

# Chief FOIA Officer Report

Diane L. Herndon

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NATIONAL RAILROAD PASSENGER CORPORATION ("AMTRAK")  
CHIEF FOIA OFFICER REPORT

Diane L. Herndon – Chief FOIA Officer

MARCH 2015

I. Steps taken to apply the Presumption of Openness

**FOIA Training:**

1. *Did your FOIA professionals or the personnel at your agency who have FOIA responsibilities attend any FOIA training or conferences during the reporting period such as that provided by the Department of Justice?*

Yes, we attended training at Department of Justice.

2. *Provide an estimate of the percentage of your FOIA professionals and staff with FOIA responsibilities who attended substantive FOIA training during this reporting period.*

100% of Amtrak's FOIA Professionals attended training during the reporting period.

3. *In the 2014 Chief FOIA Officer Report Guidelines OIP asked agencies to provide a plan for ensuring that core substantive FOIA training is offered to all agency FOIA professionals at least once each year. Please provide the status of your agency's implementation of this plan.*

*Include any successes or challenges your agency has seen in implementing your plan.*

The Lead FOIA Specialist provided all FOIA professionals with DOJ training schedules and made sure that all were scheduled for the appropriate training by March 2015.

There were no challenges in implementing our plan. Emails were sent to DOJ for requested training.

**Discretionary Releases:**

4. *Does your agency have a distinct process or system in place to review records for discretionary release?*

Yes, the Lead FOIA Specialist confers with the Chief FOIA Officer, legal counsel and senior staff in order to make determinations as to whether the disclosure of certain records would cause competitive harm to Amtrak. The date of exempt responsive records is also used to determine if the passage of time has diminished some of the significance of the record and thereby making it releasable without causing any harm to Amtrak.

5. *During the reporting period did your agency make any discretionary releases of information?*

No.

6. *What exemption(s) would have covered the material released as a matter of discretion? Provide a narrative description, as well as some specific examples of the types of information that your agency released as a matter of discretion during the reporting period.*

N/A - See item 5.

7. *Provide a narrative description as well as some specific examples, of the types of information that your agency released as a matter of discretion during the reporting year.*

N/A - See item 5.

8. *If your agency was not able to make any discretionary releases of information, please explain why?*

Due to the nature of Amtrak's records, we did not have the opportunity to make any discretionary releases this fiscal year. Some of the information that was withheld could not be disclosed without causing competitive harm, invasion of privacy, law enforcement disclosures and attorney work/attorney client privileges.

**Other Initiatives:**

9. *If there are any other initiatives undertaken by your agency to ensure that the presumption of openness is being applied, please describe them here.*

*If any of these initiatives are online, please provide links in your description.*

Amtrak often receives requests for records that are not clearly defined. In such cases, the Lead FOIA Specialist reaches out to the requester to help clarify requests for records and often provides information, which may help the requester in obtaining the records they are seeking. On some occasions,

conference calls are set up with the requester and Amtrak personnel to ensure that the requester is provided with the most responsive information.

## II. Steps taken to ensure that Your Agency has an Effective System for Responding to Requests

### **Processing Procedures:**

1. *For Fiscal 2014 what was the average number of days your agency reported for adjudicating requests for expedited processing?*

Amtrak took 3.67 days to adjudicate requests for expedited processing.

2. *If your agency's average number of days to adjudicate requests for expedited processing was above ten calendar days, please describe the steps your agency will take to ensure that requests for expedited processing are adjudicated within ten calendar days or less.*

N/A- See item 1.

### **Requester Services:**

3. *Does your agency notify requesters of the mediation services offered by the Office of Government Information Services (OGIS) at the National Archives and Records Administration?*

No, however, in instances where there is a need for mediation, i.e., the FOIA Office could not resolve a dispute with a requester, such as responding to a request within the statutory timeframe; request classification dispute; clarification of request; we would refer them to OGIS.

4. *When assessing fees, does your agency provide a breakdown of how FOIA fees were calculated and assessed to the FOIA requester? For example, does your agency explain the amount of fees attributable to search, review and duplication?*

Yes. Requesters are usually notified of their fee category and the breakdown of fees in their acknowledgment letter. Requesters are also provided with an hourly breakdown. This information is provided in our Statement of Charges document, which is provided once the request has been processed.

5. *If estimated fees estimates are particularly high, does your agency provide an explanation for the estimate to the requester?*

Yes, requesters are provided with an estimate of fees letter, which includes the number of hours it will take to search and review the records, estimate of records and duplication costs.

**Other Initiatives:**

- 6. If there are any other steps your agency has undertaken to ensure that your FOIA system operates efficiently and effectively, such as conducting self-assessments to find greater efficiencies, improving search processes, eliminating redundancy etc., please describe them here.*

The Lead FOIA Specialist periodically meets with the Chief FOIA Officer to discuss improved search procedures, such as, making sure that Amtrak personnel provide all departmental contacts for requested records, as well as setting timeframes for employees to respond to the FOIA Office.

III. Steps Taken to Increase Proactive Disclosures

**Posting Material:**

- 1. Does your agency have a distinct process or system in place to identify records for proactive disclosure? If so please describe your agency's process or system.*

Amtrak departmental senior staff reviews all information (i.e., monthly performance reports, Congressional testimonies, environmental reports, business plans, audits etc.) and makes determinations regarding proactive disclosure. Amtrak departments make these decisions without the involvement of the FOIA Office. This information is provided as a public service. However, there have been instances where this information has been requested.

- 2. Does your process or system involve any collaboration with agency staff outside the FOIA office?*

The FOIA Office makes decisions regarding the disclosure of frequently requested records and departments are notified.

- 3. Describe your agency's process or system for identifying "frequently requested" records that should be posted online.*

Records are reviewed and a determination is made as to whether the records would be of public interest. For example, Amtrak received multiple requests for its Procurement Manual. A copy of the manual was posted on Amtrak's Procurement website: <https://procurement.amtrak.com>.

Amtrak also gets requests for its travel policies, which are also posted online.

4. *Provide examples of materials that your agency has proactively disclosed during the past reporting year, including links to the posted material.*

Amtrak has a user friendly website, which contains some of the latest information regarding the Northeast Corridor, Amtrak's Business Plans, and the Passenger Rail Improvement and Investment Act (PRIIA). Also posted is information regarding finances, performance, legislation, environmental issues and Amtrak's operations.

Amtrak realizes how the public uses social media to stay up to date on what's going on and therefore has created Instagram, Facebook, Google, Twitter accounts. Amtrak also has a blog where information is provided. The public is able to connect and ask questions, keep track of train operations, apply for jobs as well as find out about the best travel destinations. Amtrak also has a mobile app that the public can use to purchase tickets.

The above referenced information can be found at [www.amtrak.com](http://www.amtrak.com), click on "About Amtrak" located at the bottom of the screen.

Listed below is some of the more recent information which has been posted on the above-referenced website:

#### Northeast Corridor Fact Sheet

##### Strategic and Financial Plans

- FY14 Budget, Business Plan, FY15 Budget Justification and FY14-18 Five Year Financial Plan
- Amtrak Fleet Strategy – Version 3.1
- Fiscal Year 2014-2018 Five Year Strategic Plan

##### Grants and Legislative Requests

- FY15 Grant Legislative Request
- FY14 Grant Legislative Request

##### Monthly Performance Reports

- Monthly Performance Reports for January 2014 through November 2014

#### Accessible Travel Services

## Other Initiatives

5. *If there are any other steps your agency has taken to increase proactive disclosure, please describe them here.*

Amtrak's senior staff usually reviews reports and provides this information to the IT Department for posting. Some reports are posted on a monthly basis, such as the Monthly Performance Reports.

## IV. Steps Taken to Greater Utilize Technology

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

1. *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?*

*Steps can include soliciting feedback on the content and presentation of posted material, improving search capabilities on your agency website, posting material in open formats, making information available through mobile applications, providing explanatory material, etc.*

As stated in item 4 above, Amtrak's Instagram, Facebook, Google, Twitter accounts, Blog (Amtrak Blog) and mobile applications allows interaction with the public. Since Amtrak's website is also customer/passenger oriented, Amtrak teamed up with Google to create an interactive train locator map, which is located on [www.amtrak.com](http://www.amtrak.com).

Additionally, Amtrak has a section on its website that's called "Browse Topics," which lists reports and data regarding Amtrak. The user is able to select a topic of interest without searching the entire website.

Outside media are also given direct contact information for Amtrak's Media personnel.

On Amtrak's Procurement website, the public is able to select a state and find out if there are any bid solicitations for that particular area.

2. *If yes, provide examples of such improvements.*

See item 4 above.

*If your agency is already posting material in its most useful format, describe these efforts.*

See item 1 above.

3. *Has your agency encountered challenges that make it difficult to post records you otherwise would like to post?*

No.

4. *If so, please briefly explain what those challenges are.*

N/A- See item 3.

#### **Other Initiatives**

5. *Did your agency successfully post all four quarterly reports to Fiscal Year 2014?*

No

6. *If your agency did not successfully post all quarterly reports, with information appearing on FOIA.gov, please explain why and provide your agency's plan for ensuring that such reporting is successful in Fiscal Year 2015.*

Amtrak posted 3 quarterly reports for FY 2014. However, we missed the first quarter posting. We will continue to post the quarterly reports for FY 2015.

7. *Do your agency's FOIA professionals use e-mail or other electronic means to communicate with requesters whenever feasible? If yes, what are the different types of electronic means are utilized by your agency to communicate with requesters?*

Yes, Amtrak's FOIA professionals communicate via e-mail and fax.

8. *If your agency does not communicate electronically with requesters as a default, are there any limitations or restrictions for the use of such means? If yes, does your agency inform requesters about such limitations?*

N/A- See item 7.

#### **V. Steps taken to Improve Timeliness in Responding to Requests and Reduce Backlogs**

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

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

Yes.



2. *If so, for your agency overall, for Fiscal Year 2014, was the average number of days to process simple requests twenty working days or fewer?*

Yes, 7.69 days.

3. *Please provide the percentage of requests processed by your agency in Fiscal Year 2014 that were placed in your simple track?*

18%

4. *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 – See item 1.

### **Backlogged Requests**

5. *If your agency had a backlog of requests at the close of Fiscal Year 2014, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2013?*

Yes. FY14 Backlog of Requests - 10  
FY13 Backlog of Requests - 25

6. *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 2014.*

5%

### **Backlogged Appeals**

7. *If your agency had a backlog of appeals at the close of Fiscal Year 2014, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2013?*

- *If not explain why and describe the causes that contributed to your agency not being able to reduce backlog. When doing so please 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 appeals received*

Yes. Amtrak received an increase in appeals in FY14 – 6 appeals as opposed to FY13 – 4 appeals. The appeals were extremely complex, some of which dealt with investigations and commercially sensitive business records. In addition, a great deal of consultations with Amtrak legal counsels and senior staff were needed in responding to the appeals.

8. *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 2014. If your agency did not receive any appeals in Fiscal Year 2014 and/or has no appeal backlog, please answer with "N/A."*

83.3%

### **Ten Oldest Requests**

9. *In Fiscal Year 2014, did your agency close the ten oldest requests that were reported pending in your Fiscal Year 2013 Annual Report?*

Yes.

10. *If no, please provide the number of these requests your agency was able close by the end of the fiscal year, as listed in Section VII.E of your Fiscal Year 2013 Annual Report?*

N/A - See item 9 above.

11. *Of the requests your agency was able to close from your ten oldest, please indicate how many of these were closed because the request was withdrawn by the requester. If any were closed because the request was withdrawn, did you provide any interim responses prior to the withdrawal?*

One request – No interim response.

### **Ten Oldest Appeals**

12. *In Fiscal Year 2014, did your agency close the ten oldest appeals that were reported pending in your Fiscal Year 2013 Annual FOIA Report?*

No.

13. *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 VII.C.(5) of your Fiscal Year 2013 Annual FOIA Report. If you had less than ten total oldest appeals to close please indicate.*

Amtrak had 3 pending appeals at the end of FY 2013, which were not closed by the end of Fiscal Year 2014.

### **Ten Oldest Consultations**

*14. In Fiscal Year 2014, did your agency close the ten oldest consultations that were reported pending in your Fiscal Year 2013 Annual FOIA Report?*

Amtrak did not have any pending consultations for FY13.

*15. 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 2013 Annual FOIA Report. If you had less than ten total consultations to close, please indicate that.*

N/A – See item 14 above.

*16. Briefly explain any obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2013.*

Amtrak closed its 10 oldest requests from FY13.  
There were no consultations from FY13.

The three (3) oldest appeals from FY13 contain highly sensitive and confidential records, which are being reviewed by Amtrak legal counsel.

*17. If your agency was unable to close any of its ten oldest requests because you were waiting to hear back from other agencies on consultations you sent, please provide the date the request was initially received by your agency, the date when your agency sent the consultation, and the date when you last contacted the agency where the consultation was pending*

N/A – See item 16 above.

*18. If your agency did not close its ten oldest pending requests, appeals, or consultations, please provide a plan describing how your agency intends to close those "ten oldest" requests, appeals, and consultations during Fiscal Year 15.*

The Appeals Officer is currently working on the appeals and the FOIA staff and law clerks will continue to assist with research when needed. Senior Staff will also be consulted regarding Amtrak business records and determinations will be made regarding discretionary disclosures in order to close the appeals. The oldest backlogged appeals are a priority and goals will be set to close by the end of FY15.

**Use of FOIA's Law Enforcement Exclusions**

*Did your agency invoke a statutory exclusion, 5 U.S.C. § 552©(1), (2), (3), during Fiscal Year 2014?*

No, Amtrak did not invoke a statutory exclusion during Fiscal Year 2015.

*If so, what was the total number of times exclusions were invoked?*

N/A