

U.S. Department of Transportation



Chief FOIA Officer Report

March 2023

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2023 Chief FOIA Officer Report

This fourteenth annual Chief FOIA Officer Report shows that the Department of Transportation (DOT or Department) and its leadership continues its commitment to transparency and open government through its FOIA program. This report covers the period from March 2022 to March 2023. Statistical information included within this report is based on data from DOT’s Fiscal Year 2022 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 (the components). The DOT-wide FOIA 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 Fiscal Year 2022:

DOT Component Acronym	DOT Component Name	Number of Requests Received in FY 2022
FAA	Federal Aviation Administration	11,702
FHWA	Federal Highway Administration	198
FMCSA	Federal Motor Carrier Safety Administration	5,325
FRA	Federal Railroad Administration	260
FTA	Federal Transit Administration	284
GLS	Great Lakes St. Lawrence Seaway Corporation	11
MARAD	Maritime Administration	124
NHTSA	National Highway Traffic Safety Administration	334
OIG	Office of Inspector General	110
OST	Office of the Secretary of Transportation	558
PHMSA	Pipeline and Hazardous Materials Safety Administration	184

During Fiscal Year 2022, DOT expended 105.4 staff-years of effort on its FOIA programs, compared with 105.8 staff-years of effort in Fiscal Year 2021. This total included the work of 49 full-time FOIA staff. The remaining 56.4 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, GLS, MARAD, NHTSA, OIG, and PHMSA 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 release 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 Fiscal Year 2022 Data

During Fiscal Year 2022, DOT received 19,090 requests compared with 15,741 received in Fiscal Year 2021. In addition, DOT processed 18,958 FOIA requests during Fiscal Year 2022, which was a 28 percent increase from the previous fiscal year. Despite the large increase in requests processed, the DOT backlog of requests increased from 4,811 requests at the end of Fiscal Year 2021 to 5,362 at the end of Fiscal Year 2022.

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 least at the Assistant Secretary or equivalent level. See 5 U.S.C. § 552(j)(1) (2018). Is your agency’s Chief FOIA Officer at or above this level?**

Yes.

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

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

- 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 U.S. Department of Transportation Strategic Plan FY 2022-2026 includes a focus on transparency. Under the Departmental Strategic Goal of Customer Service, OST is the Lead Agency to “Improve transparency and promote data sharing by increasing public access to data and data analysis and visualization tools.” The OST FOIA Office plans to include the goal of increasing the posting of proactive disclosure of information in its Electronic FOIA Reading Room during Fiscal Year 2023.

Among the components, FAA has built business plan targets around FOIA backlog reduction and closing its ten oldest perfected FOIA requests. In addition, FHWA incorporates FOIA into its Office of Administration unit plan and risk assessment for each fiscal year. Finally, OIG has incorporated FOIA milestones into the organizational assessment, which is considered for the OIG Chief Counsel’s performance assessment.

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 requester that it can neither confirm nor deny the existence of requested records if acknowledging the existence of records would harm an interested 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?**
 - 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.**

As Glomar is used very infrequently at DOT, the agency did not track use of Glomar responses. Until the agency can track Glomar responses in its commercial-off-the-shelf tracking system, agency FOIA Officers were asked at a DOT Monthly FOIA meeting and via e-mail to inform the OST FOIA Office of any Glomar responses sent. We will also continue to ask at our monthly meeting until we see that this has become part of the routine reporting.

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.**

N/A

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 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)(j)(2)(F). 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 the Department of Justice, 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. Substantive FOIA training is conducted at the monthly meetings as well.

- 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.**

Agency personnel attended DOJ Online training sessions on topics including: Virtual Introduction to the Freedom of Information Act, Virtual Procedural Requirements and Fees Workshop, OIP Annual FOIA Report Training, OIP Sunshine week training, OIP Virtual Exemption 4 and 5 Workshop, OIP Virtual Privacy Considerations Workshop, OIP Virtual Continuing FOIA Education Training, and Advanced Litigation Considerations.

DOT FOIA personnel also attended the ASAP National Training Conference in Arlington, Virginia.

DOT FOIA Professionals also conducted in-house FOIA training sessions throughout the year.

During this period, the DOT/OST FOIA Officer began holding bimonthly FOIAXpress training sessions for the Department. These training sessions focused on both administrative and operational functions of the program to assist agency personnel in their transition to the system. The DOT Learning Management System also contains the following three FOIA

training modules available to all DOT personnel: The Freedom of Information Act, The Freedom of Information Act (FOIA) for Federal Employees, and the Freedom of Information Act (FOIA) for FOIA Professionals.

The FAA Office of Chief Counsel (Information Law Practice) and the FOIA Program Management Division hosted two workshops on FOIA Processing, presented in 2 one-hour sessions. Additionally, FAA presented one-hour workshops on Privacy Act and Interplay with FOIA, Exemption 4, the Submitter Notification/Override Process, Exemption 5, Exemption 6, Exemption 7, and Information Law Training (Records Management, FOIA, Privacy Act, Litigation Holds, Public Records Act, and Children's Online Privacy Protection Act).

The FHWA FOIA Office also provided quarterly training to FHWA FOIA professionals covering subjects such as procedural requirements, fees, and FHWA's most-used exemptions. FHWA also conducted individualized training with FHWA headquarters and field offices when office personnel are assigned new FOIA duties, or upon request. FHWA maintained a five-module Virtual Learning Plan consisting of written training material and recorded videos on the agency's SharePoint page in addition to an internal FOIA site with guides, checklists and sample response letter and templates for a variety of FOIA scenarios.

All FMCSA FOIA Personnel attended specialized training pertaining to agency records, redactions, understanding scope of request and specific procedures pertaining to the agency's FOIA process. FMCSA's FOIA staff also conducted in-house training specific to the agency's records and processes.

As a standard practice, new OIG administrative FOIA staff members received hands-on training on the use of FOIAXpress, applicable laws, FOIA regulations and Redax FOIA redaction software.

Finally, at each monthly DOT FOIA Meeting, the DOT FOIA Officer led training on different topics throughout the year. Training topics covered in 2022 included: Court Decision—American Oversight v. DOT (Consultant Corollary), FOIA Fees, the March 2022 Attorney General FOIA Memorandum, Foreseeable Harm, ASAP National Training Conference Highlights, 2020-2022 FOIA Advisory Committee Recommendations, FOIA/PA Interface, Foreseeable Harm applied to Exemption 4, and the significance of other recent court decisions related to FOIA.

- 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.**

85%

- 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 FOIA 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?**

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

DOT components have instituted many of their own programs to work with non-FOIA professionals within DOT. For example, the DOT offers a self-paced, self-assigned FOIA and Privacy Act training course to all employees through the Agency’s electronic learning management system.

FHWA’s FOIA Officer is a member of the Extended Leadership Team (ELT), meeting monthly, and Administration Leadership Advisory Group (ALAG), meeting quarterly, and provides regular briefings on the administration of FHWA’s FOIA program as well as Fully Leveraging Expertise (FLEx) initiative – which for FOIA focuses on expanding the knowledge of the agency’s FOIA professionals.

FMCSA's FOIA staff collaborated with other program offices when processing requests for which the FOIA office doesn't have access to the records. This includes educating them on FOIA regulations, redactions and internal agency processes. Also, FMCSA senior leadership is briefed on the requests received each week. This year, FMCSA's Policy office conducted a FOIA Program Evaluation with a deep dive into the agency's FOIA Operations to identify any areas to improve. The closure of this evaluation, which included challenges, accomplishments and current resources, was briefed to FMCSA's Executive Director and Chief Safety Officer.

MARAD FOIA briefed its Administrator and Deputy Administrator on the FOIA process to prepare them on what to expect during a FOIA records search.

As part of OIG's on-boarding process, on day one of employment and later, all new hires were instructed on their responsibilities as federal employees under FOIA as part of orientation.

Also, outreach to new leadership at PHMSA occurs at time of arrival. During this reporting period, new leadership was briefed on the FOIA program, which included expectations and obligations of the FOIA regarding record releases along with issue-specific dialogue to ensure senior leaders are prepared to support the FOIA program mission of transparency.

For Sunshine Week, the OST FOIA office hosted its annual "Brown Bag" lunch to brief OST personnel on basic FOIA guidelines, updates on the DOT FOIA program, Foreseeable Harm, and the impact of recent FOIA Litigation decisions. In addition, the OST FOIA Office also published an article on the DOT Intranet to publicize Sunshine Week to the Department. Finally, the Secretary promoted Sunshine Week and transparency in government in his "Message from the Secretary" distributed to the entire Department.

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.**

All DOT component FOIA Offices are encouraged to reach out to the requesters in order to clarify and better respond to requests.

Several FAA FOIA Coordinators and Information Law Attorneys participated in the Chief FOIA Officers' Technology Committee in Fiscal Year 2022. The information shared by

committee members has been useful in offering alternative methods for making large productions to requestors and for sharing files with business stakeholders.

FHWA has participated in multiple engagements with requesters throughout the year to both explain USDOT FOIA requirements under 49 CFR, as well as provide assistance formulating requests such as describing records in sufficient, and sometimes slightly less technical detail. For example, noting in the request that the key terms relate to bridges and structures versus using the hardware/engineering terminology only. This has allowed headquarters FOIA personnel to route requests to the appropriate office more quickly, without the need to research technical descriptions of some records being requested to determine the office(s) most likely to have responsive records.

The OIG FOIA team met virtually with a FOIA requester law firm that sought records related to a Canadian police force and Canadian national railway company with ties in the U.S. The OIG FOIA team and OIG Auditor met with the requester's team to talk about the case and to clarify the various aspects of the request. During this meeting, the OIG Auditor reviewed the records and confirmed that no OIG records were responsive to the request. The only records that related to the request belonged to another agency. OIG had already referred those records to that agency. This meeting brought clarity and was instrumental in answering the requester's questions and concerns, and by facilitating a close out of the request.

PHMSA's FOIA Officer has served as a member of the Chief FOIA Officers Council Committee on Cross-Agency Collaboration and Innovation (COCACI) and co-chair of the Government Information Specialist (GIS) Professionalization subcommittee since April 2021. Professionalizing the GIS job series will lead to improvements in the future, including better customer service, decreased processing times, and other program efficiencies. As a member of this group, research initiatives have included dialogue with ASAP on this group's efforts to professionalize the job series.

Finally, as a co-chair of the Chief FOIA Officers Council Committee on Cross-Agency Collaboration and Innovation (COCACI), the DOT/OST FOIA Officer spoke at both widely attended Chief FOIA Officers Committee meetings in 2022. He updated the FOIA community at-large on the Committee's progress on promoting initiatives for clear career trajectories for FOIA professionals (Government Information Specialist Job Series), taking lessons learned from the pandemic to transform FOIA Offices to thrive in a virtual environment, and providing FOIA Offices with information on accessing FOIA resources. The DOT/OST FOIA Officer also led two sessions at the ASAP National Training Conference where both the FOIA requester community and FOIA processing professionals meet to discuss current FOIA issues.

- 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. When DOT receives a complex request, or a preliminary search has resulted in a large volume of responsive records, FOIA personnel contact the requester to inform them of the unusual circumstances; advise as to how to narrow the scope of the request to get them the records they are seeking; and/or request an extension and an estimated completion date.

The OST FOIA office received a FOIA request in which the requester listed a series of search terms which included several very generic words. Upon completing a search for records, OST had identified almost 60,000 potentially responsive e-mails. The OST FOIA Office contacted the requester and explained that many of the records identified by the generic terms would not necessarily be responsive to the request. The OST FOIA Office identified alternative search terms that the requester concurred with. Through this cooperation, the office was able to run a more targeted search that provided the requester with a set of records that met their needs.

In addition, the OST FOIA Office will receive requests asking for a search of every e-mail account in the Department. The OST FOIA Office reaches out to those requesters to explain our search capabilities and will recommend the offices which would most likely maintain the records they seek.

- 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).**

DOT FOIA Public Liaisons were contacted approximately 325 times during Fiscal Year 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.**

The FAA continued to utilize a contract vehicle which allows for individual program offices to take out task orders for office-specific FOIA processing support services.

FHWA continually evaluated its staffing needs throughout the year. Prior to 2020, FHWA's FOIA Office consisted of one full-time employee (FTE) only. In 2020, that number rose to two (2) FTEs; in 2022 three (3) FTEs; and in January 2023 four (4) FTEs as it continues to adjust its personnel needs as its workload increases.

During its FOIA Program Evaluation, FMCSA statisticians reviewed the agency's FOIA data from Fiscal Years 2017-2022. During this time FMCSA has seen a 143 percent increase in received requests. The analysis showed that in order to keep up with its incoming requests, at least 3 additional FTEs needed to be added. FMCSA is restructuring the FOIA Division and adding 5 FTEs in Fiscal Year 2023.

During Fiscal Year 2022, FRA added two full-time Government Information Specialists to the FOIA team to address the backlog and in anticipation of increased FOIA requests arising out of Bipartisan Infrastructure Law activities.

NHTSA evaluated the allocation of FOIA resources and increased its contract staff to assist with current and anticipated FOIA demands.

OIG has utilized non-FOIA personnel that have been internally trained on document review to assist with limited access processing of FOIA requests on an "ad-hoc" basis. OIG also has occasionally used Honors Attorneys and Law Students to assist with FOIA. Finally, OIG has also been approved to hire a second part-time intern under the Pathways program.

In response to its incoming number of requests doubling since Fiscal Year 2016, OST FOIA has hired two additional Government Information Specialists to begin work in Fiscal Year 2023 to help lower the office backlog.

PHMSA continues to evaluate the need for additional FOIA contractor support. PHMSA's FOIA Officer position was vacant for five months of 2022. However, PHMSA has hired a FOIA Officer who will onboard in January 2023.

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.

DOT's components all used the FOIAXpress system to track the processing of FOIA requests. The system allows users to generate a multitude of reports to assist with statistical analysis.

The Operating Administrations generated reports to track incoming requests, closed requests, requests assigned to different analysts, status of search taskers, and consultations to other agencies. Besides simply tracking basic numbers of incoming and processed requests, these reports provided a snapshot of DOT's FOIA process as to where any bottlenecks may be located, and which areas of the FOIA process could be improved.

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

N/A

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 formats possible."

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

In Fiscal Year 2022, the FAA implemented guidance to be utilized by the program offices that identify procedures applicable when handling FOIA requests and records identified for proactive disclosure.

FHWA reviewed, on a weekly basis, incoming FOIA requests received for that week, including for the purpose of identifying records that are appropriate for proactive disclosure, or required to be proactively disclosed.

The FMCSA FOIA Office reviewed incoming requests and searches for previous requests for the same information. Once the records are requested multiple times, the team adds it to a running list of future proactive disclosures for publishing. Proactive disclosures are also added to the staff's performance standards and tracked through individual accomplishments.

FRA posted FOIA Logs and a wealth of railroad safety data in the FRA Electronic Reading Room. FRA also monitors incoming requests to capture those that are requested 3 or more times for posting.

FTA routinely posted information regarding the issuance of grant opportunities and grants that were awarded under specific grant programs.

NHTSA proactively disclosed 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.

The OIG FOIA team used data input into the FOIAXpress to identify and track proactive disclosures.

The PHMSA FOIA Office worked closely with public-facing agency personnel to identify information of public interest that should be made publicly available without the need to submit a FOIA request. These offices include PHMSA's Office of International, Governmental, and Public Affairs; and Public Liaisons in PHMSA's Office of Pipeline Safety and Office of Hazardous Materials Safety.

2. 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 current news, speeches, and links to multimedia pages.

The OST FOIA Office posted resources such as the [Annual FOIA Reports to Congress](#), [Quarterly FOIA Reports](#), and [Chief FOIA Officer Reports](#) on its FOIA website.

In 2022, OST started proactively posting the Secretary's past public schedule: [Past Public Schedule of U.S. Secretary of Transportation | US Department of Transportation](#)

The following FAA records can be accessed at this link:
https://www.faa.gov/foia/electronic_reading_room/:

- Mid-air Skydiving Plane Swap
 - [Emergency Order of Revocation - Aikins](#)
 - [Emergency Order of Revocation - Farrington](#)
 - [Proposed Assessment of Civil Penalty - Aikins](#)
- Purchase Card Holders' List
- Stale-dated & Uncashed Checks
 - [FY 2022 Stale-dated & Uncashed Checks](#)
- Geographic Listing of Hobbyist & Non-hobbyist Small Unmanned Aircraft Systems (sUAS) Registry Enrollments & Registrants
 - 2022:

- [CY 2022 Q3](#)
 - [CY 2022 Q2](#)
 - [CY 2022 Q1](#)
- 2021:
 - [CY 2021 Q4](#)

The FHWA Office of Safety categorized and listed publicly available records associated with eligibility letters

(https://safety.fhwa.dot.gov/roadway_dept/countermeasures/reduce_crash_severity/).

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

FMCSA published 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 FMCSA regularly published this 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 published and regularly updated the Mexico-Domiciled Motor Carriers authorized to Operate Long-Haul, which was frequently requested before it was made public.

<https://www.fmcsa.dot.gov/foia/mexico-domiciled-motor-carriers-authorized-operate-long-haul-under-op-1mx-authority>

FRA posted the following safety information on its site:

- Railroad safety information including accidents and incidents, inventory and highway-rail crossing data readily available to the public. Site users can run dynamic queries, download a variety of safety database files, publications and forms, and view current statistical information on railroad safety.
<https://safetydata.fra.dot.gov/offivceofsafety/default.aspx>
- Safety Advisories: https://railroads.dot.gov/elibrary-search?f%5Bo%5D=document_series%3A14976
- Compliance Manuals: https://railroads.dot.gov/elibrary-search?f%5Bo%5D=document_series%3A14801
- Technical Bulletins: https://railroads.dot.gov/elibrary-search?f%5Bo%5D=document_series%3A14821
- FRA FY 2021 FOIA Log: [FOIA Log FY 2021 | FRA \(dot.gov\)](https://www.fra.dot.gov/foia/foia-log-fy-2021)
- Accident Investigations: https://railroads.dot.gov/elibrary-search?f%5Bo%5D=document_series%3A14786
- Enforcement and Litigation Information: https://railroads.dot.gov/elibrary-search?f%5Bo%5D=document_series%3A14746
- Current Environmental Reviews: <https://railroads.dot.gov/environment/current-environmental-reviews/current-environmental-reviews>
- Completed Environmental Reviews: <https://railroads.dot.gov/environment/completed-environmental-reviews/completed-environmental-reviews>

- General reports and other FRA information not mentioned above:
<https://railroads.dot.gov/elibrary-search>

The PHMSA FOIA Office posted the following information:

- Records of public interest:
 - [PHMSA Response to Congress regarding San Pedro Bay Pipeline Failure - January 11, 2022 | PHMSA \(dot.gov\)](#),
 - [PHMSA Failure Investigation Report - Denbury Gulf Coast Pipelines, LLC | PHMSA \(dot.gov\)](#).
- FOIA Logs: [PHMSA FOIA Logs | PHMSA \(dot.gov\)](#)

3. Beyond posting new material, is your agency taking steps to make the posted information more useful to the public, especially to the community of individuals who regularly access your agency's website?

Yes.

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

FAA posted records in multiple formats and employs contract support staff to remediate records for Section 508 compliance prior to posting.

FHWA is in the process of upgrading its FOIA public webpage to improve the user experience and allow easier updates to the webpage. FHWA also maintains a robust Section 508(c) program that emphasizes proactively making records 508(c) compliant to prevent any delays in regard to making records publicly available.

FRA has redesigned its website and portions containing publicly accessible information-including the FOIA page-making it easier for the public to access agency information.

NHTSA's safety ratings and safety Issues (Recalls, Investigations, Consumer Complaints and Manufacturer Communications) information published to www.nhtsa.gov 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 to identify recalls and investigations is another important feature that researchers and individuals quiet rely on regularly.

The Takata airbag recalls are the largest and most complex vehicle recalls in U.S. history. These recalls involve 19 vehicle manufacturers and approximately 67 million Takata airbag inflators in an estimated 41.6 million vehicles. A dedicated NHTSA Takata recall spotlight page ([Takata Air Bag Recall Spotlight | NHTSA](#)) has been published with an abstract list of affected vehicles and interactive visual charts along with a frequently asked questions (FAQ) for the consumers. This page is updated as new information becomes available.

PHMSA pipeline incident and enforcement data is accessible in various formats, including data tables for members of the public to access, sort, and review data as needed.

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

Yes. The FAA operates a decentralized FOIA program. As such, individual program offices receive FOIA requests for processing from the FAA's FOIA Program Management; each program office is responsible for processing the requests and responding directly to the requester. As FOIA Coordinators within the individual program offices become aware that records are being requested multiple times or if current events of public interest may spark an influx of FOIA requests, they contact the FAA FOIA Program Management Division to arrange for the records to be posted to the FOIA Library.

The FHWA FOIA Office collaborated with personnel from FHWA's Office of the Budget and Finance.

The FMCSA FOIA staff coordinated with the offices that manage the program where the records originated and FMCSA Chief Counsel before making proactive disclosures to ensure there would be no harm to the agency's operations.

Information posted on the FRA web page is coordinated through FHWA's Public Affairs office for posting to its web page.

The OST FOIA Office coordinated with the originating office prior to posting records to the FOIA webpage. OST also worked with the Office of the Chief Information Officer to make major changes or improvements to the FOIA webpage.

The PHMSA FOIA Office routinely collaborated with the Office of International, Governmental, and Public Affairs; and Public Liaisons in PHMSA's Office of Pipeline Safety to identify information requested outside of the FOIA process by members of the public and news media.

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

N/A

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 FOIA processing. The Attorney General's 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 began using during the reporting period to support your FOIA program.**

Even though the Department first began using the FOIAXpress system in 2021, during this past year the agency's FOIA professionals utilized additional capabilities of the system such as deduplication, automated reporting, and internal coordination/referrals. DOT FOIA professionals were taught these additional capabilities during bimonthly training sessions.

FRA used Everlaw to assist in the review and identification of duplicate records in large files.

MARAD began using an advanced scanning system to assist with processing complex FOIA requests.

- 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.**

All of DOT's Operating Administrations were able to use the FOIAXpress Electronic Document Review (EDR) function to deduplicate large swaths of records. The EDR also is able to identify the representative document from sets of contained e-mail chains among the

reviewed records. These functions saved many hours of review time when reviewing large sets of documents.

The OST FOIA Office used the eDiscovery function in Office 365 to conduct some e-mail searches for requests. Conducting these centralized e-mail searches saves the time and inconvenience of tasking the individual custodians to conduct the search. In addition, a centralized search allowed the FOIA Office to verify and document the criteria used during the search.

- 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. The OST FOIA Office reviews the DOT FOIA websites twice a year.

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

Yes.

- 6. If your agency did not successfully post all quarterly reports 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. 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.**

[2021 Annual FOIA Report to Congress - Raw Data | US Department of Transportation](#)

- 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?**

No. Two DOT components, FAA and OIG, maintain independent servers and are expecting to establish interoperability with the National FOIA Portal in early 2023.

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

N/A

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 FAA received 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. Airmen can request copies of their complete airman’s file by mailing a specific request form to the FAA or by submitting a written request stating their name, date of birth, and social security number or certificate number.

The FMCSA FOIA Office processed first-party requests with proper identification and/or authorization outside of the agency’s multi-tracking processes. These requests are processed immediately and are usually processed within 10 working days.

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.**

31.7

- 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.**

At the January 2023 DOT Monthly FOIA Meeting, this issue was briefed for the departmental FOIA Officers, and OST sent a follow-up e-mail reminding the FOIA Officers to adjudicate expedited processing requests within 10 calendar days or less.

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

Yes.

- 6. 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 2022?**

No.

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

Yes.

- 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.) x 100.**

89 percent.

- 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?**

N/A

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, the backlog in Fiscal Year 2022 did not decrease compared to Fiscal Year 2021.

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

Yes, the agency processed 18,958 requests in Fiscal Year 2022 compared to 14,754 in Fiscal Year 2021.

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 precautions

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

The agency's backlog increased primarily due to an increase in the number of requests received in Fiscal Year 2022, compared to Fiscal Year 2021. DOT received 19,090 requests in Fiscal Year 2022 compared to 15,740 requests in Fiscal Year 2021, a 21 percent increase.

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 FOIA Report: (backlogged requests from Section XII.A) divided by (requests received from Section V.A) x 100. This number can be greater than 100%. If your agency has no request backlog, please answer with “N/A.”

28 percent.

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?

No.

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

No.

16. If your agency’s appeal backlog increased during Fiscal Year 2021, please explain why and describe the causes that contributed to your agency not being able to reduce its backlog. When doing so, please also indicate if any of the following were contributing factors:

An increase in the number of incoming 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.

Impact of COVID-19 and workplace and safety precautions.

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

The Department saw an increase in the complexity of requests received. For example, the FAA received many appeals that involved the production of records from multiple program offices, with some requests being assigned to as many as five different program offices for processing and response. In addition, the OST FOIA Office received appeals requiring consultation with outside agencies to review their equities prior to an appellate determination by DOT.

- 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 2021 and/or has no appeal backlog, please answer with "N/A."**

222 percent.

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 2020 was asked to provide a plan for achieving backlog reduction in the year ahead. Did your agency implement a backlog reduction plan last year? If so, describe your agency's efforts in implementing this plan and note if your agency was able to achieve backlog reduction in Fiscal Year 2022?**

Yes, the components with some of the largest backlogs within DOT implemented backlog reduction plans in Fiscal Year 2022. DOT focused on bringing in more experienced FOIA analysts, as well as benefitting from increased efficiency in processing requests once the agency started using a centralized FOIA tracking system. The backlog reduction plan led to a 28 percent increase in the number of requests processed in Fiscal Year 2022.

- 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.**

The FAA FOIA office is continuing its practice of using coordinated business plan targets with those program offices contributing to the backlog. This adds a level of awareness both at the processing level, and at the organizational leadership level.

The FMCSA FOIA Division is working to address areas identified during their Fiscal Year 2022 FOIA evaluation. First will be human resources, which will include a mix of remedies that involve increasing the: (1) frequency and duration of details, (2) number of federal employees, (3) use of overtime, and (4) skill level or the number of people on the contract. Second will be the use of technology and working with the Chief Information Office (CIO), Public Affairs, and the Data Analysis Office to develop one or more approaches to actively promote and query the proactive disclosure of common carrier information. This will include the development of a dashboard that supports the FOIA electronic reading room (ERR) and provides the public with access to common carrier information. Finally, the FMCSA FOIA Division will improve management processes and strategies to include updating standard operating procedures (SOPs) addressing internal processes. FMCSA will also be adding 5 FTEs to the FOIA Division in Fiscal Year 2023.

The OST FOIA office is continuing its backlog reduction initiative, which it began in Fiscal Year 2020, that has led to three straight years of increased production. In addition, the OST FOIA office has hired two new Government Information Specialists to help lower the backlog. The additional analysts allowed the office to reorganize its process and assign an experienced analyst to serve as a “rover,” whose job it is to process older requests in the backlog. This will enable the office to close more older requests, as well as clusters of requests involving similar record sets.

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

Ten Oldest Requests

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

No.

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. If you had less than ten total oldest requests to close, please indicate that.

DOT closed 6 of its 10 oldest requests listed in our Fiscal Year 2021 Annual FOIA Report.

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

OST FOIA has assigned an analyst whose primary duty is to review and close older requests within OST's backlog.

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?

No.

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 VI.C.(5) of your Fiscal Year 2021 Annual FOIA Report. If you had less than ten total oldest appeals to close, please indicate that.

The Department did not close any of its ten oldest appeals.

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

FAA analysts examined the administrative files for the oldest requests and appeals and followed up with the appropriate offices to process. As a result, the Department closed six of its ten oldest requests.

Ten Oldest Consultations

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

No.

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 total oldest consultations to close, please indicate that.

The Department closed four of its ten oldest consultations.

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 FAA was able to close six of the Department’s ten oldest requests, none of its ten oldest appeals, and four of its ten oldest consultations in Fiscal Year 2022. The primary obstacles encountered by the FAA in closing its oldest appeals and consultations can be attributed to the age of the appeals and consults, staff turnover, and locating the original requests for consult. The FAA will coordinate its efforts to close more of the agency’s oldest requests, appeals, and consultations with the OST. OST will check each quarter on FAA’s progress in closing these oldest requests.

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 litigation, common causes leading to litigation, and any other information to illustrate the impact of litigation on your overall FOIA administration.

The FAA had three FOIA litigation cases filed against it in Fiscal Year 2022, citing constructive denials. Once a request is in litigation, the program office(s) to which the request is assigned for processing and response may find it necessary to assign one coordinator to process the records, which often takes them away from processing other requests already in queue.

NHTSA had four requests that were the subject of litigation for the reporting period. Litigation is very time consuming and delays regular FOIA processing as NHTSA’s analysts must divert their attention to the litigation matter.

The OST FOIA Office processed 11 FOIA litigation complaints during the reporting period. These litigation complaints were brought because OST did not respond to the requests within the time period required by the FOIA. The requests generally asked for records regarding DOT political appointees concerning subjects including: the Bipartisan Infrastructure Law, the National Climate Task Force, Appointee Ethics Records, and the Secretary’s communications and activities. Processing these FOIA litigation complaints takes much time

and effort as the office must conduct a search of multiple custodians to retrieve potentially responsive records. The records must then be reviewed for responsiveness, whether the documents contain any information exempt under the FOIA, and finally OST must consult with numerous offices as these records usually contain equities from outside OST. As OST FOIA only had a FOIA Officer and two FOIA analysts during this time period, processing these time-consuming complaints placed a severe burden on the OST FOIA office.

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).

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