

U.S. Department of Transportation



Chief FOIA Officer Report

March 2019

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

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I am pleased to show in this tenth 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 2018 to March 2019. Statistical information related to backlogs is based on data from DOT's FY 2018 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 2018:

DOT Component Acronym	DOT Component Name	Number of Requests Received in FY 2018
FAA	Federal Aviation Administration	11,407
FHWA	Federal Highway Administration	373
FMCSA	Federal Motor Carrier Safety Administration	1,463
FRA	Federal Railroad Administration	428
FTA	Federal Transit Administration	297
MARAD	Maritime Administration	77
NHTSA	National Highway Traffic Safety Administration	295
OIG	Office of the Inspector General	82
OST	Office of the Secretary of Transportation	399

DOT Component Acronym	DOT Component Name	Number of Requests Received in FY 2018
PHMSA	Pipeline and Hazardous Materials Safety Administration	214
SLSDC	Saint Lawrence Seaway Development Corporation	14

During FY 2018, DOT expended a total of 100.955 staff-years of effort on its FOIA program, which included the work of 43 full-time FOIA staff. The remaining 57.955 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. The OST's FOIA activities are primarily handled by the headquarters FOIA Office; however, one field office at the Volpe National Transportation Systems Center in Cambridge, Massachusetts, responds directly to FOIA requests for Volpe records.

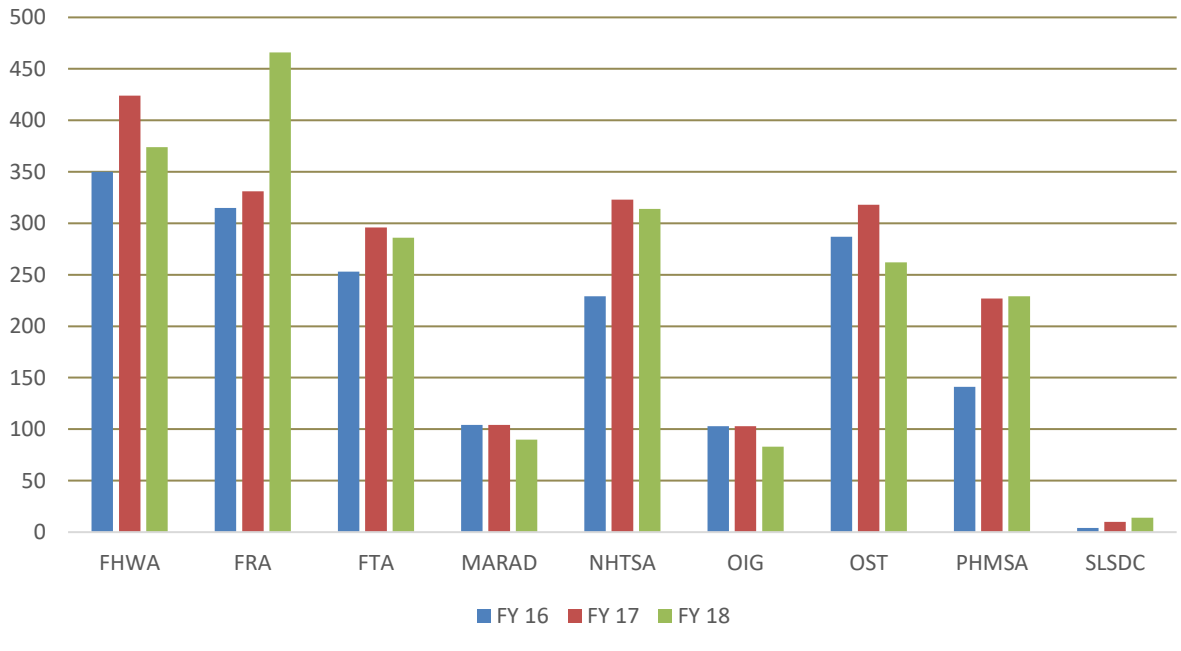
For FAA and FHWA, FOIA activities are shared among numerous field and headquarters program offices. Each of the decentralized offices receives FOIA requests, searches for records, reviews records, and makes releasability determinations. Even in these decentralized programs, there is an office at headquarters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

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.

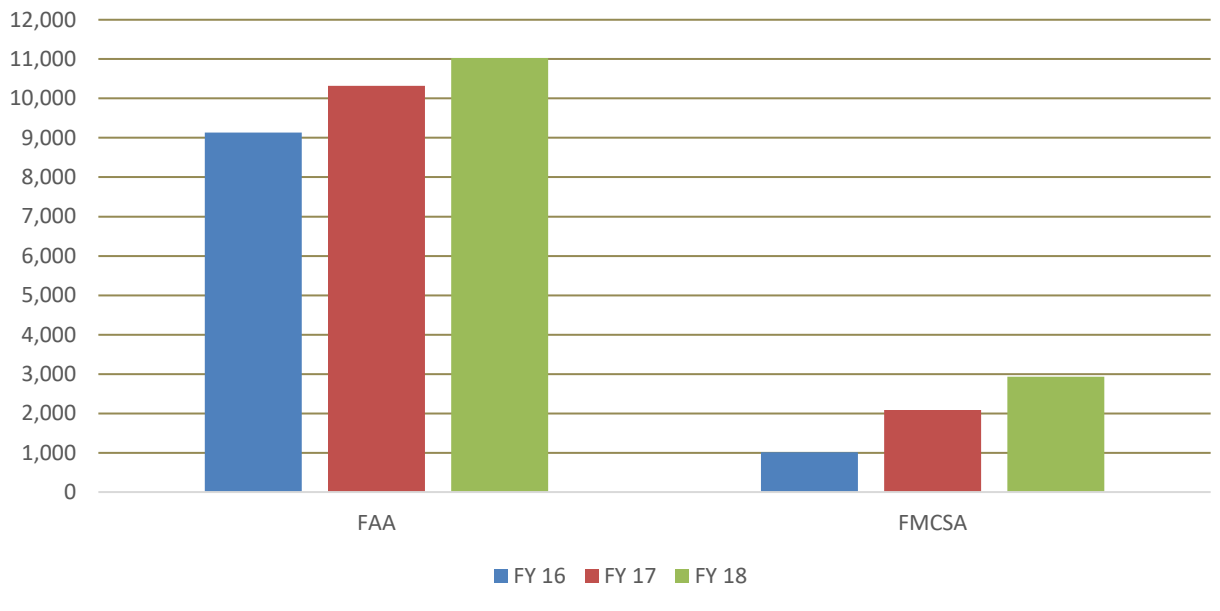
Overview of FY 2018 Data

During FY 2018, DOT processed 16,082 FOIA requests. DOT processed nearly 11 percent more FOIA requests in FY 2018 than in FY 2017. Following are charts showing the number of FOIA requests processed, by component, for fiscal years 2016, 2017, and 2018.

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

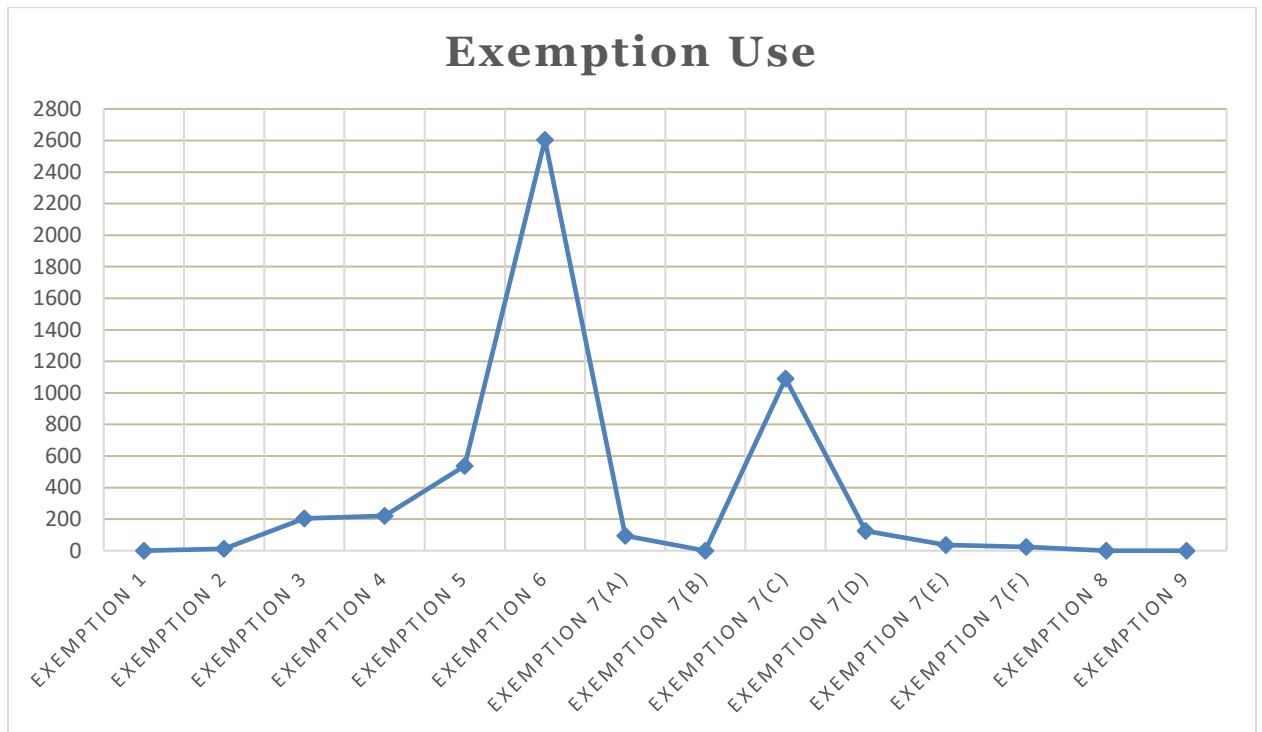


Number of Requests **Processed** by DOT's Higher Volume FOIA Components



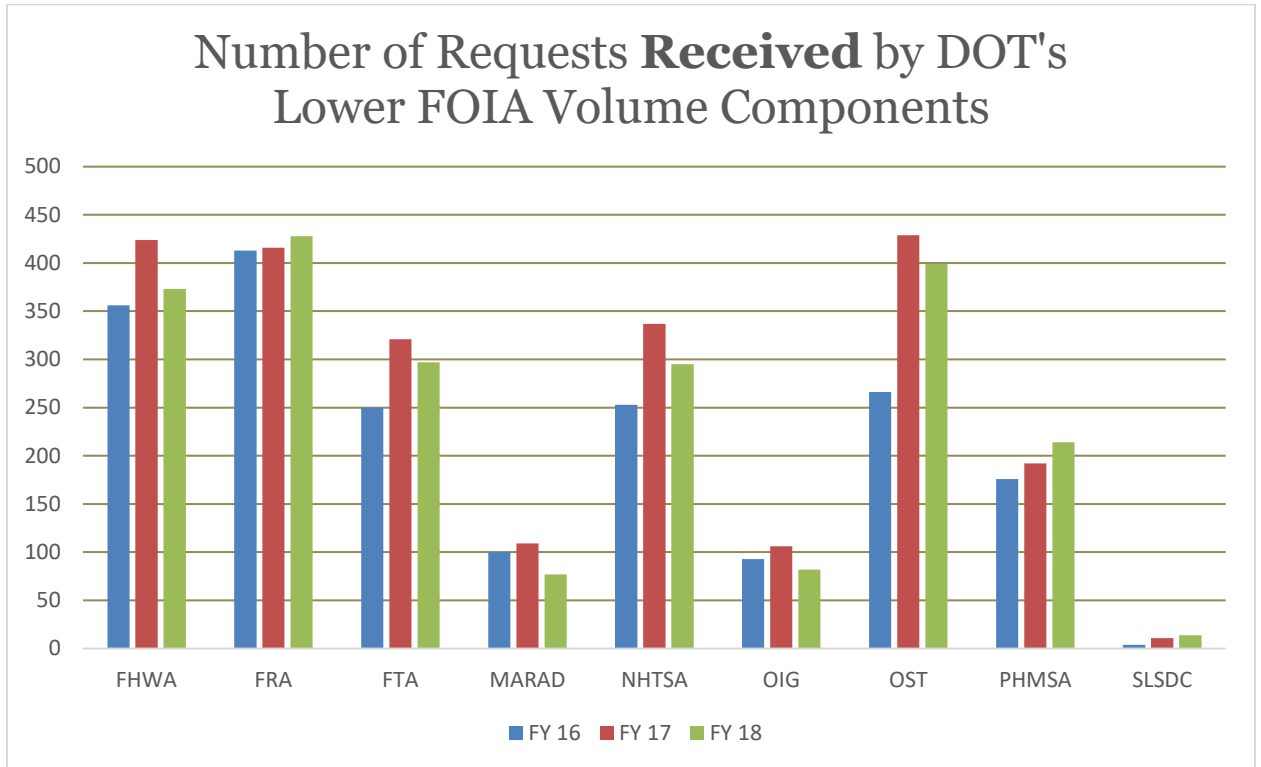
In nearly 74% percent (or 11,862) of the 16,082 cases processed, records were located and a determination was made, after considering possible exemptions, to fully release, partially release, or fully deny the records. Full or partial releases were made in nearly 99 percent of those cases.

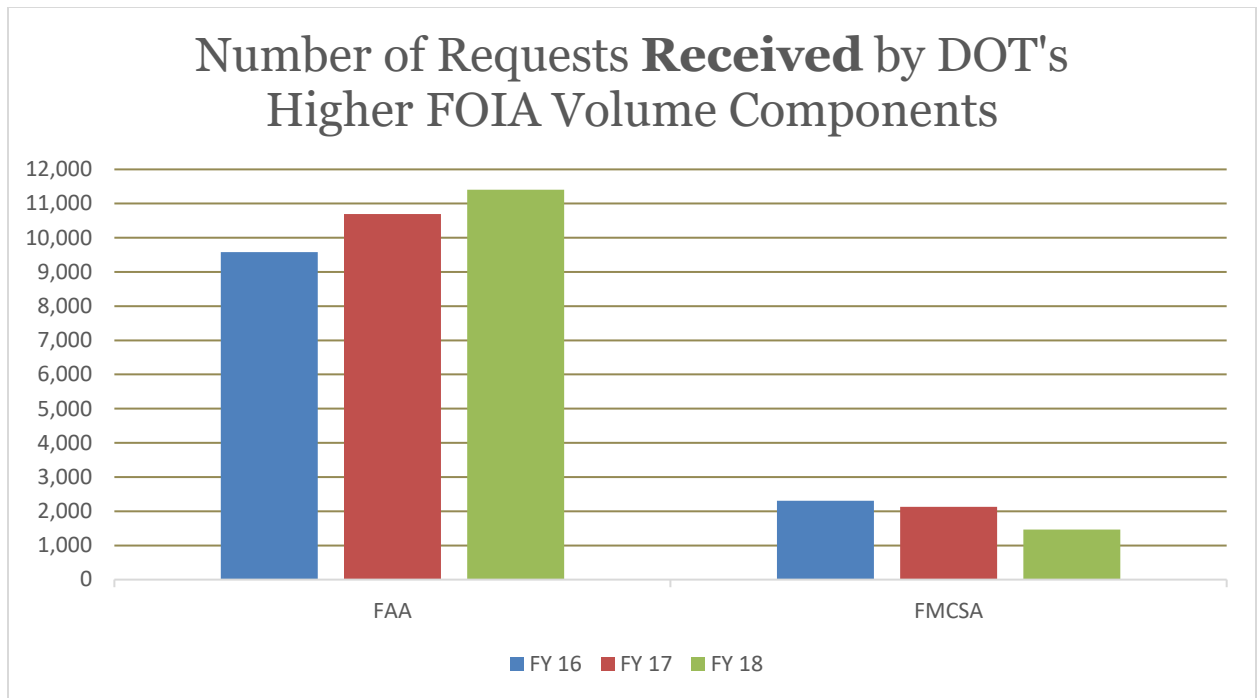
In those cases where information was partially released/partially denied or fully denied, the chart below shows the number of times each exemption was applied. As the chart demonstrates, the FOIA exemption most frequently invoked was Exemption 6, which protects the personal privacy of individuals.



In approximately 14 percent (or 2,259) of the 16,082 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 the particular pilot or mechanic had no enforcement or accident history. 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.

During FY 2018, 7 of DOT's 11 components received fewer FOIA requests than they received the previous fiscal year. However, the largest DOT component in terms of numbers of requests received, FAA, received almost 7 percent more requests in FY 2018 than in the previous fiscal year, which is reflected in the chart below. The increase in requests to FAA during this fiscal year led to DOT receiving approximately the same number of requests in FY 2018 (15,049) as in FY 2017 (15,164).





Section I: 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.

FOIA Leadership

By delegation of the Secretary at 49 CFR Section 127(a), the career Deputy General Counsel, a position at or above the Assistant Secretary level, serves as the Department’s Chief FOIA Officer. DOT’s Chief FOIA Officer is Deputy General Counsel Judith S. Kaleta.

FOIA Training

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, Annual FOIA Report Refresher Training, Chief FOIA Officer Report Refresher Training, 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.

DOT components also conducted many different types of in-house FOIA training or had personnel attend professional development courses:

FOIA professionals throughout DOT attended OST-sponsored monthly meetings that included FOIA updates, training, and discussions of current issues affecting FOIA processing.

The FAA FOIA Office conducts in-service training at its weekly staff meetings and monthly in-service training for its organizational FOIA Coordinators. The training materials are then posted on FAA's internal FOIA Toolkit webpage for future reference by FAA's FOIA professionals.

The DOT OIG FOIA Office had its personnel attend numerous FOIA/Privacy training sessions this past year. DOT OIG personnel attended the following training: Records Management University, 930GOV Annual Conference, 2018 Federal Privacy Summit, as well as many FOIA and Privacy roundtables and meetings.

FMCSA FOIA employees attended a variety of FOIA training sessions, including Graduate School USA. The FMCSA FOIA team has also conducted cross-training sessions on processing specific types of FOIA request to provide back fill and a well-rounded team.

DOT has also 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. However, at this point there has not been consideration of including FOIA-related performance standards in employee work plans for non-FOIA professionals.

During this reporting period, we developed a process for ensuring that all new DOT employees understand their FOIA responsibilities. New employees in seven components (FMCSA, FRA, FTA, MARAD, NHTSA, OIG, and PHMSA) are given an in-person introduction to FOIA by a FOIA professional during the consolidated onboarding training for those seven components, and receive a copy of the latest DOJ-created FOIA infographic. The remaining four components also provide FOIA information to new employees as part of the onboarding process.

FAA has included the DOJ online training for all employees as well as the Executive Briefing on the FOIA in its electronic Learning Management System training inventory. The DOJ infographic (and more recently, a DOT-specific infographic) has been included in the onboarding information for new employees. FAA conducted advanced training courses for specific program offices focusing on their records and the most frequently applied exemptions.

PHMSA has undertaken several training efforts to inform non-FOIA professionals of their obligations under FOIA. Specifically, PHMSA conducted FOIA training sessions for attorneys, including refresher training focused on matters of interest, and training for new attorneys; conducted FOIA training sessions focused on matters of interest for the program staff in multiple Regional Offices; and required FOIA training in the electronic training management system for all new PHMSA Federal employees.

At the OIG Office of Investigations' In-Service training, the FOIA Team Supervisor or Chief Counsel presented on the FOIA process and common questions about FOIA requests for investigative records. The In-Service training was required for all OIG Special Agents and other employees with the Office of Investigations also attended. This training was given to over 100 employees for approximately 10-15 minutes.

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 2018. The DOT FOIA Office has 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 have received from requesters has been positive, and the number and scope of the requests for this information has been reduced.

The FMCSA FOIA team and FMSCA Office of External Communications collaborated to create better procedures in processing requests from media outlets. This process improved communication between the offices and resulted in a faster response to accommodate media timeframes.

Other Initiatives

All DOT components 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 his supervisors. The DOT FOIA Officer discusses best practices related to FOIA processes, as well as progress related to the work plan in monthly DOT-wide FOIA meetings.

Processing Procedures

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.

In the reporting period, PHMSA developed a matrix that identifies FOIA process actions by targeted timeframes. PHMSA broke down targeted processing actions by FOIA processing workdays, which helped ensure that PHMSA met its backlog reduction goals for the reporting period. PHMSA identified a timeframe for completing intake, searches, and responses, and outlined major steps to complete in overall case management. For instance, PHMSA found that it may prioritize complete processing of simple requests while providing interim responses in the more challenging cases.

Additionally, OIG routinely sets goals and monitors the progress of its FOIA caseload by having bi-weekly internal meetings with the FOIA Team. OIG schedules meetings with non-FOIA agency staff to discuss and set goals for completion of FOIA-related special projects, when needed. OIG also participates in quarterly meetings with the Front Office executive staff. Finally, the OIG conducts regular self-assessments of its FOIA program.

For FY 2018, the average number of days to adjudicate requests for expedited processing was 5.

Requester Services

During the reporting period, FOIA Public Liaisons throughout the Department have reported approximately 260 contacts with requesters. Due to the number of requests FAA receives and processes, 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. In OST, the FOIA Office worked to streamline the process by accepting and housing collected documents in shared electronic directories.

Section III: Steps Taken to Increase Proactive Disclosures

During this reporting period, DOT has taken concrete steps to increase the amount of “in demand” material on our website using collaborative teams in each DOT component.

Posting Material

DOT’s components all proactively post 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 each component’s briefing room](#) and to [featured DOT social media sites](#).

Examples of Information Posted

Following are just a few examples of records that have been proactively posted or updated during the reporting period:

Under our proactive disclosure plans, DOT components have posted their most recent FOIA logs.

FTA is proactive about posting information on its website and in its Electronic Reading Room. FTA regularly posts Project Management Oversight Contractor Monthly Monitoring Reports for New York’s Metropolitan Transit Authority’s Second Avenue Subway and East Side Access. This is a subject area that has attracted a lot of attention over the years. Also, FTA posted its [inspection reports](#) for May, June and July 2018, and updated [summary inspection data](#), [SafeTrack inspection data](#), and [Corrective Action Plan status](#).

FMCSA posted the most recent edition of the [Electronic Field Operations Training Manual](#) (eFOTM Version 6.1).

OST continued to post information related to its [Transportation Investment Generating Economic Recovery \(TIGER\) grant program](#), information regarding [drug and alcohol testing](#) of safety-sensitive transportation employees in aviation, trucking, railroads, mass transit, pipelines, and other transportation industries, and the monthly [Air Travel Consumer Report](#), which provides information on the quality of services provided by the airlines.

In FY 2018, the PHMSA FOIA team identified improvements to make its [FOIA Electronic Reading Room \(ERR\)](#) website more user friendly for a variety of stakeholders, including news media outlets and public interest groups. The FOIA team: (1) made submitting a FOIA requester easier for stakeholders; (2) ensured that stakeholders can easily locate content they are most interested in viewing; and (3) ensured that content organization transfers well to different devices. One of the major improvements completed in FY 2018 included updating and revising “[How to Submit a FOIA Request](#).”

PHMSA included links to FOIA.gov, gave a brief description of what a requester can expect during the FOIA process, and provided more information on FOIA fees. The link to the PHMSA FOIA request form on FOIA.gov allows stakeholders to submit FOIA requests more easily. Another major improvement completed in FY 2018 was updating and reorganizing the content of the FOIA Electronic Reading Room (ERR). We standardized the organization by grouping the four categories of records (1-Final Opinions and Orders; 2-Policy Statements; 3-Staff Manuals and Instructions; and 4-Frequently Requested Records) in the ERR into “Pipeline,” “Hazmat,” and “Other” sections. This allows stakeholders to locate and identify the records they are looking for more quickly. Listing the records by program allows stakeholders to more easily determine if the information they are seeking is already available online. We also created a standard nomenclature for records and removed outdated content.

FHWA posted the FHWA FOIA logs, Small Purchase Credit Card Holders, and FHWA’s Safety Strategy regarding ET-Plus Guardrail End Terminals in the [FHWA Electronic Reading Room](#).

FAA posted additional Unmanned Aircraft System information, including a [Geographic Listing of sUAS Registry Enrollments and Registrants](#) and [Reported Encounters with Unmanned Aircraft Systems](#) (UAS). FAA also continued to update on a weekly basis its [aircraft tail number search](#) feature.

[FRA’s eLibrary](#) continues to provide a wealth of FRA documentation, containing over 5,000 documents searchable by date, subject, and type, and the [Rail Network Development webpage](#) includes a map created using Geographic Information Systems (GIS), allowing users to view and print precise maps of passenger rail, freight stations, grade crossings, and more through an interactive interface.

NHTSA disclosed large amounts of information ranging from grant funding tables ([2013](#), [2014](#), [2015](#), [2016](#), [2017](#) and [2018](#)) to enforcement cases involving allegedly defective or noncompliant motor vehicles and equipment.

SLSDC posted an [interactive shipping map and shipping schedule](#) for vessels transiting the Great Lakes-St. Lawrence Seaway System.

OIG continued to post information regarding its [audits](#) and [investigations](#).

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, Instagram, and Vine to further the reach of their messages.

The Agency currently relies on each component to use its internal tracking system to identify records that have been requested and released three or more times. The Agency plans to implement an Agency-wide system in 2019, which will allow this determination to be made in a centralized way.

Section IV: Steps Taken to Greater Utilize Technology

The Agency is currently evaluating ways to leverage more advanced technology to conduct searches in 2019.

The Agency regularly reviews its FOIA websites to ensure the most up-to-date information is available to requesters.

Making Material Posted Online More Usable

FMCSA publishes quarterly 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 it was regularly published in the electronic reading room.

FMCSA Analysis, Research and Technology publishes statistical data on Motor Carrier Safety Progress and Large Truck and Bus Crashes.

The OIG FOIA Office continues to use state of the art software to redact documents, as well as eDiscovery software to search for emails and minimize duplicative records.

In the reporting period, the Agency continued its use of advanced technology to process FOIA requests. DOT components use a file share site as needed to facilitate the sharing of records when the records are too large to email. This allows requesters (or other agencies for consultations) to receive records more quickly. Even more, the Department uses a de-duplication software and an eDiscovery database to review records. This eDiscovery software has saved the agency time by, for example, de-duplicating records, thereby automatically reducing the records under review at an initial review stage. Furthermore, the software allows multiple reviewers to simultaneously work on the same review, and enhances collaboration among the reviewers. This eDiscovery software allows for sophisticated searching to target responsive records, and allows a reviewer to find “the needle in the haystack.” Lastly, our eDiscovery capability has served as a customer-friendly negotiation tool with requesters. Agency components have used it 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. The Agency’s software also categorizes and group records so that the requester can receive status updates on the types of records under review.

Other Initiatives

As required by DOJ, DOT successfully posted all of the required quarterly FOIA reports for FY 2018.

Also, the Agency has posted raw data up through FY 2018:

<https://www.transportation.gov/individuals/foia/dot-annual-foia-reports-congress>

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

As of FY 2018, all components placed simple requests in a separate track.

During FY 2018, the average number of days to process simple requests was 45. Of DOT's 16,082 requests processed, approximately 81 percent were placed in the simple track.

Backlog of Initial Requests

Seven components (FMCSA, MARAD, FRA, FTA, NHTSA, PHMSA and SLSDC) either reduced their backlogs or held steady from the previous year. In the remaining four components (FAA, FHWA, OST and OIG), backlogs increased, in some cases significantly. FAA's backlog increased by 15 percent, and OST's increased by 103 percent. However, because FMCSA reduced its backlog by 75 percent, and because FRA (8.6 percent), MARAD (80 percent), NHTSA (22 percent), and PHMSA (17.3 percent) also posted reductions, the Department's backlog decreased by over 32 percent in FY 2018.

The decrease in the backlog occurred even with continuing high public interest in Departmental activities related to matters such as unmanned aircraft systems (FAA) and 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. The Department also continued to divert resources to litigation resulting from FOIA requests for these high visibility programs.

DOT's backlog of initial requests is 24.9 percent of the number of requests received during FY 2018.

Backlog of Appeals

At the end of FY 2018, the backlog of appeals decreased by 8.4 percent to 98. DOT's backlog of appeals is 127 percent of the number of appeals received during FY 2018.

Backlog Reduction Plans

Between FY 2017 and FY 2018, our backlog of initial requests and appeals decreased by 32 percent and 7.5 percent respectively. However, with several components showing increases (some significant) in the backlog of initial requests, we will develop a backlog reduction plan for the component with the largest percentage increase in the backlog. The OST initial request backlog has risen from 56 to 300 in two years. This is due to increased interest in OST records, as requests received has increased from 266 in FY 2016 to 828 combined in FY 2017 and FY 2018. The complexity of the requests submitted to OST has also increased, as at the end of FY 2016 OST had 69 complex requests pending. That number increased to 307 complex requests pending at the end of FY 2018. We plan to put technology to greater use, as well as better tracking techniques, to lower the OST backlog in FY 2019.

The Department is currently evaluating FOIA software systems that could be used to track, task, and process FOIA requests for all components of the Agency. An enterprise system would benefit the entire Agency, but especially OST with its Department-wide responsibilities. Additionally, OST will report to me its progress in better tracking the status of pending requests. Tracking will allow the component to better target which actions need to be completed for each request in order to complete processing.

Status of Ten Oldest Requests, Appeals, and Consultations

In FY 2018, we closed six of the ten oldest requests that were pending as of the end of FY 2017. Of the six that were closed, one was withdrawn. There was no interim response issued for that one withdrawn request. Of the remaining ten oldest requests, none remain open due to a pending consultation with another agency.

In addition to addressing our ten oldest requests, steps taken to reduce the overall age of our request backlog include an increased focus specifically on those older pending requests. Methods to reduce the age of our request backlog include more persistent follow-up activities with the program offices from whom we are awaiting records, implementing more efficient search methods for records, and reorienting FOIA staff work-flow to add emphasis to closing those older requests.

In FY 2018, we closed 3 of the ten oldest appeals that were pending as of the end of FY 2017.

In FY 2018, we closed 1 of the 5 pending consultations.

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

Four initial requests, seven appeals, and four consultations on the “10 oldest” lists were not closed in FY 2018. 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 2018 are assigned to the 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 the FAA, as they currently have the 10 oldest initial requests, appeals, and consultations. The DOT FOIA Office will have in-person meetings with FAA to discuss the progress of closing the oldest initial requests, appeals, and consultations. I will personally reach out to senior FAA program managers to discuss their needs to make additional progress in closing the oldest requests.

Success Story

Following a substantial increase in its initial request backlog, the FMCSA FOIA team conducted a cleanup project in FY 2018 that included reaching out to requesters and focusing on processing simple requests. FMCSA’s most common requesters are attorneys representing individuals involved in motor carrier accidents. The team contacted these requesters to discuss the scope of their requests, turning some from complex to simple, and FMCSA was able to close requests no longer needed as cases may have been resolved. By communicating with requesters and processing simple requests, the team now has more time to focus on complex requests. One other factor in reducing FMCSA’s backlog was steady FOIA Specialist contract support. The end result of FMCSA’s backlog reduction plan was a 75 percent backlog reduction (1935 in FY 2017 to 473 in FY 2018). Other notable FMCSA achievements include: a 41 percent increase in requests processed (2083 in FY 2017 to 2932 in FY 2018), a 72 percent decrease in pending requests (2045 in FY 2017 to 576 in FY 2018), and a significant decrease in the number of processing days for both simple (32 percent) and complex (20 percent) requests.