

U.S. Department of Transportation



Chief FOIA Officer Report

March 2021

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2021 Chief FOIA Officer Report

This twelfth annual Chief FOIA Officer Report shows that the Department of Transportation (DOT or Department) continues its commitment to improving its FOIA program. This report covers the period from March 2020 to March 2021. Statistical information included within this report is based on data from DOT's FY 2020 statistical annual FOIA report.

Introduction

DOT's Chief FOIA Officer is responsible for providing high-level oversight and support to the Department's FOIA programs, and recommends adjustments to agency practices, personnel, and funding as may be necessary to improve FOIA administration. The DOT-wide FOIA Office, housed within the Office of the General Counsel, provides direction, leadership, guidance, and assistance to the FOIA offices throughout DOT. This office receives weekly reports from the components, hosts a monthly DOT-wide meeting for our FOIA offices and coordinates the overall FOIA Annual Report for the Department, as well as the Chief FOIA Officer Report. The DOT FOIA Officer also serves as the FOIA Officer for the Office of the Secretary of Transportation (OST).

The following chart shows the DOT components that receive FOIA requests, along with the number of requests each received in FY 2020:

DOT Component Acronym	DOT Component Name	Number of Requests Received in FY 2020
FAA	Federal Aviation Administration	8,486
FHWA	Federal Highway Administration	302
FMCSA	Federal Motor Carrier Safety Administration	4,174
FRA	Federal Railroad Administration	278
FTA	Federal Transit Administration	264
MARAD	Maritime Administration	90
NHTSA	National Highway Traffic Safety Administration	286
OIG	Office of Inspector General	132
OST	Office of the Secretary of Transportation	338
PHMSA	Pipeline and Hazardous Materials Safety Administration	277
SLSDC	Saint Lawrence Seaway Development Corporation	5

During FY 2020, DOT expended 106 staff-years of effort on its FOIA programs, which included the work of 51 full-time FOIA staff. The remaining 55 staff-years of effort included the work of part-time FOIA professionals, contractors who worked full-time for less than the full year, detailees, program office staff who searched for records, attorneys and managers who reviewed records, and administrative support.

Many components, including FMCSA, FRA, FTA, MARAD, NHTSA, OIG, PHMSA, and SLSDC, have centralized programs, where FOIA activities are conducted by a single FOIA office. These centralized FOIA offices obtain records from their various program offices, review the documents, and make determinations regarding release of the documents. OST's FOIA activities are primarily handled by the headquarters FOIA Office; however, one OST field office at the Volpe National Transportation Systems Center in Cambridge, Massachusetts responds directly to FOIA requests for Volpe records.

For FAA and FHWA, FOIA activities are shared among numerous field and headquarters program offices. Each of the decentralized offices receives FOIA requests, searches for records, reviews records, and makes releasability determinations. Even in these decentralized programs, there is an office at headquarters that oversees the implementation of the FOIA.

DOT has a FOIA Public Liaison for each DOT component. FOIA requesters can raise concerns to the FOIA Public Liaisons about service they have received from the FOIA offices. The FOIA Public Liaisons report to the Chief FOIA Officer on their FOIA liaison-related activities.

Overview of FY 2020 Data

During FY 2020, DOT processed 15,433 FOIA requests, which was a 5.5 percent increase over the previous fiscal year. Due to this production increase, DOT lowered the number of pending FOIA requests by over 12 percent. This reduction was achieved at the same time the Department moved to a maximum telework posture in March 2020 because of the COVID-19 public health emergency.

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. Is your agency's Chief FOIA Officer at this level?**

Yes.

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

DOT's Chief FOIA Officer is Judith S. Kaleta, Deputy General Counsel.

B. FOIA Training

- 3. The FOIA directs agency Chief FOIA Officers to ensure that FOIA training is offered to agency personnel. Please describe the efforts your agency has undertaken to ensure proper FOIA training is made available and used by agency personnel.**

DOT FOIA leadership consistently provides opportunities for agency personnel to receive FOIA training. DOT's FOIA Officer transmits all publicized training notifications from entities such as DOJ, the Office of Government Information Services (OGIS), and the American Society of Access Professionals (ASAP) to the component FOIA officers. The component FOIA Officers ensure FOIA personnel are aware of these training opportunities and are encouraged to attend. Also, the DOT FOIA Officer announces future training opportunities at the Monthly DOT FOIA Meeting, which is open to all agency FOIA personnel to attend, and uses the monthly meetings as training opportunities as well.

- 4. 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.

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

Agency personnel attended DOJ Online training sessions on topics such as: Introduction to the Freedom of Information Act, Best Practices Workshops, Exemption 4 Workshop, Exemption 5 Workshop, Exemption 7 Workshop, Privacy Considerations Session, Fees and Fee Waivers Workshop, FOIA Litigation Seminar, Artificial Intelligence for FOIA Professionals, Annual FOIA Report Training, and Chief FOIA Officer Report Training.

DOT FOIA personnel also attended the ASAP Virtual National Training Conference, which covered topics such as: Updates on Recent Court Rulings, Overview of the FOIA Exemptions, Privacy Act Seminars, Key Procedural Elements of FOIA Processing.

At each monthly DOT FOIA Meeting, the DOT FOIA Officer leads training on a different topic. Training topics covered in 2020 included: DOT best practices during the public health emergency, proactive disclosures, procedures for certification of records, the consultant corollary, recent key FOIA court decisions, how to handle the inadvertent release of records, and procedures for misdirected requests.

FOIA personnel in the components also conducted in-house FOIA training sessions throughout the year. The FAA FOIA Program Management Division conducted FOIA procedural training for the FAA decentralized program offices. Also, the FAA Office of the Chief Counsel and FAA FOIA Program Management Division co-hosted an Exemption 4 training session for the FAA FOIA Coordinators working in the FAA's field offices. In addition, the FHWA conducted two webinar training sessions to cover FOIA processing procedures for the office. Finally, the FRA held quarterly FOIA POC meetings where FOIA training took place on various subjects such as FOIA procedures, the FOIA Exemptions, and dealing with FOIA requesters.

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.

85%

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 FOIA training during the next reporting year.

N/A

C. Outreach

8. 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.

All DOT component FOIA Offices are encouraged to reach out to the requesters in order to clarify and better respond to requests. For example, the DOT OIG FOIA team met with representatives of MuckRock News to discuss why MuckRock was not receiving FOIA responses from OIG. The meeting revealed that the OIG never received the requests in question because the requests had been e-mailed to an OIG employee who had departed the agency. The OIG FOIA Office provided the updated FOIA submittal information and began processing the MuckRock requests.

Also, the FMCSA FOIA Officer was a guest speaker during the 2020 Virtual Academy of Truck Accident Attorneys Symposium. Attendees were attorneys who represent individuals in motor carrier accidents are FMCSA's frequent FOIA requesters. Topics covered were the FMCSA FOIA Program, ways to improve FOIA requests and the agency's current backlog.

Finally, the OST FOIA Office worked with the DOT Office of Aviation Consumer Protection to contact requesters who had submitted FOIA requests for consumer complaints regarding airline cancellations caused by the pandemic. The number of these complaints had increased exponentially during 2020, and processing all the requests for FOIA production threatened to overwhelm both the Office of Aviation Consumer Protection and the OST FOIA Office. DOT reached out to these requesters to explain the unprecedented situation and identified solutions to provide as much relevant information as possible to the requesters.

DOT FOIA personnel also engage with the requester community by participating in training and committees sponsored by organizations such as ASAP and OGIS.

D. Other Initiatives

9. 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.

A FOIA representative briefs all incoming DOT employees on their responsibilities under FOIA at the bi-weekly DOT New Employee Orientation. All DOT components conducted, as appropriate, one-on-one discussions with record holders on their obligations to furnish information under FOIA. DOT provides a separate briefing to all new political appointees to ensure they are aware of their responsibilities under FOIA.

In addition, DOT components have instituted many of their own programs to work with non-FOIA professionals within DOT. For example, the FRA FOIA office individually briefs all new FRA employees on their duties required under FOIA, and PHMSA held four virtual FOIA training sessions for executive staff during 2020.

10. 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.

N/A

Section II: Steps Taken to Ensure that DOT 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 that describes your agency's efforts in this area.

1. For Fiscal Year 2020, 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 2020 Annual FOIA Report.

1.5 days

2. 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 2020 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

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 or raw data, using active workflows and track management, reviewing and updating processing procedures, etc. Note: In September 2017, OIP released a FOIA Self-Assessment Toolkit as a resource for agencies

conducting a self-assessment of their FOIA program. The Toolkit is available on OIP's website for all agencies to use.

No. However, DOT plans to conduct a self-assessment in 2021 using the OIP Self-Assessment Toolkit.

- 4. Standard Operating Procedures (SOPs): Having SOPs can improve the consistency and quality of an agency's FOIA process. In addition, describing an agency's standard practices for handling FOIA requests on agency FOIA websites can help requesters better understand how their request will be handled.**

a) Does your agency have SOPs that outline general processes for handling FOIA requests and appeals?

Yes.

b) If not, does your agency have plans to create FOIA SOPs?

N/A

c) If yes, how often are they reviewed/updated to account for changes in law, best practices, and technology?

DOT SOPs are updated as needed to reflect changes in the law or FOIA policy.

d) In addition to having SOPs, does your agency post or otherwise describe your standard processes for handling requests on your website?

Yes.

- 5. 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 2020 (please provide a total number or an estimate of the number).**

DOT FOIA Public Liaisons were contacted approximately 280 times during FY 2020.

- 6. Does your agency frequently receive common categories of first-party requests? If so, please describe the types of requests and if your agency has explored establishing alternative means of access to these records outside of the FOIA process?**

FAA receives numerous requests for airmen medical records and certificates. Processing these types of requests is routine, as the records are collected from a specific system of record. The FAA Office of the Chief Counsel developed guidelines to ensure consistent withholdings regardless of which FOIA Coordinator processes the records. While FAA receives numerous requests for these types of records, form and content of the records is highly variable.

FMCSA receives requests from commercial drivers requesting their individual driving records for employment. These records can be accessed on-line for a cost; however, with proper documentation, these requests take less than 20 minutes to process through FOIA. Because of the short processing time, there is no cost. The FOIA office receives and processes around 200 of these requests a year.

The DOT OIG FOIA office frequently receives common categories of first-party requests from attorneys representing clients, individuals who make hotline complaints to the OIG and are requesting the results of said complaints, individuals not selected for OIG vacancy announcements, and individuals who are targets of OIG investigations.

- 7. The FOIA Improvement Act of 2016 required all agencies to update their FOIA regulations within 180 days. 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.

- 8. Please explain how your agency worked to mitigate the impact of the COVID-19 pandemic on FOIA processing. Examples could include, but are not limited to: altering workflows, implementing new technology, providing notices and instructions or otherwise communicating directly with requesters.**

In March 2020, DOT posted a banner on our main FOIA page informing requesters that FOIA Offices would be primarily working remotely during the COVID-19 public health emergency. We recommended that requests be submitted electronically to ensure that requests were received by FOIA personnel in a timely manner. We also provided e-mail addresses and links to each of the component FOIA Offices so that requesters could directly contact the FOIA Requester Service Center of their choice. Also, all DOT FOIA Officers were provided a copy of the COVID-19 notice for posting on their respective FOIA webpages.

All DOT FOIA offices also placed a greater reliance on electronic records and delivery systems to respond to requests, primarily through increased use of e-mail. The FRA and FHWA FOIA offices also used a file transfer protocol system to deliver large files to requesters and other

offices. In addition, FAA used a commercial delivery system in certain circumstances to ensure delivery of large files sent by FOIA personnel working from home. The Department's increased use of electronic processing and delivery systems will continue after the COVID-19 public health emergency ends as DOT FOIA offices have been able to more efficiently respond to FOIA requests using these practices.

9. Optional -- Please describe:

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

FRA redesigned its public website and portions containing publicly accessible information. The FRA FOIA team also triages requests with one Government Information Specialist primarily focused on the backlog to better coordinate the efforts of the team towards the goal of reducing FRA's backlog.

The OIG FOIA team uses active workflows and track management by meeting regularly (usually bi-weekly) to discuss the open FOIA cases to prioritize workflow, follow up with program offices who owe outstanding search results, follow up with agencies who owe outstanding consults, and establish/meet internal deadlines.

Due to the remote working environment, the OIG FOIA office has at times experienced delays in the receipt of voluminous amounts of search results from program offices, as well as delays in responses to outstanding consults from other agencies. However, they consistently follow-up with program offices for search results and other agencies for consults.

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 any 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.**

All DOT components proactively posted information about high-visibility/high-impact programs on their main pages and/or program pages. Within the [main DOT briefing room](#), we have posted [press releases](#), regular [blog posts by the Secretary of Transportation](#), and [speeches](#). The main DOT briefing room also contains links to [featured DOT social media sites](#).

FAA has posted the following records in its main electronic reading room at this link: https://www.faa.gov/foia/electronic_reading_room/

- *Geographic listing of hobbyist/non-hobbyist Small Unmanned Aircraft System (sUAS) registry enrollments and registrants*
 - *CY 2020 Q3*
 - *CY 2020 Q1 through CY 2020 Q2*
- *Purchase Card Holders*
 - *Alaska Region*
 - *Northwest Mountain Region*
 - *Western-Pacific Region*
 - *Southwest Region*
 - *Central Region*
 - *Aeronautical Center*
 - *Great Lakes Region*
 - *New England Region*
 - *Eastern Region*
 - *Southern Region*
 - *FAA Headquarters*
 - *Technical Center*
- *FOIA Logs*
 - *FY 2020 FOIA Logs (October to April)*
 - *FY 2019 FOIA Logs (May to September)*

FAA also created a separate reading room for records regarding the Boeing 737 MAX https://www.faa.gov/foia/electronic_reading_room/boeing_reading_room/:

- *March 27, 2019 - Statement of Daniel K. Elwell, Acting Administrator Before the Senate Committee on Commerce, Science, & Transportation, Subcommittee on Aviation and Space on the State of Airline Safety: Federal Oversight of Commercial Aviation*
- *September 25, 2019 - Statement of Daniel K. Elwell, Deputy Administrator Before the Committee on Appropriations; Subcommittee on Transportation, and Housing and Urban Development, and Related Agencies; Oversight Hearing on FAA Aviation Certification*
- *June 17, 2020 - Statement of Stephen M. Dickson, Administrator Before the Committee on Commerce, Science, and Transportation, United States Senate on Examining the Federal Aviation Administration's Oversight of Aircraft Certification*
- *September 23, 2019 - Boeing 737 MAX Status Meeting with Aviation Regulators in Montreal: Stephen M. Dickson, Montreal Canada*
- *December 11, 2019 - The Boeing 737 Max: Examining the FAA's Oversight of the Aircraft's Certification: Stephen M. Dickson Before the Committee on Transportation and Infrastructure, United States House of Representatives*

- *March 6, 2020 - FAA Proposes \$19.68 Million Civil Penalty Against The Boeing Co.*
- *January 10, 2020 - FAA Proposes \$5.4 Million Civil Penalty Against The Boeing Co.*
- *JATR Observations, Findings, and Recommendations: Boeing 737 MAX Flight Control System (PDF)*
- *Maneuvering Characteristics Augmentation System*
- *737-7/8/9 Elevator Control System Description and Safety Analysis (PDF)*
- *737-7/8/9 Stabilizer Trim System (PDF)*
- *Stall Testing with EFS and / or STS off Part 2 (letter) (PDF)*
- *Flight Test Plan-Stall Testing with EFS and/or STS off (PDF)*
- *737-8/737-9 Flight Control Computer Software Replacement (letter) (PDF)*
- *Flight Crew Operations-Compliance Report-Crew Alerting (letter) (PDF)*
- *Aerodynamics Stability and Control Analysis for Certification of the Low Mach Extension in the 737-7, 737-8, 77-8200, and 737-9MCAS Control Law (letter) (PDF)*
- *737 MAX Speed Trim System (STS) Integrated System Safety Analysis (ISSA) (letter) (PDF)*
- *Statement of Compliance with Airworthiness Standards*
- *Flight Crew Operations-Compliance Report-Crew Alerting (PDF)*
- *Plan for Software Aspects of Certification, FCC-730 (PDF)*
- *737NG/737MAX Enhanced Digital Flight Control System Certification Summary (PDF)*
- *737NG/737MAX Enhanced Digital Flight Control System, System Description (PDF)*
- *Aerodynamics, Stability and Control Analysis for Certification of the Low Mach Extension (PDF)*
- *(MCAS) Correspondence Related to Boeing 737 MAX Certification Plans Submitted to FAA by Boeing ODA Lead Administrator (PDF)*

FHWA proactively posts its yearly FOIA log in addition to the FHWA Small Purchase Cardholders “list” <https://www.fhwa.dot.gov/foia/err.cfm>.

FMCSA publishes the Electronic Field Operations Training Manual (eFOTM) that was developed to provide a comprehensive guide to enforcement staff when conducting or managing investigations, audits, and roadside inspections. This document was requested 3 to 5 times a year before being included in the electronic reading room. The latest version was published this year. <https://www.fmcsa.dot.gov/foia/electronic-field-operations-training-manual-efotm-version-50>

FMCSA also publishes and updates regularly the Mexico-Domiciled Motor Carriers authorized to Operate Long-Haul which was highly requested before making public. <https://www.fmcsa.dot.gov/foia/mexico-domiciled-motor-carriers-authorized-operate-long-haul-under-op-1mx-authority>

FRA publishes its [FRA's Safety Data Website](#) (data related to railroad accidents and incidents, including railroad supplied highway-rail grade crossing accidents, rail equipment accidents, and employee injuries and illnesses).

FRA also publishes the [FRA Headquarters-Level Railroad Accident Investigation Reports](#) (headquarters-assigned investigations and reports for completed investigations beginning in January 2005). It typically takes from six to nine months from the date of the accident for a report to be completed. This site is updated regularly as new accidents are assigned for investigation and additional investigation reports are completed.

Also, FRA posts data to its [Docket Info website](#) (FRA and Department of Transportation rulemaking proceedings).

NHTSA proactively discloses large amounts of information ranging from grant information to enforcement cases involving allegedly defective or noncompliant motor vehicles and equipment. NHTSA routinely publishes these records on its website at www.NHTSA.gov. Records include motor vehicle defect investigations, motor vehicle recall notices, consumer complaints, motor vehicle manufacturer communications, motor vehicle manufacturer early warning data, Federal Motor Vehicle Safety Standard tests, New Car Assessment Program Tests, Grant Administration Information, traffic safety consumer awareness programs, behavioral safety study data, fatality analysis reporting system data, and special crash investigation reports.

The OIG's Office of Government & Public Affairs frequently posts information and updates to the agency's website. During FY 2020, 204 items were posted to the website at www.oig.dot.gov including: Congressional Correspondence, Audit Announcements, Investigation Summaries, Statements for Congressional Testimonies, and Budget Estimates.

OST continued to post information related to its [Better Utilizing Investments to Leverage Development \(BUILD\) Transportation Discretionary Grants program](#), and information regarding [drug and alcohol testing](#) of transportation personnel who perform safety-sensitive functions transportation employees in aviation, trucking, railroads, mass transit, pipelines, and other transportation industries.

The PHMSA FOIA Office made five postings of (a)(2) records during FY 2020 in its [FOIA Electronic Reading Room](#). Examples of these posts include: [Congressional Correspondence Log requested under FOIA, FOIA Logs \(FY 2019\)](#), and [Notice of Proposed Violations and Proposed Order Issued to Sunoco on May 17, 2019](#). Offices in PHMSA, other than the FOIA Office, made 390 postings of (a)(2) records. An example of these postings is the Office of Pipeline Safety's [Corrective Action Orders](#).

- 2. 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.

- 3. 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.**

FRA's Office of Safety made a major overhaul of its [Safety Data](#) website making it much more accessible, understandable, and usable by the typical FRA requestor. FRA also updated its FOIA page to prominently display this information.

NHTSA's safety ratings and safety issues (Recalls, Investigations, Consumer Complaints and Manufacturer Communications) information is published to www.nhtsa.gov and has been made more useful to individuals with increased search capability such as by Vehicle Identification Number (VIN), Make, Model & Model year. A new date range search feature allows individuals to identify relevant recalls and investigations.

Prior to the posting of new material to the OIG website, the OIG Communications Team ensures that documents are Section 508 compliant.

In initial FOIA responses, PHMSA began to routinely provide links to requesters on publicly available information that may satisfy the FOIA request without additional FOIA processing. For example, PHMSA provides requesters with a link to the Office of Pipeline Safety's (OPS's) user-friendly "Operator Information" portal that pulls information about pipeline operators into one spot on PHMSA's website. PHMSA also provides links to the National Pipeline Mapping System Public Viewer, which allows the public to view pipelines and certain data about the pipelines, one county at a time.

Finally, PHMSA works to post records on its website that is 508 compliant. For any records not posted as compliant, there are instructions to obtain a copy. Challenges include voluminous record sets that may not be accessible due to lack of staff to make the record compliant.

4. Optional -- Please describe:

- **Best practices used to improve proactive disclosures**
- **Any challenges your agency faces in this area**

N/A

Section IV: Steps Taken to Make Greater Use of 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. Please briefly describe the types of technology your agency uses to support your FOIA program. In addition, please highlight if your agency is leveraging or exploring any new technology that you have not previously reported. If so, please describe the type of technology.**

In FY 2020, DOT signed a contract to acquire a DOT-wide FOIA tracking and redacting software system for use by all the components. When the configuration process is completed in spring 2021, the new system will enable the Department to better coordinate and share information between components, improve data collection and reporting to DOJ, and allow interoperability with the National FOIA Portal at FOIA.gov.

FAA utilizes Microsoft SharePoint document libraries to share documents with external stakeholders. The FAA also utilizes Microsoft OneDrive to share documents internally.

FHWA uses the DOT Secure Large File Transfer Solution (SLFTS) to both share large records between distant offices where network sharing is difficult, and providing large records to the requester. FHWA utilized SharePoint and Teams throughout the year to provide live training to new FOIA personnel, such as how to log in and complete the disposition of FOIA requests, and provide assistance with responding to complex requests.

FMCSA uses an in-house system for tracking new incoming requests, Adobe Acrobat DC for redacting and the utilization of shared drives for managing records.

FRA is in the process of updating its correspondence management system updated to include new reporting categories.

PHMSA continues to leverage e-discovery tools that increase processing efficiencies on requests with large electronic record sets to evaluate for responsiveness and FOIA exemption application.

PHMSA is also testing the use of a new electronic form in MS Forms to collect and document FOIA search responses from all agency components including HQ and Field offices.

- 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 2020?**

Yes.

- 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 2021.**

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 2019 Annual FOIA Report and, if available, for your agency's Fiscal Year 2020 Annual FOIA Report.**

Yes. DOT has posted raw data through Fiscal Year 2020.

The Fiscal Year 2019 raw data may be found here:

<https://www.transportation.gov/individuals/foia/2019-annual-foia-report-congress-raw-data>

The Fiscal Year 2020 raw data may be found here:

<https://www.transportation.gov/individuals/foia/2020-annual-foia-report-congress-raw-data>

DOT has also posted its Fiscal Year 2020 Annual FOIA Report. The Fiscal Year 2020 Annual FOIA Report may be found here: <https://www.transportation.gov/individuals/foia/fy-2020-annual-foia-statistical-report>

- 6. Optional -- Please describe:**

• **Best practices used in greater utilizing technology**

• **Any challenges your agency faces in this area**

For FHWA, large files, such as project plans containing color pictures or design drawings, continue to represent a challenge due to size limitations in how these files can be sent. Network

constraints continue to be a challenge as well, with some field FHWA offices being able to provide shared drive links for coordination, while other field offices are either unable to share themselves, or must go through departmental IT to do so. The 10MB limit for attachments in the current FHWA case management and tracking system also requires offices to save records locally unless they break up large PDFs into smaller sizes. Many of these challenges will be resolved once DOT begins operating on its new tracking and redacting system in spring 2021.

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 FY 2019 and 2020 Annual FOIA Reports.

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?

Yes.

2. If your agency uses a separate track for simple requests, according to Annual FOIA Report section VII.A, was the agency overall average number of days to process simple requests twenty working days or fewer in Fiscal Year 2020?

No. It was 50.6 days.

3. Please provide the percentage of requests processed by your agency in Fiscal Year 2020 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.

81.8 percent.

- 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?**

N/A

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 2019 and Fiscal Year 2020 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 2020, according to Annual FOIA Report Section XII.A, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2019?**

No.

- 6. If not, according to Annual FOIA Report Section V.A, did your agency process more requests during Fiscal Year 2020 than it did during Fiscal Year 2019?**

Yes.

- 7. If your agency's request backlog increased during Fiscal Year 2020, please explain why and describe the causes that contributed to your agency not being able to reduce its backlog. When doing so, please also indicate if any of the following were contributing factors:**

- An increase in the number of incoming requests.**
- A loss of staff.**

• **An increase in the complexity of the requests received. If possible, please provide examples or briefly describe the types of complex requests contributing to your backlog increase.**

• **Any other reasons – please briefly describe or provide examples when possible.**

The agency's backlog increased in FY 2020 primarily due to increases in the backlog of three DOT components: OST, FMCSA, and NHTSA.

The OST backlog increased primarily due to the effort needed to respond to FOIA litigation over the first two quarters of FY 2020. During the third and fourth quarters of FY 2020, the OST backlog decreased as OST resolved pending FOIA litigation and instituted a Backlog Reduction Initiative (details below).

The FMCSA backlog increased due to an increase of over 1,000 requests received in FY 2020 (4,174 received) compared to FY 2019 (3,094 received). This led to an increase in FMCSA's FOIA backlog despite processing 78 percent more requests in FY 2020 versus FY 2019.

NHTSA's backlog increased due to a loss of FOIA contractor staff and an increase in the complexity of the requests received. NHTSA has brought in new FOIA contracting staff to backfill the contractor staff who departed in FY 2020.

- 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 2020. 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. If your agency has no request backlog, please answer with "N/A."**

29 percent.

BACKLOGGED APPEALS

- 9. If your agency had a backlog of appeals at the close of Fiscal Year 2020, according to Section XII.A of the Annual FOIA Report, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2019?**

No.

10. If not, according to section VI.A of the Annual FOIA Report, did your agency process more appeals during Fiscal Year 2020 than it did during Fiscal Year 2019?

No.

11. If your agency's appeal backlog increased during Fiscal Year 2020, 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.**

The Agency's appeal backlog increased due to an increase in the number of incoming appeals from FY 2019 to FY 2020 (91 to 119) and an increase in the complexity of the appeals.

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 2020. 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. If your agency did not receive any appeals in Fiscal Year 2020 and/or has no appeal backlog, please answer with "N/A."

106 percent.

C. Backlog Reduction Plans

13. In the 2020 guidelines for Chief FOIA Officer Reports, any agency with a backlog of over 1000 requests in Fiscal Year 2019 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?

Yes, the agency implemented a backlog reduction plan last year. FMCSA brought in additional contractors to help process requests; however, for the second straight fiscal year FMCSA received more than 1000 requests than in the previous fiscal year. FMCSA received 1,463 requests in FY 2018 and 4,174 in FY 2020. This large increase in requests prevented FMCSA from reducing its backlog in FY 2020, notwithstanding the additional contractor support.

OST also implemented a backlog reduction plan in FY 2020. However, the plan did not bear fruit until the second half of FY 2020. OST brought in experienced FOIA personnel on detail from selected components to help OST process FOIA requests and litigation. The detailees helped resolve pending FOIA litigation and freed OST FOIA personnel to work on closing a greater number of requests. OST also implemented a Backlog Reduction Initiative which included setting a monthly completion goal, working with FOIA personnel to target specific requests for closure each month, and closer coordination with team members to allocate the workload in the most efficient manner. For the first time in four years, the OST FOIA Office closed more requests than it received for three consecutive months and finished the fiscal year having increased closures by 50 percent over FY 2019. This increased productivity resulted in OST reducing its backlog over the final two quarters of FY 2020.

14. If your agency had a backlog of more than 1,000 requests in Fiscal Year 2020, please explain your agency's plan to reduce this backlog during Fiscal Year 2021.

The three DOT components with the largest FOIA backlogs (FAA, FMCSA, OST) will each implement a plan to reduce the backlog during FY 2021.

FAA plans to implement a targeted, coordinated business plan with the FAA program offices that contribute to the FAA backlog. This additional visibility at the organizational leadership level will drive a backlog reduction in FY 2021.

FMCSA will implement a detailed plan to address its backlog increase in the wake of two consecutive years of increased requests received. FMCSA has increased its FOIA support contractors from two to six FOIA Specialists. Also, FMCSA is actively participating in the DOT's Pathway and Rotation programs to host interns and detailees to provide individual development and more resources for the FMCSA program. The FMCSA FOIA Team is proactively providing an increasing number of records to avert submission of FOIA requests. Finally, FMCSA has reassigned a Senior FOIA Analyst to perform only Quality Control

reviews ensuring redactions are correct and helping the office respond to more requests per month.

OST will continue its backlog reduction initiative begun in FY 2020, as that plan reduced the OST backlog over the second half of the year. OST will also focus on targeting requests for similar records in order to increase efficiency in processing groups of requests simultaneously. In addition, OST will increase its use of automated e-mail searching to fulfill requests asking for records with similar subject matter.

Finally, the entire agency will benefit from the new tracking and reacting software that is scheduled to be running in spring of 2021. This software will increase coordination between program offices and allow for more detailed tracking of requests, which will lead to increased efficiency in processing times.

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 2019 and Fiscal Year 2020 when completing this section of your Chief FOIA Officer Report.

OLDEST REQUESTS

15. In Fiscal Year 2020, did your agency close the ten oldest pending perfected requests that were reported in Section VII.E. of your Fiscal Year 2019 Annual FOIA Report?

No.

16. If no, please provide the number of these requests your agency was able to close by the end of the fiscal year, as listed in Section VII.E of your Fiscal Year 2019 Annual FOIA Report. If you had fewer than ten total oldest requests to close, please indicate that.

DOT closed eight of its 10 oldest requests from the FY 2019 Annual FOIA Report.

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

DOT plans an increased focus specifically on those older pending requests. The new tracking system will allow better management oversight of the oldest pending requests. This will allow for more persistent follow-up activities with the program offices from whom we are awaiting records. By implementing more efficient search methods for these older records, we can reorient FOIA staff work-flow to add emphasis to closing those older requests.

TEN OLDEST APPEALS

18. In Fiscal Year 2020, did your agency close the ten oldest appeals that were reported pending in Section VII.C.5. of your Fiscal Year 2019 Annual FOIA Report?

No.

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 2019 Annual FOIA Report. If you had fewer than ten total oldest appeals to close, please indicate that.

DOT closed three of its ten oldest appeals from the FY 2019 Annual FOIA Report.

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

The DOT FOIA Officer will periodically reach out to those components with older pending appeals to receive updates on their progress and to show the importance of closing these older appeals.

TEN OLDEST CONSULTATIONS

21. In Fiscal Year 2020, did your agency close the ten oldest consultations that were reported pending in Section XII.C. of your Fiscal Year 2019 Annual FOIA Report?

No.

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 2019 Annual FOIA Report. If you had fewer than ten total oldest consultations to close, please indicate that.

DOT closed four of its 10 oldest consultations from its FY 2019 Annual FOIA Report.

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

23. Briefly explain any obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2019.

The primary obstacles encountered by FAA in closing a few of its oldest requests were the inability to locate the initial request and staff turnover/loss. Despite encountering some obstacles, FAA closed eight of its 10 oldest perfected requests, three of its ten 10 oldest administrative appeals, and four of its 10 oldest consults that were reported in the FY19 Annual Report.

24. 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

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 2021.

In FY 2021, DOT FOIA leadership will hold regular meetings with the FOIA Officer of any component with one of the ten oldest pending requests, appeals or consultation. These meetings will discuss the progress made in closing these oldest requests, appeals, and consultations, as well as be a chance for the components to ask for advice or assistance in closing these.

E. Success Stories

This year the PHMSA FOIA Office concentrated on improved processing times, decreasing its backlog, and closing out its oldest FOIA requests.

From fiscal year 2019 to fiscal year 2020, PHMSA:

- o Decreased its backlog by twenty percent and overall requests pending by seventeen percent.

- o Processed fifteen percent more requests, while receiving eleven percent more requests.
- o Closed all ten of its oldest requests.
- o Improved processing times, processing simple requests, on average, within 20 workdays (improving processing by more than 3.5 times). Requests processed in the complex track also saw an improvement in processing times, with the average number of workdays to respond decreasing by nearly 30 percent.

Several strategies enabled these improvements. PHMSA tracked requests by topic to streamline record responses and to determine if records released in one request would satisfy other requests on the same topic. Additionally, PHMSA aggressively managed the front-end of the intake process, including making early interim releases and providing links to relevant publicly available information that might satisfy the request or allow a requester to re-scope a request to make the request simpler to process. PHMSA strives to send acknowledgment letters out within one business day of receipt, identifies procedural issues like fees and clarification upfront, and promptly sends searches to program staff. PHMSA staff follow an intake checklist to ensure the proper steps are taken for each request.