such disclosure.

*Other Initiatives:*

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. (If any of these initiatives are online, please provide links in your description.)*

**Answer:**

The Board continues to provide the public with a large number of records on its website, in addition to those required by FOIA. Specifically, the Board posts all original and subsequent pleadings filed with the Board (except materials containing sensitive personal or commercial information).

(<http://www.stb.dot.gov/filings/all.nsf/WebFilingDate?openform>.) It 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).

(<http://www.stb.dot.gov/recordations.nsf>.) These records are posted daily on the Board's website.

Other records are posted periodically. The Board provides links to important environmental documents, including large Environmental Assessments and Environmental Impact Statements related to proceedings before the Board.

([http://www.stb.dot.gov/stb/environment/key\\_cases.html](http://www.stb.dot.gov/stb/environment/key_cases.html).) The Board also posts non-confidential economic reports or economic data from reports filed annually and/or quarterly by the Class I railroads.

([http://www.stb.dot.gov/stb/industry/econ\\_reports.html](http://www.stb.dot.gov/stb/industry/econ_reports.html).) Recently, as noted in section III question 5, the Board began posting the newly-ordered weekly rail service updates for all Class I rail carriers.

(<http://www.stb.dot.gov/railserviceissues.nsf?OpenDatabase&Start=1&Count=300&ExpandView> or <http://www.stb.dot.gov/FILINGS/all.nsf/EP724%20Web%20Filing%20Date%20oForm?Open&OpenForm>.)

Additionally, the Board has recently created a new webpage describing the agency's limited role in overseeing the interstate transportation of household

goods by motor carriers, essentially moving companies. This new webpage will serve as a resource for moving companies and their customers that would like more information about the STB's role in this area and the informal assistance that its customer assistance program can provide. It is important to note that the STB's oversight applies only to interstate moves (moves crossing state lines) and not to intrastate moves (moves within a single state). (<http://www.stb.dot.gov/STB/HouseholdGoods/Introduction.html>). A quick link is also provided on the Board's web homepage.)

The Board also issues to the media and posts on our website press releases for significant decisions, hearing and other rulings (<http://www.stb.dot.gov/stb/news/whatsnew.html>), posts testimony and speeches ([http://www.stb.dot.gov/stb/news/speeches\\_testimony.html](http://www.stb.dot.gov/stb/news/speeches_testimony.html)), and allows the public to sign up to receive press releases by email ([http://www.stb.dot.gov/stb/news/mailling\\_list.html](http://www.stb.dot.gov/stb/news/mailling_list.html)). And when the rail industry began to experience rail service problems last year, the Board created on its home page a special direct link to filings and decisions regarding this issue, which was of industry-wide and substantial public interest. The easy-to-find link is at the top of the list of Quick Links: Rail Service Updates <<http://stb.dot.gov/stb/index.html>>.

The website also provides a section for Rail Customer Assistance, which facilitates varying levels of alternative dispute resolution to the public or industry participants. ([http://www.stb.dot.gov/stb/rail/consumer\\_asst.html](http://www.stb.dot.gov/stb/rail/consumer_asst.html).)

Finally, the FOIA Officer is a member of the Agency's Open Government Team, which works to identify additional information that can be posted on our website and to increase the utility of the information that is already posted there.

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

*As the Attorney General emphasized in his FOIA Guidelines, "[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 your management of your FOIA program is effective and efficient. You should also include any additional information that that describes your agency's efforts in this area.*

### *Processing Procedures:*

1. *For Fiscal Year 2014, 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 2014 Annual FOIA Report. (Please note here if your agency did not adjudicate any requests for expedited processing during Fiscal Year 2014.)*

**Answer:**

0 (zero – no requests for expedited processing were received).

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.*

**Answer:**

N/A.

3. *Does your agency notify requesters of the mediation services offered by the Office of Government Information Services (OGIS) at the National Archives and Records Administration? See OIP Guidance, "Notifying Requesters of the Mediation Services Offered by OGIS."*

**Answer:**

Yes. A link to information about OGIS's mediation services is on our website. In addition, any letter denying an administrative appeal will include information about these services.

4. *When assessing fees, does your agency provide a break down of how FOIA fees were calculated and assessed to the FOIA requester? For example, does your agency explain the amount of fees attributable to search, review, and duplication? See OIP Guidance, "The Importance of Good Communication with FOIA Requesters 2.0: Improving Both the Means and the Content of Requester Communications." (Nov. 22, 2013)*

**Answer:**

Yes. In FY 2014, the Board broke down its fees billed to requesters by amount of time worked and the grade level of each Board employee that did work on a FOIA request for which the Board could seek fees under FOIA. We are further reviewing the referenced OIP Guidance to see if we can adjust our billing system to better break down fees according to each search attribute.

5. *If estimated fee estimates are particularly high, does your agency provide an explanation for the estimate to the requester? See id.*

**Answer:**

Yes. In the only request in which fees were over \$250 in FY 2014, the Board provided the requester with a multi-page summary of how we arrived at our estimate.

*Other Initiatives:*

6. *If there are any other steps your agency has undertaken to ensure that your FOIA system operates efficiently and effectively, such as conducting self-assessments to find greater*

*efficiencies, improving search processes, eliminating redundancy, etc., please describe them here.*

**Answer:**

FOIA staff has worked hard to finalize a new FOIA database that the Board has purchased. This new database will create a more efficient system internally and an improved FOIA-request website interface externally. During the reporting year, FOIA staff has continued to provide multiple layers of feedback so that the system will capture all of the Board's FOIA materials, including requests, correspondence, responsive records, and all data related to each FOIA request. We believe that this new FOIA database will allow the Board's FOIA staff to track and access every facet of a FOIA request easily, thereby improving the efficiency our office. Because the design of the database was, to a large extent, guided by the FOIA staff, we will be immediately comfortable with its use and functionality. This continues to be a very significant effort by FOIA staff.

FOIA staff has also made significant efforts to update the agency staff's FOIA search process for electronic records. For complicated FOIA requests, FOIA staff provides the appropriate Board staff with step-by-step instruction on how to do electronic searches for responsive records using the text searching capabilities of an updated version of Lotus Notes. By providing such detailed instruction, agency staff is able to perform quicker and more thorough searches.

### **Section III: Steps Taken to Increase Proactive Disclosures**

*Both the President and Attorney General 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.*

*Posting Material:*

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

**Answer:**

Yes. As required, if an item is requested three times, or if we anticipate that it might be frequently requested, the Board posts those records on our website.

2. *Does your process or system involve any collaboration with agency staff outside the FOIA office? If so, describe this interaction.*

**Answer:**

Yes. The FOIA staff works closely with the Board's Office of Economics, which is the primary office receiving commercial data from the rail industry, to identify non-confidential data that may be of interest to the public. Almost every year, this office, working in conjunction with the Board's FOIA office, adds records collected or created by the Board to the Board's website.

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

**Answer:**

When the FOIA office receives more than one request for records collected or created by a Board office that is not already posting them on the Board's website, FOIA staff initiates a discussion about those records, and a balance is struck between the size of the file (sometimes a very large database) and the number of potential requesters likely to be interested. This discussion may expand to related records. Using this analysis, the agency will post records on the Board's website whenever it makes sense to do so.

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

**Answer:**

In November 2014, the Board began posting the newly-ordered weekly rail service updates for all Class I rail carriers on its website.

(<http://www.stb.dot.gov/railserviceissues.nsf?OpenDatabase&Start=1&Count=300&ExpandView> or

<http://www.stb.dot.gov/FILINGS/all.nsf/EP724%20Web%20Filing%20Date%20oForm?Open&OpenForm>.)

The Board also created a new webpage describing the agency's limited role in overseeing the interstate transportation of household goods by motor carriers, essentially moving companies. This new webpage will serve as a resource for moving companies and their customers that would like more information about the STB's role in this area and the informal assistance that its customer assistance program can provide. It is important to note that the STB's oversight applies only to interstate moves (moves crossing state lines) and not to intrastate moves (moves within a single state).

(<http://www.stb.dot.gov/STB/HouseholdGoods/Introduction.html>. A quick link is also provided on the Board's web homepage.)

*Other Initiatives:*

5. *If there are any other steps your agency has taken to increase proactive disclosures, please describe them here.*

**Answer:**

Because our FOIA Officer is also our PRA Officer, she is well aware of the information collected by the agency and is always on the lookout for opportunities to make proactive disclosures.

## **Section IV: Steps Taken to Greater Utilize Technology**

*A key component of the President's FOIA Memorandum was the direction to "use modern technology to inform citizens about what is known and done by their Government." In addition to using the internet to make proactive disclosures, agencies should also be exploring ways to utilize technology in responding to requests.*

*Please answer the following questions to describe how your agency is utilizing technology to improve its FOIA administration and the public's access to information. You should also include any additional information that describes your agency's efforts in this area.*

### *Making Material Posted Online More Useful:*

1. *Beyond posting new material, is your agency taking steps to make the posted information more useful to the public, especially to the community of individuals who regularly access your agency's website? (Steps can include soliciting feedback on the content and presentation of posted material, improving search capabilities on your agency website, posting material in open formats, making information available through mobile applications, providing explanatory material, etc.)*

**Answer:**

Yes.

2. *If yes, please provide examples of such improvements. (If your agency is already posting material in its most useful format, please describe these efforts.)*

**Answer:**

In an effort to make our posted economic data more user-friendly, the Board now posts many reports in both XML and searchable pdf formats. As required, the Board is also providing its FOIA reports in XML.

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

**Answer:**

No. The agency is very supportive of efforts to post most records on its website.

4. *If yes, please provide examples of such improvements.*

**Answer:**

N/A.

*Other Initiatives:*

5. *Did your agency successfully post all four quarterly reports for Fiscal Year 2014? (Please see OIP's guidance for posting of quarterly reports to ensure that your agency is following all required steps (including using the correct file type and URL structure) so that your quarterly reports are properly appearing on FD/A.gov. (If your reports are posted to your website but not appearing of FOIA.gov, please contact OIP in order to resolve the issue.))*

**Answer:**

Yes. (<http://www.stb.dot.gov/stb/foia.html>.)

6. *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 2015.*

**Answer:**

N/A.

7. *Do your agency's FOIA professionals use e-mail or other electronic means to communicate with requesters whenever feasible? See OIP Guidance, "The Importance of Good Communication with FOIA Requesters 2.0: Improving Both the Means and the Content of Requester Communications. (Nov. 22, 2013). If yes, what are the different types of electronic means that are utilized by your agency to communicate with requesters?*

**Answer:**

Yes. The Board uses e-mail whenever possible to communicate with requesters. Email facilitates our ability to assist requesters in perfecting or clarifying their requests to ensure that they get what they want. During the reporting period, a majority of the Board's FOIA requests were received by email. The Board also provides electronic means for submitting FOIA requests through its website, which was the second most frequent way that requesters submitted their FOIA requests in FY 2014.

8. *If your agency does not communicate electronically with requesters as a default, are there any limitations or restrictions for the use of such means? If yes, does your agency inform requesters about such limitations. See id.*

**Answer:**

N/A.

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

*The President and the Attorney General have emphasized the importance of improving timeliness in responding to requests. This section of your Chief FOIA Officer Report addresses both time limits and backlog reduction. Backlog reduction is measured both in terms of numbers of backlogged requests or*

appeals and by looking at whether agencies closed their ten oldest requests, appeals, and consultations. For the figures required in this Section, please use the numbers contained in the specified sections of your agency's 2014 Annual FOIA Report and, when applicable, your agency's 2013 Annual FOIA Report.

*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?

**Answer:**

No. We do not typically receive an extensive number of requests, and because the majority are relatively simple, there is no need to set up a separate track for simple and complex requests.

2. If so, for your agency overall, for Fiscal Year 2014, was the average number of days to process simple requests twenty working days or fewer?

**Answer:**

N/A.

3. Please provide the percentage of requests processed by your agency in Fiscal Year 2014 that were placed in your simple track.

**Answer:**

N/A.

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?

**Answer:**

Yes.

**Backlogged Requests:**

5. If your agency had a backlog of requests at the close of Fiscal 2014, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2013? (If not, explain why and describe the causes that contributed to your agency not being able 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; and an increase in the complexity of the requests received.)

**Answer:**

N/A.

6. 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 2014. If your agency did not receive any requests in Fiscal Year 2014 and/or has no request backlog, please answer

with "NIA." (To calculate your agency's percentage, you must divide the number of backlogged requests reported in Section XII.A. of your Fiscal Year 2014 Annual FOIA Report by the number of requests received in Fiscal Year 2014, which can be found in Section V.A. of your Annual FOIA Report. Once divided, you can multiply that number by 100 to get the percentage.)

**Answer:**

N/A.

*Backlogged Appeals:*

7. *If your agency had a backlog of appeals at the close of Fiscal Year 2014, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2013? (If not, explain why and describe the causes that contributed to your agency not being able reduce backlog. When doing so, please also indicate if any of the following were contributing factors: An increase in the number of incoming appeal; a loss of staff; an increase in the complexity of the appeals received.)*

**Answer:**

N/A.

8. *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 2014. If your agency did not receive any appeals in Fiscal Year 2014 and/or has no appeal backlog, please answer with N/A." (To calculate your agency's percentage, you must divide the number of backlogged appeals reported in Section XII.A. of your Fiscal Year 2014 Annual FOIA Report by the number of appeals received in Fiscal Year 2014, which can be found in Section VI.A. of your Annual FOIA Report. Once divided, you can multiply that number by 100 to get the percentage.)*

**Answer:**

N/A.

*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 2013 and Fiscal Year 2014 when completing this section of your Chief FOIA Officer Report.*

### **TEN OLDEST REQUESTS**

9. *In Fiscal Year 2014, did your agency close the ten oldest requests that were reported pending in your Fiscal Year 2013 Annual FOIA Report?*

**Answer:**

Yes. The agency had one pending request at the end of Fiscal Year 2013. It was closed in the first month of Fiscal Year 2014, within the 20-day statutory time limit.

10. 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 2013 Annual FOIA Report. If you had less than ten total oldest requests to close, please indicate that.

- For example, if you only had seven requests listed as part of your "ten oldest" in Section VII.E. and you closed six of them, you should note that you closed six out of seven "oldest" requests.

**Answer:**

N/A.

11. 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?

**Answer:**

N/A.

#### **TEN OLDEST APPEALS**

12. In Fiscal Year 2014, did your agency close the ten oldest appeals that were reported pending in your Fiscal Year 2013 Annual FOIA Report?

**Answer:**

N/A.

13. 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 2013 Annual FOIA Report. If you had less than ten total oldest appeals to close, please indicate that.

- For example, if you only had seven appeals listed as part of your "ten oldest" in Section VII.C.(5) and you closed six of them, you should note that you closed six out of seven "oldest" appeals.

**Answer:**

N/A.

#### **TEN OLDEST CONSULTATIONS**

14. In Fiscal Year 2014, did your agency close the ten oldest consultations that were reported pending in your Fiscal Year 2013 Annual FOIA Report?

**Answer:**

N/A.

15. 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 2013 Annual FOIA Report. If you had less than ten total oldest consultations to close, please indicate that.

- *For example, if you only had seven consultations listed as part of your "ten oldest" in Section XII.C. and you closed six of them, you should note that you closed six out of seven "oldest" consultations.*

**Answer:**

N/A.

*16. Briefly explain any obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2013.*

**Answer:**

N/A.

*17. 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.*

**Answer:**

N/A.

*18. 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 2015.*

**Answer:**

N/A.

### **Use of the FOIA's Law Enforcement Exclusions**

*Did your agency invoke a statutory exclusion, 5 U.S.C. § 552(c)(1), (2), (3), during Fiscal Year 2014?*

*If so, please provide the total number of times exclusions were invoked.*

**Answer:**

No.