



National Mediation Board
Freedom of Information Act Annual Report
Fiscal Year 2010

I. BASIC INFORMATION REGARDING REPORT

1. Name, title, address and telephone number of person to contact with questions about the report:

Timothy Sweeney
National Mediation Board
1301 K Street, NW., Suite 250E
Washington, DC 20005
Tel: (202) 692-5040

2. The electronic address for access to this report on the agency's Web site is:

http://www.nmb.gov/publicinfo/foia_annualreports.html

3. A copy of this report in paper form may be obtained by contacting Susanna Parker (see I. 1. above).

II. MAKING A FOIA REQUEST

1. FOIA requests should be sent to: Mary L. Johnson, Chief FOIA Officer, National Mediation Board, 1301 K Street, N.W., Suite 250E, Washington, DC 20005. The telephone number is (202) 692-5040. The formal rules for the making of FOIA requests to the National Mediation Board are set forth in Chapter 10, Volume 29, of the Code of Federal Regulations.

2. Some requests are not granted based upon the exemptions from disclosure under the FOIA. In some other instances, the record sought does not exist; the request was withdrawn; or the document sought is not an agency record. The following is an overview of certain general categories of agency records to which the FOIA exemptions apply.

- a. Exemption 5 exempts inter-agency or intra-agency memoranda or letters that would not be available by law to a party other than an agency in litigation with the agency. Records withheld under this exemption are those that reflect the agency's predecisional, deliberative process. Attorney-client privileged communications also are covered by this exemption. (5 U.S.C. § 552(b)(5)). Records withheld under this exemption in FY 2010 include the following: delegations signed by the General Counsel, confidential showing of interest reports from investigators, and predecisional documents that reflect personal opinions and not NMB policy.

- b. Exemption 6 exempts information involving matters of personal privacy. (5 U.S.C. § 552(b)(6)). Records withheld under this exemption in FY 2010 include telephone numbers of employees and other individuals.

III. ACRONYMS, DEFINITIONS, AND EXEMPTIONS

1. Agency-specific acronyms or terms used in this Report.
 1. NMB - National Mediation Board
 2. FOIA - Freedom of Information Act
 3. FY – Fiscal Year
2. Definitions of terms used in this Report:
 - a. **Administrative Appeal** - a request to a Federal agency asking that it review at a higher administrative level a FOIA determination made by the agency at the initial request level.
 - b. **Average Number** - Average number -- the number obtained by dividing the sum of a group of numbers by the quantity of numbers in the group. For example, of 3, 7, and 14, the average number is 8.
 - c. **Backlog** – the number of requests or administrative appeals that are pending at an agency at the end of the fiscal year that are beyond the statutory time period for a response.
 - d. **Component** – for agencies that process requests on a decentralized basis, a “component” is an entity, also sometimes referred to as an Office, Division, Bureau, Center, or Directorate, within the agency that processes FOIA requests. The FOIA now requires that agencies include in their Annual FOIA Report data for both the agency overall and for each principal component of the agency.
 - e. **Consultation** – the procedure whereby the agency responding to a FOIA request first forwards a record to another agency for its review because that other agency has an interest in the document. Once the agency in receipt of the consultation finishes its review of the record, it responds back to the agency that forwarded it. That agency, in turn, will then respond to the FOIA requester.
 - f. **Exemption 3 Statute** – a federal statute that exempts information from disclosure and which the agency relies on to withhold information under subsection (b)(3) of the FOIA.

- g. **FOIA Request** – a FOIA request is generally a request to a federal agency for access to records concerning another person (i.e., a third-party” request), or concerning an organization, or a particular topic of interest. FOIA requests also include requests made by requesters seeking records concerning themselves (i.e., “first-party” requests) when those requesters are not subject to the Privacy Act, such as non-U.S. citizens. Moreover, because all first-party requesters should be afforded the benefit of both the access provisions of the FOIA as well as those of the Privacy Act, FOIA requests also include any first-party requests where an agency determines that it must search beyond its Privacy Act “systems of records” or where a Privacy Act exemption applies, and the agency looks to FOIA to afford the greatest possible access. All requests which require the agency to utilize the FOIA in responding to the requester are included in this Report.

Additionally, a FOIA request includes records referred to the agency for processing and direct response to the requester. It does not, however, include records for which the agency has received a consultation from another agency. (Consultations are reported separately in Section XII of this Report.)

- h. **Full Grant** – an agency decision to disclose all records in full in response to a FOIA request.
- i. **Full Denial** – an agency decision not to release any records in response to a FOIA request because the records are exempt in their entirety under one or more of the FOIA exemptions, or because of a procedural reason, such as when no records could be located.
- j. **Median Number** - the middle, not average, number. For example, of 3, 7, and 14, the median number is 7.
- k. **Multi Track Processing** - a system in which simple requests requiring relatively minimal review are placed in one processing track and more voluminous and complex requests are placed in one or more other tracks. Requests granted expedited processing are placed in yet another track. Requests in each track are processed on a first-in/first-out basis.
 - i. **Expedited Processing** – an agency will process a FOIA request on an expedited basis when a requester satisfies the requirements for expedited processing as set forth in the statute and in agency

regulations.

- ii. **Simple Request** - a FOIA request that an agency using multi-track processing places in its fastest (non expedited) track based on the low volume and/or simplicity of the records requested.
- iii. **Complex Request** – a FOIA request that an agency using multi-track processing places in a slower track based on the high volume and/or complexity of the records requested.

- l. **Partial Grant/Partial Denial** – in response to a FOIA request, an agency decision to disclose portions of the records and to withhold other portions that are exempt under the FOIA, or to otherwise deny a portion of the request for procedural reason.
- m. **Pending Request or Pending Administrative Appeal** – a request or administrative appeal for which an agency has not taken final action in all respects.
- n. **Perfected Request** – a request for record which reasonably describes such records and is made in accordance with published rules stating the time, place, fees (if any) and procedures to be followed.
- o. **Processed Request or Processed Administrative Appeal** – a request or administrative appeal for which an agency has taken final action in all respects.
- p. **Range in Number of Days** – the lowest and highest number of days to process requests or administrative appeals.
- q. **Time Limits** – the time period in the statute for an agency to respond to a FOIA request (ordinarily twenty working days from receipt of a perfected FOIA request).

3. Concise descriptions of the nine FOIA exemptions.

- a. **Exemption 1:** classified national defense and foreign relations information.
- b. **Exemption 2:** internal agency rules and practices
- c. **Exemption 3:** information that is prohibited from disclosure by

another federal law.

- d. **Exemption 4:** trade secrets and other confidential business information
- e. **Exemption 5:** inter-agency or intra-agency communications that are protected by legal privileges
- f. **Exemption 6:** information involving matters of personal privacy.
- g. **Exemption 7:** records or information compiled for law enforcement purposes, to the extent that the production of those records (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclosure guidelines for law enforcement investigations or prosecutions, or (F) could reasonably be expected to endanger the life or physical safety of any individual
- h. **Exemption 8:** information relating to the supervision of financial institutions
- i. **Exemption 9:** geological information on wells

IV. Exemption 3 Statute

The NMB did not rely on any Exemption 3 statutes.

Statute	Type of Information Withheld	Case Citation	Number of Times Relied Upon	Total Number of Times Relied Upon
0	0	0	0	0

V.A. FOIA REQUESTS - RECEIVED, PROCESSED AND PENDING FOIA REQUESTS

The NMB has no component agencies.

Column 1	Column 2	Column 3	Column 4
Number of Requests Pending as of Start of Fiscal Year	Number of Requests Received in Fiscal Year	Number of Requests Processed in Fiscal Year	Number of Requests Pending as of End of Fiscal Year
0	28	27	1

V.B. (1). DISPOSITION OF FOIA REQUESTS – ALL PROCESSED REQUESTS

Number of Full Grants	Number of Partial Grants/ Partial Denials	Number of Full Denials Based on Exemptions	Number of Full Denials Based on Reasons Other than Exemptions									
			No Records	All Records Referred to Another Component or Agency	Request Withdrawn	Fee-Related Reasons	Records not Reasonably Described	Improper FOIA Request for Other Reason	Not Agency Record	Duplicate Request	Other *Explain in chart below	TOTAL
7	5	0	15	0	0	0	0	0	0	0	0	27

V. B. (2) DISPOSITION OF FOIA REQUESTS – “OTHER” REASONS FOR “FULL DENIALS BASED ON REASONS OTHER THAN EXEMPTIONS” FROM SECTION V, B(1) CHART

No “Other” Column in Section V, B (1) Chart was utilized.

V.B. (3). DISPOSITION OF FOIA REQUESTS – NUMBER OF TIMES EXEMPTIONS APPLIED

Ex. 1	Ex. 2	Ex. 3	Ex. 4	Ex. 5	Ex. 6	Ex. 7(A)	Ex. 7(B)	Ex. 7(C)	Ex. 7(D)	Ex. 7(E)	Ex. 7(F)	Ex. 8	Ex. 9
0	0	0	0	2	13	0	0	0	0	0	0	0	0

VI. A. ADMINISTRATIVE APPEALS OF INITIAL DETERMINATIONS OF FOIA REQUESTS RECEIVED, PROCESSED AND PENDING ADMINISTRATIVE APPEALS

Column 1	Column 2	Column 3	Column 4
Number of Appeals Pending As of Start of Fiscal Year	Number of Appeals Received In Fiscal Year	Number of Appeals Processed in Fiscal Year	Number of Appeals Pending As of End Fiscal Year
0	2	2	0

VI. B. DISPOSITION OF ADMINISTRATIVE APPEALS – ALL PROCESSED APPEALS

Number Affirmed On Appeal	Number Partially Affirmed & Partially Reversed/Remanded On Appeal	Number Completely Reversed/Remanded on Appeal	Number of Appeals Closed for Other Reasons	TOTAL
2	0	0	0	2

VI.C. (1) REASONS FOR DENIAL ON APPEAL – NUMBER OF TIMES EXEMPTIONS APPLIED

Ex. 1	Ex. 2	Ex. 3	Ex. 4	Ex. 5	Ex. 6	Ex. 7(A)	Ex. 7(B)	Ex. 7(C)	Ex. 7(D)	Ex. 7(E)	Ex. 7(F)	Ex. 8	Ex. 9
0	0	0	0	2	0	0	0	0	0	0	0	0	0

The two documents withheld were pre-decisional documents and privileged from disclosure under FOIA Exemption 5.

VI.C. (2). REASONS FOR DENIAL ON APPEAL – REASONS OTHER THAN EXEMPTIONS

No Records	Records Referred at Initial Request Level	Request Withdrawn	Fee Related Reason	Records not Reasonably Described	Improper Request for Other Reasons	Not Agency Record	Duplicate Request or Appeal	Request in Litigation	Appeal Based Solely on Denial of Request for Expedited Processing	Other *Explain in chart below
1	0	0	0	0	0	0	0	0	0	0

VI.C. (3). REASONS FOR DENIAL ON APPEAL – “OTHER” REASONS FROM SECTION VI, C (2) CHART

No “Other” Column in Section VI, C (3) Chart was utilized.

VI.C.(4). RESPONSE TIME FOR ADMINISTRATIVE APPEALS

Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days
16	16	16	16

VI. C. (5). TEN OLDEST PENDING ADMINISTRATIVE APPEALS

	10 th Oldest Appeal	9 th	8 th	7 th	6 th	5 th	4 th	3 rd	2 nd	Oldest Appeal
Date of Receipt of Ten Oldest Appeals	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Number of Days Pending	0	0	0	0	0	0	0	0	0	0

VII.A. FOIA REQUESTS - RESPONSE TIME FOR PROCESSED PERFECTED REQUESTS

(The NMB does not use a multi-track processing system)

	SIMPLE				COMPLEX*				EXPEDITED PROCESSING			
	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days
AGENCY OVERALL	10	17	3	87	0	0	0	0	10	15	7	29

*No complex requests were received.

VII. B. Processed Requests – Response Time for Perfected Requests in Which Information Was Granted

SIMPLE				COMPLEX				EXPEDITED PROCESSING			
Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days
9	21	3	87	0	0	0	0	18	18	7	29

VII. C. PROCESSED REQUESTS – RESPONSE TIME IN DAY INCREMENTS

Simple Requests

1-20 Days	21-40 Days	41-60 Days	61-80 Days	81-100 Days	101-120 Days	121-140 Days	141-160 Days	161-180 Days	181-200 Days	201-300 Days	301-400 Days	401+	TOTAL
18	5	0	0	1	0	0	24						

Complex Requests

1-20 Days	21-40 Days	41-60 Days	61-80 Days	81-100 Days	101-120 Days	121-140 Days	141-160 Days	161-180 Days	181-200 Days	201-300 Days	301-400 Days	401+	TOTAL
0	0	0	0	0	0	0	0	0	0	0	0	0	0

Requests Granted Expedited Processing

1-20 Days	21-40 Days	41-60 Days	61-80 Days	81-100 Days	101-120 Days	121-140 Days	141-160 Days	161-180 Days	181-200 Days	201-300 Days	301-400 Days	401+	TOTAL
2	1	0	0	0	0	0	0	0	0	0	0	0	3

VII. D. PENDING REQUESTS – ALL PENDING PERFECTED REQUESTS

SIMPLE			COMPLEX			EXPEDITED PROCESSING		
Number Pending	Median Number of Days	Average Number of Days	Number Pending	Median Number of Days	Average Number of Days	Number Pending	Median Number of Days	Average Number Of Days
1	65	65	0	N/A	N/A	0	N/A	N/A

VII.E. PENDING REQUESTS – TEN OLDEST PENDING PERFECTED REQUESTS

10 th Oldest Request and Number of Days Pending	9 th	8 th	7 th	6 th	5 th	4 th	3 rd	2 nd	Oldest Request and Number of Days Pending
N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	8/30/10 65

VIII.A. REQUESTS FOR EXPEDITED PROCESSING

The NMB did not adjudicate the three requests for expedited processing because all three requests were processed within 29 days.

Number Granted	Number Denied	Median Number of Days to Adjudicate	Average Number of Days to Adjudicate	Number Adjudicated Within Ten Calendar Days
0	0	0	0	0

VIII.B. REQUESTS FOR FEE WAIVER

The NMB did not charge fees in any case in which the requester submitted a valid fee-waiver request.

Number Granted	Number Denied	Median Number of Days to Adjudicate	Average Number of Days to Adjudicate	Number Adjudicated Within Ten Calendar Days
0	0	0	0	0

IX. FOIA PERSONNEL AND COSTS

Column 1			Column 2		
PERSONNEL			COSTS		
Number of “Full-Time FOIA Employees”	Number of “Equivalent Full-Time FOIA Employees”	Total Number of “Full-Time FOIA Staff” (The sum Of Columns 1 & 2)	Processing Costs	Litigation- Related Costs	Total Costs
0	1.15	1.15	\$76,637	None	\$76,637

X. FEES COLLECTED FOR PROCESSING REQUESTS

Total Amount of Fees Collected	Percentage of Total Costs
\$5,559.20	7.25 %

XI. FOIA REGULATIONS

www.nmb.gov/documents/nmbrules1099.html#1208

XII. A.BACKLOGS OF FOIA REQUESTS AND ADMINISTRATIVE APPEALS

Number of Backlogged Requests as of End of Fiscal Year	Number of Backlogged Appeals as of End of Fiscal Year
1	0

XII. B. CONSULTATIONS ON FOIA REQUESTS – RECEIVED, PROCESSED, AND PENDING CONSULTATIONS

Column 1	Column 2	Column 3	Column 4
Number of Consultations Received From Other Agencies that Were <u>Pending</u> at NMB as of <u>Start</u> of the Fiscal Year	Number of Consultations Received from Other Agencies During the Fiscal Year	Number of Consultations Received From Other Agencies That Were Processed by NMB During the Fiscal Year	Number of Consultations Received from Other Agencies that Were Pending at NMB as of End of the Fiscal Year
0	1	1	0

XII. C. CONSULTATIONS ON FOIA REQUESTS – TEN OLDEST CONSULTATIONS RECEIVED FROM OTHER AGENCIES

	10 th Oldest Consultation and Number of Days Pending	9 th	8 th	7 th	6 th	5 th	4 th	3 rd	2 nd	Oldest Consultation and Number of Days Pending
Date	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Number of Days	0	0	0	0	0	0	0	0	0	0

XII.D. COMPARISON OF NUMBERS OF REQUESTS FROM PREVIOUS AND CURRENT ANNUAL REPORT – REQUESTS RECEIVED AND PROCESSED

Column 1		Column 2		Column 3		Column 4	
<u>NUMBER OF REQUESTS RECEIVED</u>				<u>NUMBER OF REQUESTS PROCESSED</u>			
Number Received During Fiscal Year from Last Year's Annual Report	Number Received During Fiscal Year from Current Annual Report	Number Received During Fiscal Year from Last Year's Annual Report	Number Received During Fiscal Year from Current Annual Report	Number Processed During Fiscal Year from Last Year's Annual Report	Number Processed During Fiscal Year from Current Annual Report	Number Processed During Fiscal Year from Last Year's Annual Report	Number Processed During Fiscal Year from Current Annual Report
22	28	22	27	22	27	22	27

XII. D. COMPARISON OF NUMBERS OF BACKLOGGED REQUESTS FROM PREVIOUS AND CURRENT ANNUAL REPORT

Column 1	Column 2
Number of Backlogged Requests as of End of the Fiscal year from Previous Annual Report	Number of Backlogged Requests as of End of the Fiscal Year from Current Annual Report
0	1

XII. E. COMPARISON OF NUMEBRS OF ADMINISTRATIVE APPEALS FROM PREVIOUS AND CURRENT ANNUAL REPORT – RECEIVED AND PROCESSED APPEALS

Column 1	Column 2	Column 3	Column 4
<u>NUMBER OF APPEALS RECEIVED</u>		<u>NUMBER OF APEALS PROCESSED</u>	
Number Received During Fiscal Year from Last Year’s Annual Report	Number Received During Fiscal Year from Current Annual Report	Number Processed During Fiscal Year from Last Year’s Annual Report	Number Processed During Fiscal Year From Current Annual Report
0	2	0	2

**XII. E. COMPARISON OF NUMBERS OF ADMINISTRATIVE APPEALS
FROM PREVIOUS AND CURRENT ANNUAL REPORT –
BACKLOGGED APPEALS**

Column 1	Column 2
Number of Backlogged Appeals as of End of the Fiscal year from Previous Annual Report	Number of Backlogged Appeals as of End of the Fiscal Year from Current Annual Report
0	0