



**U.S. Department of
Transportation**

Office of the Secretary
of Transportation

The Inspector General

Office of Inspector General
Washington, DC 20590

September 30, 2010

The Honorable Charles E. Grassley
Ranking Member, Committee on Finance
United States Senate
Washington, DC 20510

The Honorable Darrell Issa
Ranking Member, Committee on Oversight
and Government Reform
United States House of Representatives
Washington, DC 20515

Dear Ranking Members Grassley and Issa:

Thank you for your August 23, 2010, letter requesting that we examine the Department of Transportation's Freedom of Information Act (FOIA) process to determine whether or to what extent political appointees are made aware of information requests and have a role in reviewing requests or making decisions. To complete your request, we surveyed FOIA officers from the Office of the Secretary of Transportation (OST) and 10 of the 11 Operating Administrations within the Department.¹ We also interviewed FOIA officers from OST and 5 of the 11 Operating Administrations, which accounted for 94 percent of the Department's FOIA requests during fiscal year 2009. In addition, we reviewed lists of the Department's political appointees and supporting documentation from OST and the Operating Administrations, such as memorandums and orders, to determine the level of appointee involvement in the FOIA process. The three enclosures to this letter provide more detail on the Department's FOIA process, our scope and methodology, and specific survey responses from the 11 FOIA officers.

Overall, we found that political appointees within the Department have a limited role in reviewing and approving FOIA requests and responses. For example, in response to our survey, 7 of the 11 FOIA officers (all 11 officers are career service employees) stated that only career service employees review and approve FOIA responses prior to

¹ To maintain independence, we excluded the Office of Inspector General (OIG) from the scope of our review. However, we note that the Inspector General is the only appointed official within the OIG and is appointed by the President "without regard to political affiliation" (5 U.S.C. App. 3 § 3(a)).

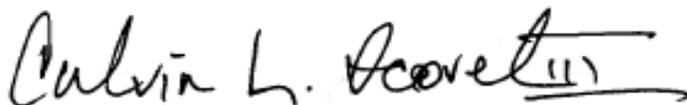
release. The remaining four FOIA officers stated that political appointees only occasionally review and approve FOIA responses based on their position as the director of the particular organization providing the information.

We found no evidence suggesting that political appointees have impeded the FOIA process within the Department. For example, in response to our survey, 10 of the 11 FOIA officers stated that they had no knowledge of any instances when a political appointee delayed a FOIA request.² While several of the FOIA officers we interviewed stated that they occasionally provide information on sensitive FOIA requests to organizations such as their Public Affairs Office, they did so for informational purposes only and usually at their own initiative. We also reviewed hotline complaints made to our office over the past 8 years and found no allegations of political interference or filtering involving the review and approval of FOIA responses within the Department.

Finally, we found that there have been no substantive changes to the FOIA process within the Department since 2008. In response to our survey, only 4 of the 11 FOIA officers stated that their FOIA process has changed since January 2008. Those changes, however, were minor and, according to the FOIA officers, made to either: (1) reduce their backlog, (2) improve efficiency, or (3) centralize the process. Additionally, 8 of the 11 FOIA officers stated they have received no verbal guidance on political appointees' involvement in their FOIA process. The remaining three stated that they were asked to provide copies of media requests, or requests involving other agencies, to their Public Affairs Office or Chief of Staff for informational purposes only.

Thank you again for your attention to this important issue. If I can answer any questions or be of further assistance, please contact me at (202) 366-1959 or my Deputy, Ann Calvaresi Barr, at (202) 366-6767.

Sincerely,

A handwritten signature in black ink that reads "Calvin L. Scovel III". The signature is written in a cursive style with a horizontal line extending from the end.

Calvin L. Scovel III
Inspector General

Enclosure (3)

² One FOIA officer stated that on one occasion a political appointee delayed the release of a FOIA response because of possible media and environmental advocacy group publicity; however, this occurred during the prior Administration, and the FOIA request was subsequently released in full.

BACKGROUND

The U.S. Department of Transportation is made up of the Office of the Secretary of Transportation (OST) and 11 Operating Administrations:

- Federal Aviation Administration (FAA)
- Federal Highway Administration (FHWA)
- Federal Motor Carrier Safety Administration (FMCSA)
- Federal Railroad Administration (FRA)
- Federal Transit Administration (FTA)
- Maritime Administration (MARAD)
- National Highway Traffic Safety Administration (NHTSA)
- Office of Inspector General (OIG)
- Pipeline and Hazardous Materials Safety Administration (PHMSA)
- Research and Innovative Technology Administration (RITA)
- Saint Lawrence Seaway Development Corporation (SLSDC)

Each Operating Administration and OST is responsible for reviewing and approving FOIA requests and responses pertaining to its organization. For example, FHWA would handle a request for information regarding budget projections for a major highway project.

While each Operating Administration and OST maintains central points of contact for the facilitation of FOIA requests, some are too large to completely centralize their FOIA process in one location. For example, FHWA—which has 52 division offices nationwide—utilizes a decentralized FOIA process but has a primary FOIA officer in Washington, DC. In contrast, smaller Operating Administrations, such as FRA, typically have a centralized FOIA process and facilitate all requests through personnel located in Washington, DC. In fiscal year 2009, the Department received more than 9,000 new requests for information and fulfilled nearly 9,300 (this number includes requests carried over from the previous fiscal year). The table below shows the number of FOIA requests that each Operating Administration and OST received and processed in fiscal year 2009.

Table. FOIA Requests Fiscal Year 2009

| | Number of Requests Pending as of Start of Fiscal Year | Number of Requests Received in Fiscal Year | Number of Requests Closed in Fiscal Year | Number of Requests Pending as of End of Fiscal Year |
|-----------------------|---|--|--|---|
| FAA | 1,024 | 6,169 | 6,294 | 899 |
| FHWA | 48 | 433 | 431 | 50 |
| FMCSA | 149 | 932 | 974 | 107 |
| FRA | 127 | 373 | 351 | 149 |
| FTA | 27 | 201 | 219 | 9 |
| MARAD | 170 | 109 | 79 | 200 |
| NHTSA | 22 | 267 | 276 | 13 |
| OIG | 72 | 88 | 139 | 21 |
| OST | 65 | 294 | 334 | 25 |
| PHMSA | 46 | 100 | 132 | 14 |
| RITA | 1 | 47 | 48 | 0 |
| SLSDC | 0 | 5 | 5 | 0 |
| AGENCY OVERALL | 1,751 | 9,018 | 9,282 | 1,487 |

Source: U.S. Department of Transportation Freedom of Information Act 2009 Annual Report

SCOPE AND METHODOLOGY

To determine the extent to which political appointees are made aware of FOIA requests and participate in the review or decision-making processes, we conducted a data collection instrument structured survey, interviewed agency officials, and reviewed OIG hotline complaints. Our review covered the Department's FOIA practices and procedures from January 2008 to the present to ensure coverage of multiple Presidential Administrations.

We administered the survey to the chief FOIA officers from OST and 10 of the Department's 11 Operating Administrations, excluding OIG for purposes of independence. In addition, we conducted post-survey interviews with FOIA officers from OST and 5 of the 11 Operating Administrations—those organizations that received the highest number of FOIA requests in fiscal year 2009 (94 percent), according to the Department's annual FOIA report. We also conducted a follow-up interview with the one FOIA officer who reported one instance of political appointee involvement inconsistent with the Operating Administration's normal FOIA processes to learn more about circumstances surrounding that particular incident.

In the event that FOIA officers may not have been aware of all instances in which political appointee involvement occurred outside of the Department's normal FOIA processes, we reviewed OIG's hotline complaints. The OIG hotline facilitates the reporting of allegations of fraud, waste, abuse, or mismanagement in Department programs or operations. In reviewing complaint records dating back to May 2002, we found no complaints associated with political appointee involvement in the FOIA process.

We performed our work between August 26 and September 24, 2010. Due to the condensed timeframes for this review, we performed select verification of information provided in survey and interview responses. As the analysis performed indicated little, if any, political appointee involvement outside of OST and the Operating Administrations' normal FOIA processes since January 2008, we limited our review of documentary evidence to lists of all political appointees within the Department and supporting internal documentation from OST and the Operating Administrations; this included memorandums, orders, annual reports, and training agendas for the past 2 years.

SUMMARY OF RESPONSES TO KEY SURVEY QUESTIONS

The following are summaries of answers to key questions given by the 11 FOIA officers in response to our structured survey.

For your Operating Administration, please identify by name and title the individuals who review and/or approve a FOIA response prior to release and indicate if these individuals are career service or political appointees.

- In response to this question, 7 of the 11 FOIA officers indicated that only career service employees are responsible for those duties; 4 of the 11 reported occasional political appointee involvement that is part of their normal Operating Administration's FOIA review and approval process. For example, one FOIA officer stated that in the event she needs to confirm the information in a response is accurate, she may coordinate the response with appropriate program officials who are a mixture of political appointees and career service employees.

Please summarize any verbal direction you have received specific to political appointees' involvement in your Operating Administration's process for handling FOIA requests and responses (excluding the appeals process).

- In response to this question, 8 of the 11 FOIA officers stated they had not received verbal direction regarding these issues. Three of the 11 FOIA officers told us they were asked to routinely inform offices such as Public Affairs (which could include political appointees) if requests or responses are from the media or not routine. Moreover, during our six interviews with the FOIA officers whose organizations receive the most requests, we asked if they had ever received direction regarding the release of potentially sensitive or controversial material that could attract media attention, such as the calendars of political appointees. All six FOIA officers responded no.

Has your Operating Administration's FOIA review and approval process changed since January 2008? If so, how, when, and why did it change?

- In response to this question, seven FOIA officers indicated there has been no change. Four officers indicated there had been slight changes in attempts to improve FOIA process efficiency, such as centralizing the process in PHMSA in 2009.

How long have you been your Operating Administration's FOIA officer? If less than 2 years, please provide the name(s) of your Operating Administration's prior FOIA officer(s) dating back to January 2008.

- Eight of the 11 FOIA officers have held their positions for more than 2 years, spanning at least two Presidential Administrations. The longest serving FOIA officer has been in that position since 1993.

Do you have knowledge of any instances since January 2008 when a political appointee asked to review FOIA information prior to its release outside of your Operating Administration's normal FOIA processes? If so, please briefly describe the circumstances (i.e., 4-6 sentences).

- In response to this question, eight FOIA officers said they had no recollection of any such instances. Two FOIA officers reported an instance each when a political appointee asked to review a response prior to release, but in follow-up interviews both stated the review was for informational purposes only and did not feel the review was intended to delay or hinder the response release. One respondent did state there was one instance (during the prior Administration) when a political appointee delayed a FOIA response by several months due to high visibility among environmental groups and the media. However, the respondent said the delay revealed an error in performing a reasonable search with regard to the original response, which was corrected to the requestor's benefit, and the final response was provided in full.

Have you ever felt political pressure to perform your FOIA duties in a manner in which you were uncomfortable? If so, please briefly describe the circumstances (i.e. 4-6 sentences).

- In response to this question, 10 of the 11 FOIA officers responded no. The one FOIA officer who responded yes to the question referred to the instance described in the preceding question.

Since January 2008, do you have knowledge of any employees within your Operating Administration who have been reprimanded or otherwise disciplined for releasing information in response to a FOIA without approval or review by a political appointee? If so, please briefly describe the circumstances (i.e. 4-6 sentences).

- In response to this question, all 11 FOIA officers responded no. In addition, all six FOIA officers we interviewed said they had no knowledge of employees elsewhere within the Department that had been reprimanded for releasing information in response to a FOIA request without review or approval by a political appointee.

Are there any other issues related to political appointee involvement in the FOIA process that have not been addressed above which you believe we should be aware of? If so, please briefly describe the circumstances (i.e. 4-6 sentences).

- In response to this question, all 11 FOIA officers responded no.

During follow-up interviews with the six FOIA officers, we asked three additional questions regarding potential impediments to the FOIA process that could be considered politically motivated. Specifically, the FOIA officers told us their organizations had never:

- engaged in political filtering of FOIA requests,
- probed for information about FOIA requestors, or
- specified or recorded the party affiliation of congressional requestors.