

2023 Chief FOIA Officer Report for the U.S. Railroad Retirement Board (RRB)

The RRB submits this report for 2023 in response to the request in the United States Department of Justice Office of Information Policy, “Guidelines for 2023 Chief FOIA Officer Reports.” The report has been prepared by Ana M. Kocur, General Counsel/Chief FOIA Officer, RRB.

Section I: FOIA Leadership and Applying the Presumption of Openness

The guiding principle underlying the Attorney General’s FOIA Guidelines is the presumption of openness. The Guidelines also highlight the importance of agency leadership in ensuring effective FOIA administration. Please answer the following questions about FOIA leadership at your agency and describe the steps your agency has taken to ensure that the presumption of openness is being applied to all decisions involving the FOIA.

A. Leadership Support for FOIA

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 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.

3. What steps has your agency taken to incorporate FOIA into its core mission? For example, has your agency incorporated FOIA milestones into its strategic plan?

The RRB has not, yet, incorporated FOIA milestones into its strategic plan, however the agency will examine such in the next planning process.

B. Presumption of Openness

4. The Attorney General’s 2022 FOIA Guidelines provides that “agencies should confirm in response letters to FOIA requesters that they have considered the foreseeable harm standard when reviewing records and applying FOIA exemptions.” Does your agency provide such confirmation in its response letters?

Yes.

5. In some circumstances, agencies may respond to a requestor that it can neither confirm nor deny the existence of requested records if acknowledging the existence of records would harm an interest protected by a FOIA exemption. This is commonly referred to as a Glomar response. With respect to these responses, please answer the below questions:

a. In addition to tracking the asserted exemption, does your agency specifically track whether a request involved a Glomar response?

No.

b. If yes, please provide:

i. the number of times your agency issued a full or partial Glomar response (separate full and partial if possible);

ii. the number of times a Glomar response was issued by exemption (e.g., Exemption 7(C) – 20 times, Exemption 1 – 5 times).

c. If your agency does not track the use of Glomar responses, what would your agency need to do to track in the future? If possible, please describe the resources and time involved.

The RRB would require additional technology.

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

Section II: Ensuring Fair and Effective FOIA Administration

The Attorney General’s FOIA Guidelines provide that “[e]nsuring fair and effective FOIA administration requires . . . proper training, and a full understanding of the FOIA obligations by the entire agency workforce.” The Guidelines reinforce longstanding guidance to “work with FOIA requesters in a spirit of cooperation.” The Attorney General also “urge[s] agency Chief FOIA Officers to undertake comprehensive review of all aspects of their agency’s FOIA administration” as part of ensuring fair and effective FOIA administration.

A. FOIA Training

1. The FOIA directs agency Chief FOIA Officers to ensure that FOIA training is offered to agency personnel. See 5 U.S.C. § 552(a)(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.

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

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

Yes.

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

During this reporting period all FOIA professionals attended at least one training. One General Attorney, and an Assistant General Counsel participated in FOIA training provided by the Department of Justice concerning overview and completion of the Annual FOIA Report.

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

100% of agency FOIA professionals attended substantive FOIA training.

5. OIP has directed agencies to “take steps to ensure that all of their FOIA professionals attend substantive FOIA training at least once throughout the year.” If your response to the previous question is that less than 80% of your FOIA professionals attended training, please explain your agency’s plan to ensure that all FOIA professionals receive or attend substantive training during the next reporting year.

N/A

6. Describe any efforts your agency has undertaken to inform non-FOIA professionals of their obligations under the FOIA. In particular, please describe how often and in what formats your agency provides FOIA training or briefings to non-FOIA staff; and if senior leaders at your agency received a briefing on your agency’s FOIA resources, obligations and expectations during the FOIA process?

As stated previously, all agency employees participate in annual mandatory FOIA Awareness/Privacy Act Awareness training and are trained on their obligations pursuant to the FOIA and Privacy Act respectively. Additionally, we release an annual FOIA Awareness Notice to all agency employees.

B. 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.

8. As part of the standard request process, do your FOIA professionals proactively contact requesters concerning complex or voluminous requests in an effort to clarify or narrow the scope of the request so requesters can receive responses more quickly? Please describe any such outreach or dialogue, and, if applicable, any specific examples.

Yes. Agency FOIA professionals process requests on an individual case-by-case basis and, if necessary, contact requesters to clarify or narrow the scope of requests.

9. The FOIA Improvement Act of 2016 requires additional notification to requesters about the services provided by the agency's FOIA Public Liaison. Please provide an estimate of the number of times requesters sought assistance from your agency's FOIA Public Liaison during Fiscal Year 2022 (please provide a total number or an estimate of the number).

No FOIA requesters sought assistance from the agency's FOIA Public Liaison during FY 2022.

C. Other Initiatives

10. Has your agency evaluated the allocation of agency personnel resources needed to respond to current and anticipated FOIA demands? If so, please describe what changes your agency has or will implement.

Yes. The agency annually reviews its FOIA staffing levels and plans personnel resources to ensure accomplishment of its FOIA mission. No changes are needed this fiscal year.

11. How does your agency use data or processing metrics to ensure efficient management of your FOIA workload? For example, case management reports, staff processing statistics, etc. In addition, please specifically highlight any data analysis methods or technologies used.

The Office of General Counsel utilizes its Assignment Control System to manage incoming FOIA requests from initial receipt to processing completion.

12. Optional – If there are any other initiatives undertaken by your agency to ensure fair and effective FOIA administration, please describe them here.

Section III: Proactive Disclosures

The Attorney General’s FOIA Guidelines emphasize that “proactive disclosure of information is . . . fundamental to the faithful application of the FOIA.” The Guidelines direct agencies to post “records online quickly and systematically in advance of any public request” and reiterate that agencies should post records “in the most useful, searchable, and open format possible.”

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 our 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 other guidance documents. There is also a link to the *Federal Register* notices published by the RRB.

An example of additional material provided since the issuance of the new FOIA Guidelines include the Railroad Retirement Board’s online database of Legal Opinions, Board Coverage Decisions, and Guidance Documents. It is housed on the U.S. Government Printing Office’s website at www.govinfo.gov. However, the database is also linked to the RRB website through the RRB *FOIA Reading Room*.

Additional information, including 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
 - Notices Published in the *Federal Register*
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?

Aside from our routine review of repeat requests for those subject to proactive disclosure under 5 U.S.C. § 552(a)(2)(D), on a quarterly basis new publications and information are posted to the *Govinfo* searchable database referenced above.

4. If yes, please provide examples of such improvements. In particular, please describe steps your agency is taking to post information in open, machine-readable, and machine-actionable formats, to the extent feasible. If not posting in open formats, please explain why and note any challenges.

The RRB is committed to making its electronic and information technologies accessible to individuals with disabilities by meeting or exceeding the requirements of Section 508 of the Rehabilitation Act, 29 U.S.C. §794d. Our comprehensive approach to Section 508 ensures people with disabilities have access which is comparable to those who do not have disabilities, and our commitment to accessibility includes content and online services provided on the agency's website.

The RRB utilizes optical character recognition (OCR) to turn scanned documents into machine-readable PDF files that can be redacted and shared with FOIA requesters. This also makes the documents more easily searchable.

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

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

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

Section IV: Steps Taken to Greater Utilize Technology

A key component of FOIA administration is using technology to make information available to the public and to gain efficiency in processing. The Attorney General FOIA Guidelines emphasize the importance of making FOIA websites easily navigable and complying with the FOIA.gov interoperability requirements. Please answer the following questions to describe how your agency is using technology to improve its FOIA administration and the public's access to information.

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

Yes.

2. Please briefly describe any new types of technology your agency uses to support your FOIA program.

The RRB strives to respond to most of its FOIA requests electronically, by utilizing email and scanning paper documents into a PDF format.

3. Does your agency currently use any technology to automate record processing? For example, does your agency use machine learning, predictive coding, technology assisted review or similar tools to conduct searches or make redactions? If so, please describe and, if possible, estimate how much time and financial resources are saved since implementing the technology.

The RRB uses Adobe Acrobat Pro application software to convert paper records into a digital format. The software is also used to review and redact documents for disclosure pursuant to the FOIA. Additionally, the RRB utilizes Box, a cloud-based content management, collaboration, and file sharing tool, to email large disclosure document files to requesters.

4. OIP issued guidance in 2017 encouraging agencies to regularly review their FOIA websites to ensure that they contain essential resources and are informative and user friendly. Has your agency reviewed its FOIA website(s) during the reporting period to ensure it addresses the elements noted in the guidance?

Yes.

5. Did all four of your agency's quarterly reports for Fiscal Year 2022 appear on FOIA.gov?

The RRB successfully posted all quarterly reports for FY 2022 on FOIA.gov and RRB.gov.

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 2023.

N/A.

7. The FOIA Improvement Act of 2016 requires all agencies to post the raw statistical data used to compile their Annual FOIA Reports. Please provide the link to this posting for your agency's Fiscal Year 2021 Annual FOIA Report and, if available, for your agency's Fiscal Year 2022 Annual FOIA Report.

FY 2021:

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

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

FY2022:

<https://rrb.gov/sites/default/files/2023-02/FY2022RRBANNUALFOIAREPORT.pdf>

<https://rrb.gov/sites/default/files/2023-02/FY2022FOIA.xlsx>.

8. In February 2019, DOJ and OMB issued joint Guidance establishing interoperability standards to receive requests from the National FOIA Portal on FOIA.gov. Are all components of your agency in compliance with the guidance?

Yes.

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

Section V: Steps Taken to Remove Barriers to Access, Improve Timeliness in Responding to Requests, and Reduce Backlogs

The Attorney General's FOIA Guidelines instruct agencies "to remove barriers to requesting and accessing government records and to reduce FOIA processing backlogs." Please answer the following questions to describe how your agency is removing barriers to access, improving timeliness in responding to requests, and reducing FOIA backlogs.

A. Remove Barriers to Access

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

Yes.

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

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 pursuant to a request from the representative of the deceased individual's estate, without requiring a FOIA request.

B. Timeliness

3. For Fiscal Year 2022, what was the average number of days your agency reported for adjudicating requests for expedited processing? Please see Section VIII.A. of your agency's Fiscal Year 2022 Annual FOIA Report.

The agency received no requests for expedited processing in FY 2022.

4. If your agency's average number of days to adjudicate requests for expedited processing was above ten calendar days, according to Section VIII.A. of your agency's Fiscal Year 2022 Annual FOIA Report, please describe the steps your agency will take to ensure that requests for expedited processing are adjudicated within ten calendar days or less.

N/A.

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

No.

6. If your agency uses a separate track for simple requests, according to Annual Report Section VII.A., was the agency overall average number of days to process simple requests twenty working days or fewer in Fiscal Year 2022?

N/A.

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

No, the average processing time increased from FY 2021 to FY 2022.

8. Please provide the percentage of requests processed by your agency in Fiscal Year 2022 that were placed in your simple track. Please use the following calculation based on the data from your Annual FOIA Report: (processed simple requests from Section VII.C.1) divided by (requests processed from Section V.A.) times 100.

97 percent (62 divided by 64 x 100).

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

No. The overall agency average was 42.9 working days to process all non-expedited requests.

C. Backlogs

BACKLOGGED REQUESTS

10. If your agency had a backlog of requests at the close of Fiscal Year 2022, according to Annual FOIA Report section XII.D.2, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2021?

No.

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

No. The RRB processed 70 FOIA requests in FY 2021 and 64 FOIA requests in FY 2022.

12. If your agency's request backlog increased during Fiscal Year 2022, please explain why and describe the causes that contributed to your agency not being able to reduce its backlog. When doing so, please also indicate if any of the following were contributing factors:

- An increase in the number of incoming requests
- A loss of staff
- 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 procedures
- Any other reasons – please briefly describe or provide examples when possible

The Office of Inspector General (OIG) reports that complexity of the requests received account for the two backlogged requests pending at the end of Fiscal Year 2022.

13. If you had a request backlog, please report the percentage of requests that make up the backlog out of the total number of requests received by your agency in Fiscal Year 2022. Please use the following calculation based on data from your Annual 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 current pending backlog is 3 (2 divided by 63 x 100).

BACKLOGGED APPEALS

14. If your agency had a backlog of appeals at the close of Fiscal Year 2022, according to Section XII.E.2 of the Annual FOIA Report, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2021?

The agency did not have a backlog of appeals in Fiscal Year 2022.

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

No.

16. If your agency’s appeal backlog increased during Fiscal Year 2022, please explain why and describe the causes that contributed to your agency not being able to reduce its backlog. When doing so, please also indicate if any of the following were contributing factors:

- 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.

17. If you had an appeal backlog, please report the percentage of appeals that make up the backlog out of the total number of appeals received by your agency in Fiscal Year 2022. Please use the following calculation based on data from your Annual FOIA Report: (backlogged appeals from Section XII.A) divided by (appeals received from Section

VI.A.) x 100. This number can be greater than 100%. If your agency did not receive any appeals in Fiscal Year 2022 and/or has no appeal backlog, please answer with “N/A.”

N/A.

D. Backlog Reduction Plans

18. In the 2022 guidelines for Chief FOIA Officer Reports, any agency with a backlog of over 1000 requests in Fiscal Year 2021 was asked to provide a plan for achieving backlog reduction in the year ahead. Did your agency implement a backlog reduction plan last year? If so, describe your agency’s efforts in implementing this plan and note if your agency was able to achieve backlog reduction in Fiscal Year 2022?

N/A.

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

N/A.

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

TEN OLDEST REQUESTS

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

During FY 2022, the agency closed its only pending ten oldest perfected requests from FY 2021.

21. If no, please provide the number of these requests your agency was able to close by the end of the fiscal year, as listed in Section VII.E of your Fiscal Year 2021 Annual FOIA Report?

N/A.

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

N/A.

TEN OLDEST APPEALS

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

The FY 2021 Annual Report did not report any ten oldest appeals pending.

24. If no, please provide the number of these appeals your agency was able to close by the end of the fiscal year, as listed in Section VII.C(5) of your Fiscal Year 2021 Annual FOIA Report. If you had less than ten total oldest appeals to close, please indicate that.

N/A.

25. 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

26. In Fiscal Year 2022, did your agency close the ten oldest consultations that were reported pending in your Fiscal Year 2021 Annual FOIA Report?

The FY 2021 Annual Report did not report any ten oldest consultations.

27. If no, please provide the number of these consultations your agency was able to close by the end of the fiscal year, as listed in Section XII.C. of your Fiscal Year 2021 Annual FOIA Report. If you had less than ten oldest consultations to close, please indicate that.

N/A.

Additional Information Regarding Ten Oldest

28. If your agency did not close its ten oldest pending requests, appeals, or consultations, please explain why and provide a plan describing how your agency intends to close those “ten oldest” requests, appeals, and consultations during Fiscal Year 2023.

The Office of Inspector General (OIG) reports that the complexity of the two pending requests prevented them from being completed in Fiscal Year 2022. The OIG plans to complete these two pending requests in Fiscal Year 2023.

F. Additional Information about FOIA Processing

29. Were any requests at your agency the subject of FOIA litigation during the reporting period? If so, please describe the impact on your agency’s overall FOIA request processing and backlog. If possible, please indicate the number and nature of requests subject to the litigation, common causes leading to litigation, and any other information to illustrate the impact of litigation on your overall FOIA administration.

No requests were the subject of FOIA litigation in Fiscal Year 2022.

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

No requests involved unusual circumstances in Fiscal Year 2022.