



UNITED STATES GOVERNMENT
National Labor Relations Board
Office of Inspector General

Memorandum

June 10, 2005

To: Jacqueline Young
Freedom of Information Officer

From: Jane E. Altenhofen
Inspector General

A handwritten signature in cursive script that reads "Jane E. Altenhofen".

Subject: Inspection Report No. OIG-INS-36-05-02: FOIA Processing

We initiated this inspection in March 2005 to determine whether the National Labor Relations Board (NLRB or Agency) filled requests for information made under the Freedom of Information Act (FOIA) in a timely manner.

The Agency responded to FOIA requests in a timely manner. In Fiscal Year (FY) 2004, the Agency processed 5,295 requests in a median of 9.5 days, substantially under the 20-day period allowed by regulations. A majority of FOIA requests were granted in full in most of the offices reviewed. Generally, the number of FOIA requests received by the Agency decreased over the past 6 years from a high of 6,268 requests in FY 1998 to a low of 5,193 requests in FY 2004.

In instances when the Agency did not respond to a FOIA request within 20 days, some offices reviewed did not usually provide the required written notice to the requester. FOIA logs or databases for three Regional Offices and the Office of Appeals had data elements with exception rates in excess of 10 percent, a rate that we consider significant. Two offices did not compute working days in accordance with FOIA guidelines. These inconsistencies made the Agency appear to respond to requests in a less timely manner than it actually did.

SCOPE

We reviewed FOIA as amended by the Electronic Freedom of Information Act Amendments of 1996 and the U.S. Department of Justice's (DOJ) Office of Information and Privacy's Freedom of

Information Act Guide and Privacy Act Overview (DOJ FOIA Guide) to determine the laws affecting FOIA requests and appeals. We reviewed the NLRB Rules and Regulations, NLRB's FOIA Manual, and all relevant Operations-Management and General Counsel Memorandums to identify Agency policies and procedures.

We interviewed NLRB personnel to determine the methodology for processing FOIA requests and compiling related reports. We reviewed FOIA reports prepared by the Office of Executive Secretary; Division of Advice, Research and Policy Planning Branch, Legal Research Section (Legal Research); Office of Appeals; and Regional and Sub-Regional Offices that were used to compile the FY 2004 FOIA Annual Report.

We selected a statistical sample for Legal Research and judgmental samples of the other offices reviewed and tested the accuracy of the manual and electronic databases used to compile reports prepared by each office. We also reviewed the processing timeliness of these items. We then determined whether offices were calculating the number of days to process transactions correctly and calculated both the median and average days to process requests or appeals for the entire year.

We conducted this review from March through June 2005. We conducted this inspection at NLRB Headquarters and Regions as follows: Region 8 – Cleveland; Region 18 - Minneapolis; Region 20 - San Francisco; and Region 22 - Newark. This review was done in accordance with the Quality Standards for Inspections issued by the President's Council on Integrity and Efficiency.

BACKGROUND

Enacted in 1966 and taking effect on July 4, 1967, FOIA firmly established an effective statutory right of public access to Executive Branch information in the Federal government. FOIA generally provides that any person has a right, enforceable in court, to obtain access to Federal agency records, except to the extent that such records (or portions of them) are protected from public disclosure by one of nine exemptions or by one of three special law enforcement exclusions.

FOIA requests are made to the office that possesses the records. Requests are made to the Executive Secretary for records in the custody of the Board or the Inspector General, to the Freedom of Information Officer for records of the General Counsel in Washington, DC, or to the applicable Regional or Sub-Regional Office. The Assistant General Counsel, Research and Policy Planning Branch, Division of Advice is the Agency's Freedom of Information Officer. NLRB offices that process FOIA

requests submit reports detailing their FOIA activity for the fiscal year. Legal Research compiles these results and prepares the Agency's annual report that is submitted to DOJ.

PENDING LEGISLATION

Two pieces of legislation related to FOIA are pending. The Open Government Act of 2005 amends FOIA in an effort to expand the accessibility and openness of Government. The legislation provides that the commencement of the 20-day time limit that the agencies must process a request for records begins on the day in which the request is first received. It also creates penalties for not meeting that deadline. The legislation would also require agencies to establish: (1) a system to assign tracking numbers for requests for information; and (2) telephone or Internet service that provides the status of the request. The Faster FOIA Act would create a commission of congressional and executive branch appointees to study ways of reducing delays in processing requests.

RESULTS

Timeliness

According to NLRB Regulations, once an agency properly receives a FOIA request, the Agency has 20 working days to make a determination to grant or deny the request and to notify the requester of any charges. The DOJ's Guidelines for Agency Preparation and Submission of Annual FOIA Reports requires that the median number of days to process different types of requests be included in the annual report. The Agency may also report the average time if it believes that it is a better measure of performance.

Overall, the NLRB responds to FOIA requests and appeals in a timely manner. Results of processing timeliness for the offices tested are shown below. In all but one request shown in the table below, the applicable information was provided in the initial response. For this request, Region 22 responded, but was unable to forward the information at that time. The documents requested had to be retrieved from a Federal Records Center and were provided in 34 working days.

Processing Timeliness

	Requests Processed	Within 20 Days	%	Median Days	Average Days
Board	81	77	95	3	6
GC - Hdqtrs	762	679	89	12	13
Region 8	141	139	99	3	5
Region 18	116	116	100	6	6
Region 20	104	82	79	9	14
Region 22	117	107	91	2	6

In total, 121 requests took more than 20 days to process, and most of these were requests for information from the General Counsel at Headquarters and Region 20.

- Of the 83 requests that took more than 20 days to process by Legal Research, 18 took longer than 30 days and two of these took longer than 40 days to process. Another two requests took 50 and 52 days to process. Legal Research stated that when extra time is taken it is usually because they need to coordinate with other offices to obtain the requested information. Legal Research stated that in each instance, the requester was contacted and a note was made in the file.
- Of the 22 requests that took more than 20 days to process in Region 20, 11 took more than 30 days and 5 of these took longer than 40 days. Three of these requests took 85, 106, and 125 days to process. The Region could not explain what contributed to long processing times in these particular instances.

Appeals

NLRB Rules and Regulations state that an appeal of a FOIA request denial shall be decided within 20 days (excepting Saturdays, Sundays, and legal public holidays) after receipt of such an appeal by the Office of Appeals or the Chairman of the Board.

The Office of Appeals processed 42 of 47 (89 percent) appeals in 20 working days or less. Of the cases that were not processed in 20 working days or less, three were processed in less than 30 days, one request was processed in 31 days, and another took 63 days. The longest case appealed NLRB's decision to charge a fee and to withhold in part the NLRB 10(j) Manual and required substantial coordination with multiple offices. The Agency decided to place a redacted 10(j) Manual in the

NLRB's electronic reading room. No appeals were made to the Chairman's Office.

Extension of Time

FOIA provides that in unusual circumstances an agency can extend the 20-day time limit for processing a request or appeal if it notifies the requester in writing why the extension is needed and when a determination will be made. NLRB Regulations state that the time limits may be extended by written notice to the person requesting the record setting forth the reasons for such extension and the date on which a determination is expected to be dispatched.

The table below shows requests and appeals that took longer than 20 days to process and whether a written notice was provided.

Written Notice for Requests Over 20 Days

	Sample	Over 20 Days	Written Notice
Board	25	2	0
GC - Hdqtrs	76	6	5
Region 8	25	0	N/A
Region 18	25	0	N/A
Region 20	25	6	0
Region 22	25	2	0
Appeals	25	4	4

The Office of Executive Secretary stated that they usually send written notification, but was unaware that these two requests took longer than 20 working days to process. Legal Research did not send a written notice for a request that was processed in 21 working days. In this instance, Legal Research stated that they knew the information would be available the following day and a 10 day letter would have crossed in the mail. Region 20 was unaware of the requirement to send written notification. Region 22 acknowledged that they should send a written notification, but did not due to other case handling priorities.

Disposition

FOIA requests may be granted in full, denied in full, or granted in part. A majority of FOIA requests were granted in full in most of the offices reviewed. Requests are denied in full or granted in part because they are covered by one of nine FOIA exemptions or due to procedural reasons.

The nine exemptions include protection of: inter-agency or intra-agency memorandums or letters; information about individuals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; records compiled for law enforcement purposes whose release could reasonably be expected to interfere with enforcement proceedings, could reasonably be expected to constitute an unwarranted invasion of personal privacy, or could reasonably be expected to disclose the identity of a confidential source.

Procedural reasons include that the information requested does not exist, the request was referred to another office, the requester does not agree to pay for the request, or a withdrawal by the requester.

FOIA Processing Results

	Processed	Granted in Full		FOIA Exemption		Procedural	
		No.	%	No.	%	No.	%
Board	81	48	59	2	3	31	38
GC - Hdqtrs	762	313	41	211	28	238	31
Region 8	141	104	74	18	13	19	13
Region 18	116	112	96	3	3	1	1
Region 20	104	84	81	4	4	16	15
Region 22	117	102	87	5	4	10	9

Of the 315 requests not granted for procedural reasons, 119 (38 percent) were referred to another office for processing. Of these 119, 99 (83 percent) were processed by Legal Research and 13 (11 percent) were processed by the Office of Executive Secretary. The majority of cases referred by Legal Research involved case related documents and were referred to a field office. All of the referrals made by the Office of Executive Secretary were to Legal Research.

If the requesting party disagrees with the determination of an office to not grant the FOIA request in full, the decision can be appealed to the Office of Appeals. The Office of Appeals affirmed the deciding office's determination in 32 of 47 (68 percent) FOIA appeals processed.

Data Accuracy

GAO Standards for Internal Control in the Federal Government state that control activities, including the accurate and timely recording of transactions, are an integral part of an entity's planning, implementing, reviewing, and accountability for stewardship of government resources and achieving effective results.

FOIA logs or databases for three of the seven offices tested had data elements with exception rates in excess of 10 percent, a rate that we consider significant. In Region 22, 3 of 25 (12 percent) items tested had an incorrect receipt date, 3 items had incorrect response dates, and 3 items were not supported by documentary evidence. In Region 18, 5 of 25 (20 percent) items tested had an incorrect receipt date. In Region 8, exemption codes that were used were not recorded for 4 of 25 (16 percent) items. These Regions did not have an explanation for errors, but stated that they would take corrective action. Generally, the FOIA logs maintained by Region 20 and the Office of Executive Secretary and the database maintained by Legal Research were accurate.

In the Office of Appeals, 5 of 25 (20 percent) items had an incorrect receipt date and exemption codes that were used were not recorded for 5 (20 percent) items. The Office of Appeals stated that a new employee was still learning the data input process and employees were sometimes unclear on who is responsible for entering particular data.

Working Day Calculations

Once an agency properly receives a FOIA request, it has 20 working days to make a determination on the request. NLRB Regulations define working days as days except Saturdays, Sundays, and legal public holidays. A DOJ official stated that the 20 working-day calculation starts the day after the request is received.

Two offices did not compute working days in accordance with FOIA guidelines. In both instances, the error made the Agency appear to respond to requests in a less timely manner than it actually did. Region 18 did not exclude weekends and holidays from their calculations. The Office of Executive Secretary calculated the number of working days to process a request starting on the day it was received, unless the request was received after 5:00 pm. Region 18 processed cases in a median of 6 working days, as opposed to the reported 9, and the Office of Executive Secretary processed requests in 3 working days, as opposed to the 5 days reported. Region 18 and the Office of Executive Secretary both stated that their calculations were consistent with prior reporting periods.

Median Calculations

The FOIA states that each year, each agency shall submit to the Attorney General of the United States a report which shall cover the preceding fiscal year. This report shall include the median number of days taken by the agency to process different types of requests. DOJ stated that reporting a median of offices' median day calculations was a valid method of calculating the agency-wide statistic.

The median days figures reported in the Annual FOIA Report are a median of the median days reported by each office, not an actual Agency-wide median due to the many reports prepared by offices that processed FOIA requests. The NLRB is scheduled to implement a new FOIA tracking system to be used Agency-wide for time management purposes and to assist Regional Offices. In addition, this new system has the ability to calculate the actual median.

Reading Room Documents

According to the DOJ's FOIA Guide, four categories of records should be made available routinely in agency reading rooms. This includes final opinions and orders rendered in the adjudication of administrative cases, specific agency policy statements, certain administrative staff manuals that affect a member of the public, and any records processed and disclosed in response to a FOIA request that the agency determines have become or are likely to become the subject of subsequent requests for substantially the same records.

The NLRB maintains appropriate documents in the Agency's reading room. The following documents can be accessed directly from the NLRB Home Page: NLRB Rules and Regulations; Decisions and Orders of the NLRB; Weekly Summary of NLRB Cases; NLRB Public Notices; NLRB Manuals; Press Releases; Miscellaneous NLRB Publications; FOIA Manual; Annual FOIA Reports; NLRB FOIA Regulations; and Frequently Requested Documents.

SUGGESTIONS

We suggest that the Freedom of Information Officer:

1. Issue guidance to offices that respond to FOIA requests reminding them that written notification is required if a response cannot be made within 20 working days.
2. Utilize reports in the new FOIA tracking system to prepare the Annual FOIA Report so that results are based on consistent criteria and an Agency-wide median.

cc: Lester A. Heltzer, Executive Secretary
Richard Siegel, Associate General Counsel