

# **U.S. Department of Transportation**



## **Chief FOIA Officer Report**

**March 2018**

**Chief FOIA Officer: Judith S. Kaleta**  
**Deputy General Counsel**

**U.S. Department of Transportation**  
**2018 Chief FOIA Officer Report**  
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I am pleased to show in this ninth annual Chief FOIA Officer Report that the Department of Transportation (DOT or Department) continues its commitment to improving its FOIA program. This report covers the period of March 2017 to March 2018. Statistical information related to backlogs is based on data from DOT's FY 2017 statistical annual FOIA report.

**DOT's FOIA Structure**

As DOT's Chief FOIA Officer, I am responsible for providing high-level oversight and support to the Department's FOIA programs, and I recommend 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 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 and respond to FOIA requests, along with the number of requests each received in FY 2017:

DOT Component Acronym	DOT Component Name	Number of Requests Received in FY 2017
<b>FAA</b>	Federal Aviation Administration	10,690
<b>FHWA</b>	Federal Highway Administration	424
<b>FMCSA</b>	Federal Motor Carrier Safety Administration	2,129
<b>FRA</b>	Federal Railroad Administration	416
<b>FTA</b>	Federal Transit Administration	321
<b>MARAD</b>	Maritime Administration	109
<b>NHTSA</b>	National Highway Traffic Safety Administration	337
<b>OIG</b>	Office of Inspector General	106
<b>OST</b>	Office of the Secretary of Transportation	429
<b>PHMSA</b>	Pipeline and Hazardous Materials Safety Administration	192
<b>SLSDC</b>	Saint Lawrence Seaway Development Corporation	11

During FY 2017, DOT expended a total of 120.455 staff-years of effort on its FOIA program, which included the work of 43 full-time FOIA staff. The remaining 77.455 staff-years of effort included 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 staff time.

Many components (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. The OST FOIA activities are primarily handled by the headquarters FOIA Office; however, one field office (Volpe National Transportation Systems Center in Cambridge, Massachusetts) responds directly to FOIA requests for its 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 implementation of the FOIA.

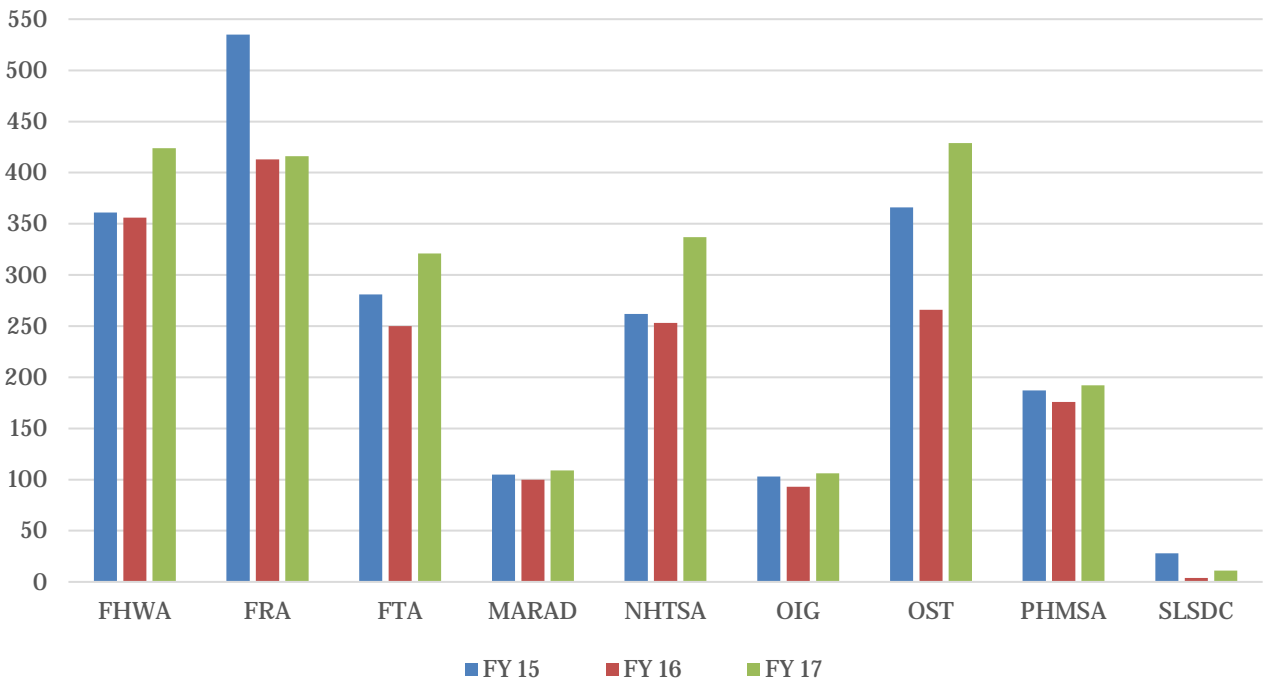
The DOT has a FOIA Public Liaison for each DOT component. FOIA requesters can raise concerns to the FOIA Public Liaisons about service they have received from the FOIA offices. The FOIA Public Liaisons report to the Chief FOIA Officer on their FOIA liaison-related activities.

### **Overview of FY 2017 Data**

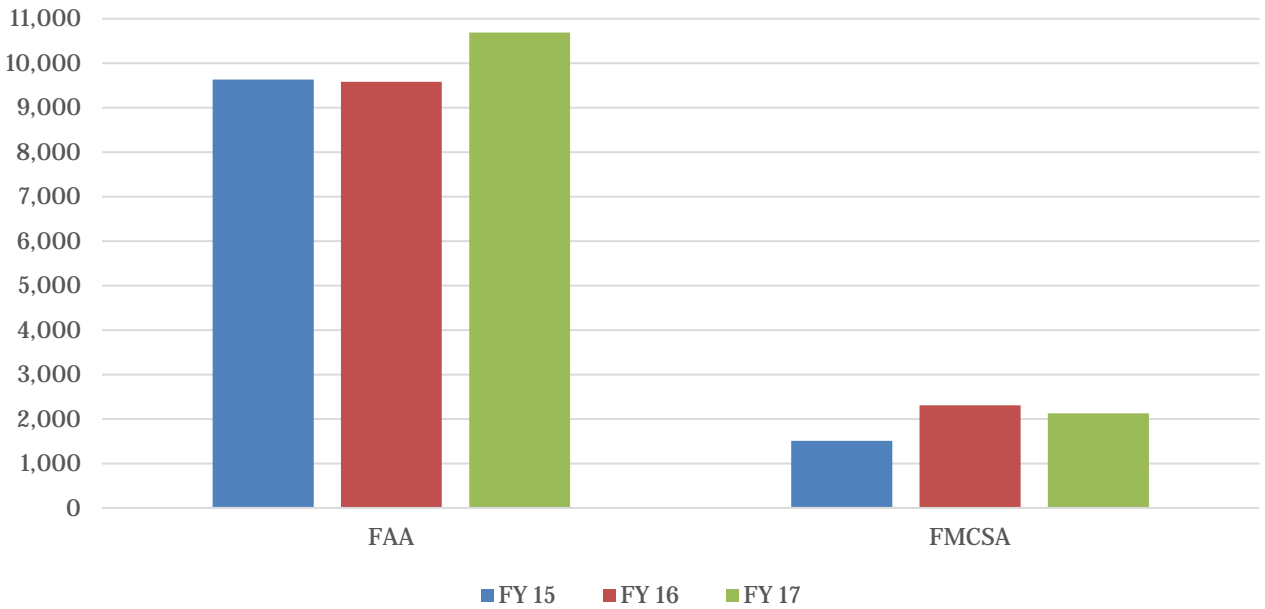
During the previous reporting period (FY 2016), 10 of DOT's 11 components received fewer FOIA requests than they received the previous fiscal year (FY 2015). The remaining component – FMCSA, which is the second largest DOT component in terms of number of requests received – received 53 percent more requests in FY 2016 than in FY 2015. In FY 2017, FMCSA, after its large increase the previous year, received approximately 8 percent fewer requests than in FY 2016. However, the remaining 10 DOT components saw an increase in the number of FOIA requests received in FY 2017.

Following are charts showing the number of FOIA requests received, by DOT component, in fiscal years 2015, 2016, and 2017.

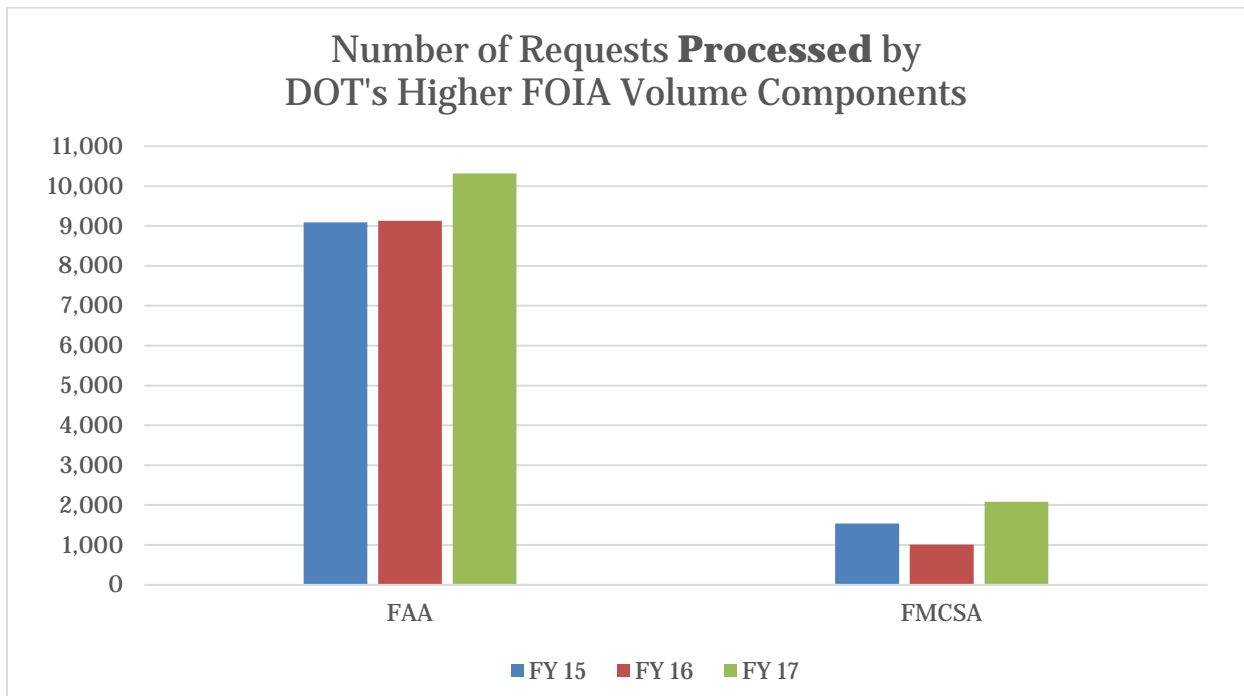
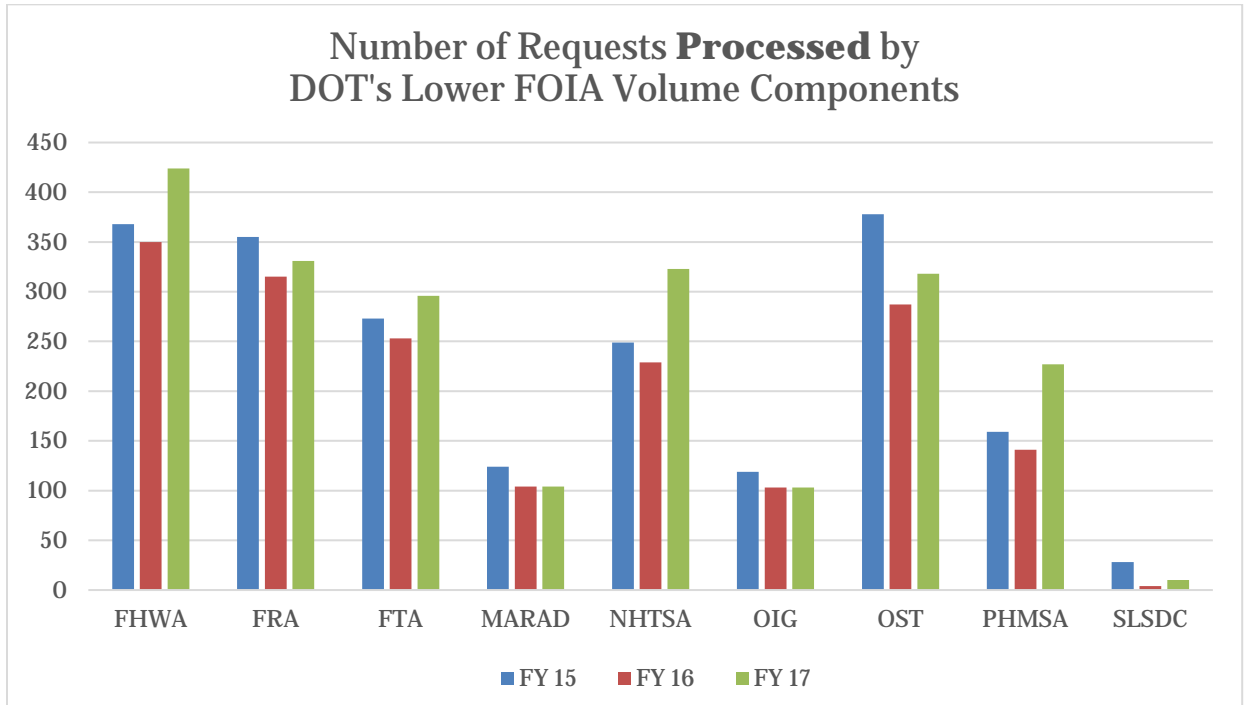
Number of Requests **Received** by  
DOT's Lower FOIA Volume Components



Number of Requests **Received** by  
DOT's Higher FOIA Volume Components



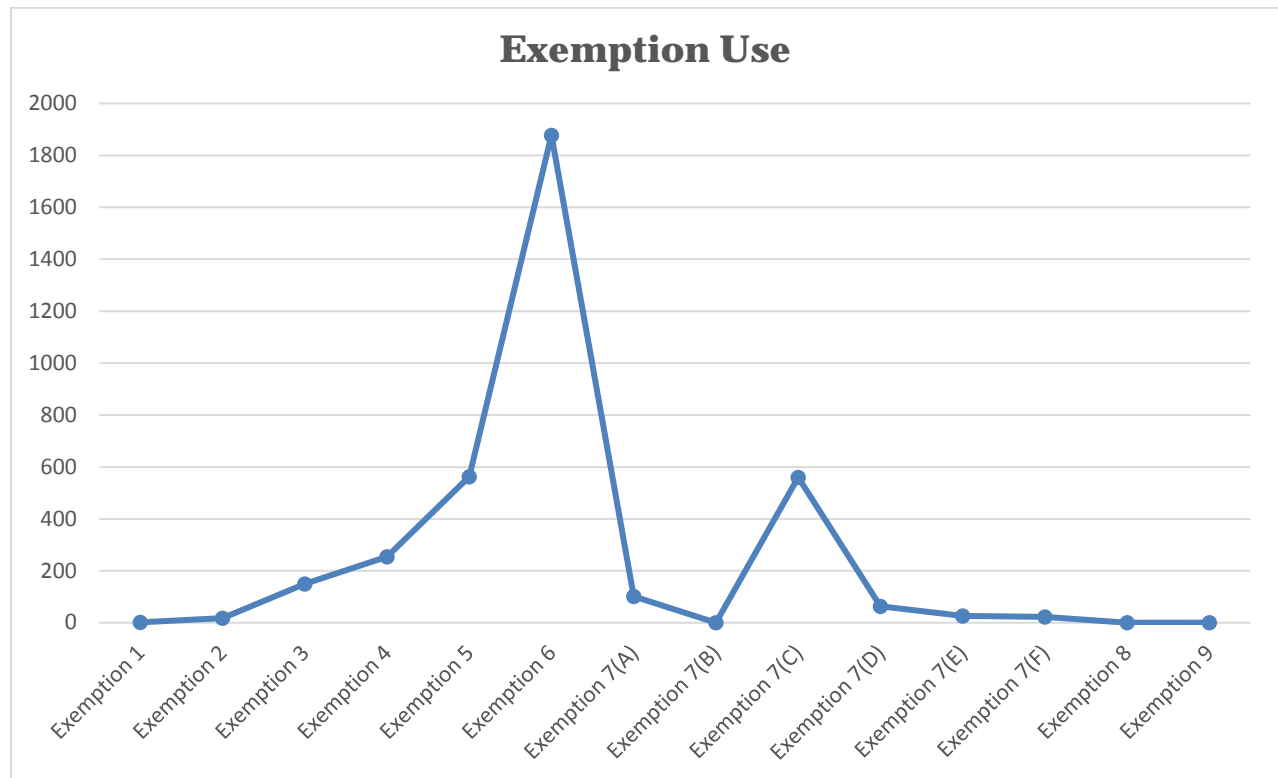
In FY 2017, DOT processed 14,539 FOIA requests. DOT processed nearly 22 percent more FOIA requests in FY 2017 than in FY 2016. Following are charts showing the number of FOIA requests processed, by component, for fiscal years 2015, 2016, and 2017.



In nearly 74 percent (or 10,711) of the 14,539 cases processed, records were located and a determination was made, based on exemptions, to fully release, partially release, or fully deny. Full or partial releases were made in over 98 percent of those cases.

In approximately 14 percent (or 2,033) of the 14,539 cases processed, no records were located. Approximately half of those were requests for information from FAA’s airmen database. Often, companies ask for enforcement and accident histories for pilots or mechanics they are considering hiring. A “no records” response indicates that DOT had no enforcement or accident history for the particular pilot or mechanic. Other requesters may seek air traffic control tapes. These are recycled after 15 days, so if a FOIA request arrives asking for a tape past that time, FAA ordinarily would have no responsive records. The Department also receives requests for correspondence between DOT and a particular individual or company for which we sometimes have no responsive records.

In those cases where information was partially released/partially denied or fully denied, the chart below shows the number of times each exemption was applied. As the chart demonstrates, the FOIA exemption most frequently invoked was Exemption 6, which protects the personal privacy of individuals.



## **Section 1: Steps Taken to Apply the Presumption of Openness**

The following are examples of steps that DOT has taken to ensure that the presumption of openness is being applied to all decisions involving FOIA, and that DOT FOIA professionals are appropriately trained.

### ***Training for FOIA Professionals***

DOT employees in various components attended a wide variety of FOIA training sessions. This included formal training sponsored by the Department of Justice's Office of Information Policy (DOJ/OIP), such as *Introduction to the FOIA*, *FOIA for Attorneys and Access Professionals*, *FOIA Litigation Seminar*, and *Advanced FOIA Seminar*. In addition, many DOT FOIA professionals attended the annual 3-day National Training Conference sponsored by the American Association of Access Professionals (ASAP), viewed various ASAP-sponsored FOIA educational webinars, and attended ASAP-sponsored luncheon seminars. Several DOT employees also made use of DOJ/OIP's online in-depth training module designed for FOIA professionals.

FOIA professionals throughout DOT attended OST-sponsored monthly meetings that included FOIA updates and training. In addition, the FAA FOIA Office conducted in-service training at its weekly staff meetings and monthly in-service training for its organizational FOIA Coordinators, then posted the training materials on FAA's internal FOIA Toolkit webpage for future reference by FAA's FOIA professionals. In FHWA, the headquarters FOIA Team provided one-on-one training to headquarters staff with FOIA responsibilities and training by phone for FOIA contacts in the program offices as needed. The FHWA headquarters FOIA Team also encouraged new FOIA staff members to watch the FHWA-specific FOIA training videos.

### ***Percentage of FOIA Professionals Trained***

Using the methods described above, as well as on-the-job training, DOT achieved its goal of providing substantive FOIA training to all DOT FOIA professionals during the reporting period.

### ***Outreach***

DOT has posted in its FOIA Reading Room logs of incoming Congressional correspondence received from 2005 through 2017. During the reporting period, the DOT FOIA Office reached out to its FOIA requesters who frequently request this type of information and provided them with a link to the Congressional correspondence logs. Feedback we received from requesters has been positive, and the number and scope of the requests for this information has been reduced.

### ***Educating non-FOIA Professionals on their FOIA Obligations***

DOT has taken many steps to ensure that non-FOIA professionals are made aware of their FOIA obligations, including making the DOJ/OIP online training module designed specifically for non-FOIA professionals available to all DOT employees.

During this reporting period, new employees in seven components (FMCSA, FRA, FTA, MARAD, NHTSA, OIG, and PHMSA) were given an in-person introduction to FOIA by a FOIA professional during the bi-weekly consolidated onboarding training sessions for new employees with those seven components, as well as given a copy of a DOT-specific FOIA infographic. The remaining four components also provide FOIA information to new employees as part of the onboarding process. The DOJ and/or DOT infographics have been included in the onboarding information for new employees. In addition, orientation briefings for non-career officials have included a FOIA component.

FAA conducted advanced training courses for specific program offices, focusing on their respective records and their most frequently applied exemptions. PHMSA conducted ad hoc FOIA training sessions for program staff and continued to require FOIA training in the electronic training management system for all new PHMSA Federal employees. MARAD conducted briefings for program offices and managers, as appropriate. FHWA updated its internal FOIA help webpage, which provides assistance to FHWA employees with questions about their FOIA obligations. NHTSA FOIA professionals regularly engaged with non-FOIA professionals at NHTSA and potential custodians were provided with a notice that lists the custodian's FOIA obligations.

All DOT components also conduct, as appropriate, one-on-one discussions with record holders on their obligations to furnish information under FOIA.

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

To ensure continued improvement to the effective and efficient management of our FOIA program, several years ago, I initiated an annual FOIA work plan. The annual plan, which is developed each year in coordination with the Departmental FOIA Office, identifies a series of objectives for our DOT FOIA program. The objectives are designed to provide more efficient and user-friendly service to FOIA requesters and improve the overall management of DOT's FOIA program. I personally oversee progress on the work plan through monthly meetings with the DOT FOIA Officer and her supervisors. The DOT FOIA Officer also holds monthly DOT-wide FOIA meetings, discussing best practices related to FOIA processes and progress related to the work plan described above.



### ***Processing Procedures***

For Fiscal Year 2017, the average number of days to adjudicate requests for expedited processing was 8.06.

In addition to the analysis conducted by the DOT FOIA Officer in conjunction with the Annual Statistical Report, several components conducted self-assessments of their FOIA programs during the reporting period.

All DOT components strive to make their processes as efficient and effective as possible. PHMSA self-assessed its FOIA program, which included evaluating the methods and processes used and areas for improvement. FHWA conducted a self-assessment of its FOIA program by reviewing current annual report data and comparing the data with information from prior years. Based on the review of its data, the FHWA FOIA Office sets goals for improving its effectiveness in targeted areas. MARAD performed a review of its FOIA activities using the reporting capability built into its FOIA processing software. The MARAD FOIA Office also regularly meets to go over policy and procedures to identify areas that can be improved. NHTSA regularly updates its processing procedures during the course of the year, and assesses its processing procedures on a case-by-case basis as the need arises. When the need for a correction is identified, NHTSA amends its processing procedures accordingly.

### ***Requester Services***

The primary way that DOT offers requesters a way to provide feedback about their experiences with the FOIA process is through our FOIA Public Liaisons. FOIA Public Liaison contact information is included in initial response letters and on DOT's FOIA Home Page, as well as on each component's FOIA Home Page. DOT also provides contact information in acknowledgement letters and other FOIA correspondence.

During the reporting period, DOT's Public Liaisons throughout the Department have reported approximately 225 contacts with requesters. Due to the number of requests they receive and process, the vast majority of these interactions were with FAA's FOIA Public Liaison.

### ***Other Initiatives***

DOT has taken many steps to ensure that its FOIA program operates efficiently and effectively. Following is an example from one component. PHMSA implemented the use of SharePoint technology to automate parts of its search process, which included automatically sending, tracking, and completing search tasks to PHMSA personnel in one spot. This new process tracks searches for the FOIA team, sends an auto-reminder to the searching office when a search becomes overdue, allows an individual to track the searches that have been assigned to them, and replaces the previously used pdf form. In

addition, PHMSA established a “FOIA Coordinator” role for its program offices. The primary role of the FOIA Coordinator will be tasking the search to employees within his/her office, and certifying the search when his/her office’s search is complete. FOIA Coordinator training was held in 2017 to help PHMSA employees assigned to this new role.

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

During this reporting period, DOT has increased the amount of “in demand” material on our agency websites using collaborative teams in the DOT components.

#### ***Posting Material***

DOT’s components all proactively post information about high-visibility/high-impact programs on their main page 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 each component’s briefing room](#) and to [featured DOT social media sites](#).

DOT’s components regularly monitor their FOIA logs to identify frequently requested records.

#### ***Examples of Information Posted***

Following are just a few examples of records that have been proactively posted or updated during the reporting period. FTA provides the public with extensive information on its webpage [FTA Safety Oversight of the Washington Metropolitan Area Transit Authority \(WMATA\) Metrorail System](#). OST continued to post information regarding [drug and alcohol testing](#) of safety-sensitive transportation employees in aviation, trucking, railroads, mass transit, pipelines, and other transportation industries. PHMSA maintained and updated [pipeline data](#). FAA continued to post [Unmanned Aircraft System](#) information. FAA also continued to update on a weekly basis its [aircraft tail number search](#) feature. [NHTSA’s 5-Star Safety Ratings](#) help consumers make smart decisions about safety when purchasing a vehicle. OIG continued to post information regarding its [audits](#) and [investigations](#). [FRA’s eLibrary](#) continues to provide a wealth of FRA documentation, containing over 5,000 documents searchable by date, subject, and type. FHWA maintains an easy-to-use webpage of [National Traffic and Road Closure Information](#), and [MARAD’s Open Data Portal](#) provides a variety of Maritime Data & Statistics

#### ***Publicizing Posted Material***

Many components reported publicizing important proactive disclosures for public awareness, including through various [DOT social media](#) outlets. Several components send e-mails to readers who have asked via a site-wide subscription process to receive news and information on specific topics or subjects. In addition to traditional press releases, events and press calls, many DOT components employ Facebook, Twitter, YouTube, and Instagram to further the reach of their messages. The heads of

components also contributed guest blogs to the [Secretary of Transportation's Blog](#). NHTSA actively publicizes large motor vehicle defect investigations. These publications regularly include a link on the agency's webpage to records related to these investigations. PHMSA, like other DOT components, makes use of press releases to highlight important proactive disclosures for public awareness.

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

Using a number of methods, including customer feedback, FOIA logs, and analytics, DOT is constantly striving to make information on its web pages more useful. As just one example, DOT recently launched an updated, user-friendly [airline consumer website](#). The redesigned website provides clear, useful information about passenger rights, as well as DOT's rules, guidance, and orders on key consumer issues. The launch of the new website coincided with the busy holiday traveling season, so that the traveling public had access to the most up-to-date consumer information. The website is an important part of the Department's efforts to ensure that air travelers know their rights. The redesigned website highlights content on topics of greatest concern to consumers, such as bumping, tarmac delays, flight delays and cancellations, flying with a disability, passengers' right to fly free from discrimination, and how to file a consumer complaint.

Several components also use mobile applications to reach their intended audiences. One such example is FAA's mobile app, B4UFLY, which provides drone and model aircraft users with situational awareness and considers the user's current or planned location in relation to operational restrictions. Indicators inform the user if model aircraft or drone operation is prohibited, or if there are specific actions the user must take in addition to flying safety.

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

Several DOT components use a de-duplication software and e-discovery databases to review records. We consider the use of this technology a best practice; therefore, it is a regular topic of discussion at monthly DOT-wide FOIA meetings. The software has saved the agency time by de-duplicating records, thereby automatically reducing the records under review at an initial review stage. Furthermore, the tool allows for multiple reviewers to simultaneously work on the same review, and enhances collaboration among the reviewers. The product allows for sophisticated searching to target responsive records, and allows a reviewer to find "the needle in the haystack." It has also served as a customer-friendly negotiation tool with requesters: DOT components have used the e-discovery tool to suggest search terms and immediately report back to requesters on the search results, which has helped narrow the scope of the request and hence reduce the number of documents under review. It also automatically categorizes and group records so that the requester can receive status updates on the types of records under review.

### ***Other Initiatives***

DOT successfully posted all four quarterly reports for FY 2017.

The link to DOT's raw data for FY 2016 is posted at:

<https://www.transportation.gov/individuals/foia/2016-annual-foia-report-congress-raw-data>.

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

DOT recognizes the importance of improving timeliness in responding to requests. This section addresses both time limits and backlog reduction.

### ***Simple Track Requests***

In FY 2017, all but one component placed simple requests in a separate track. Beginning in FY 2018, the remaining DOT component began placing simple requests on a separate track for simple requests. During FY 2017, the average number of days to process simple requests was 62.52. Of DOT's 14,539 requests processed, approximately 83 percent were placed in the simple track.

### ***Backlog of Initial Requests***

Three components (FAA, PHMSA, and OIG) reduced their backlogs. In the remaining eight components, four experienced relatively minor backlog increases (FHWA, MARAD, FTA, and SLSDC) and four experienced more significant backlog increases (FMCSA, FRA, NHTSA, and OST). FMCSA's backlog increased by 7 percent; FRA's by 25 percent; NHTSA's by 10 percent; and OST's by 164 percent.

Overall, our backlog of pending requests increased by 7 percent. The increase in the initial request backlog was the result of an increase in the number of FOIA requests received by the majority of the components and an increase in the complexity of requests received.

The increase in the number of complex requests relates to high public interest in Departmental activities related to matters such as the new Administration (OST), unmanned aircraft systems (FAA), Positive Train Control (FRA), derailments (FRA), enforcement actions related to vehicle manufacturers (NHTSA), and pipeline and hazardous materials incidents/accidents (PHMSA) – to name a few. In addition, when FOIA requests end up in litigation, resources are necessarily diverted from regular FOIA processing.

DOT's backlog of initial requests is approximately 25 percent of the number of requests received during FY 2017.

### ***Backlog of Appeals***

At the end of FY 2017, the backlog of appeals rose to 107, which was an increase from the previous year's backlog of appeals. The increase in the backlog of appeals is primarily attributable to the complexity of the appeals received. DOT's backlog of appeals is approximately 75 percent of the number of appeals received during FY 2017.

### ***Backlog Reduction Plans***

Between FY 2016 and FY 2017, our backlog of initial requests and appeals increased. Therefore, we developed a backlog reduction plan for initial requests and appeals.

During FY 2017, our backlog reduction plan focused on the components that saw an increase in their backlogs (FAA, FMCSA, FRA, NHTSA, and PHMSA), and in particular, FAA, FMCSA, and FRA. Due to competing demands, we spent less time than we had hoped on monitoring and reducing these backlogs. During FY 2018, we will renew our efforts to work with those DOT components that were not able to reduce their backlogs -- FMCSA, FRA, NHTSA, and OST. I have asked the DOT FOIA Officer to provide me with quarterly reporting data, which we will discuss each quarter. We will follow up with those DOT components with increases in their backlogs.

### ***Status of Ten Oldest Requests, Appeals, and Consultations***

In FY 2017, we closed six of the ten oldest requests that were pending as of the end of FY 2016. All six were withdrawn.

In FY 2017, we closed six of the ten oldest appeals that were pending as of the end of FY 2016.

In FY 2017, we closed 1 of the 4 pending consultations.

### ***Additional Information on Ten Oldest Requests, Appeals, and Consultations & Plans***

Four initial requests, four appeals, and three consultations on the "10 oldest" lists were not closed in FY 2017. This was due to staffing vacancies, the complexity and volume of the responsive records, and competing priorities.

DOT's remaining "10 oldest" initials, appeals, and consultations from FY 2017, as well as DOT's "10 oldest" initials, appeals, and consultations from FY 2018, are all assigned to FAA.

### ***Backlog Reduction Plan for Closing "10 Oldest" Requests, Appeals, and Consultations***

Our backlog reduction plan for closing the "10 oldest" requests, appeals, and consultations will focus on FAA. The DOT FOIA Office will have in-person meetings with FAA to discuss all cases on these

lists. I will personally reach out to senior FAA program managers to seek assistance from them if there is a need for additional progress in closing these oldest requests.

### ***Success Story***

DOT would like to highlight a website that was redesigned to make it easier to use for the traveling (by airplane) public.

DOT recently launched an updated, user-friendly [airline consumer website](#). The redesigned website provides clear, useful information about passenger rights, as well as DOT's rules, guidance, and orders on key consumer issues. The launch of the new website coincided with the busy holiday traveling season, so that the traveling public had access to the most up-to-date consumer information. The website is an important part of the Department's efforts to ensure that air travelers understand their rights. The redesigned website highlights content on topics of greatest concern to consumers, such as bumping, tarmac delays, flight delays and cancellations, flying with a disability, passengers' right to fly free from discrimination, and how to file a consumer complaint.