

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Freedom of Information Act Annual Report

Fiscal Year 2018



February 2019

I. BASIC INFORMATION REGARDING REPORT

- A. For questions about the Report, contact:

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Washington, DC 20004
(202) 694-7000
FOIA@dnfsb.gov

- B. The Report is available online at the following address:

<https://www.dnfsb.gov/foia-reading-room>.

- C. Requests for printed copies of the Report may be addressed to the FOIA Public Liaison at the telephone number and e-mail address given above.

II. MAKING A FOIA REQUEST

- A. Written FOIA requests may be sent directly to the agency, either by letter addressed to the Chief FOIA Officer and sent to the above mailing address or sent via e-mail to FOIA@dnfsb.gov. Alternatively, FOIA requests may also be sent to the agency via the National FOIA Portal, which can be accessed at <https://www.foia.gov/>.

- B. Historically, the Board has provided most of the records that have been requested under the FOIA. Sometimes, however, the Board finds it necessary to withhold all or part of a responsive record, most frequently because the requested information falls within the scope of either FOIA Exemption 6 (which protects information related to personal privacy interests) or FOIA Exemption 5 because it embodies protected communications, e.g., pre-decisional deliberations or those between attorney and client.

- C. The most recent version of the Board's FOIA regulations is available online at: <https://www.dnfsb.gov/sites/default/files/page/DNFSB%20FOIA%20Regulations.pdf>. Its fee schedule is at: <https://www.dnfsb.gov/foia-reading-room/foia-fee-schedule>.

III. ACRONYMS, DEFINITIONS, AND EXEMPTIONS

- A. OGM is the acronym used for the Office of the General Manager, and OGC is the acronym used for the Office of the General Counsel.

- B. The following are definitions of terms used in this report:

1. **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.
2. **Average Number** – number obtained by dividing the sum of a group of numbers by the quantity of numbers in the group (e.g., for 3, 7, and 14, the average number is 8).
3. **Backlog** – the number of requests or administrative appeals pending at an agency at the end of the fiscal year that are beyond the statutory time period for a response.
4. **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. The Board does not have any “components.”

5. **Consultation** – the procedure whereby the agency responding to a FOIA request forwards a potentially responsive record to another agency or a component within the same agency for its review because that other agency or component has an interest in the document. Once the agency or component 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.
6. **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.
7. **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), an organization, or a particular topic of interest. FOIA requests also include requests made by requesters seeking records concerning themselves (*i.e.*, “first-party” request) when those individuals are not covered by the Privacy Act, such as non-U.S. citizens. Moreover, because all first-party requesters should be afforded the benefit of access to the provisions of both the FOIA and 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 that require the agency to utilize the FOIA in responding to the requester are included in this Report. In that regard,, 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 request for consultation from another agency. Such requests are reported separately in Section XII of this Report.
8. **Full Grant** – an agency decision to disclose all records in full in response to a FOIA request.
9. **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 for a procedural reason (e.g., no records located).
10. **Median Number** – the middle, not the average, number in a series (*i.e.*, of the sequence of numbers 3, 7, 9, 11 and 14, the median number is 9).
11. **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 another track. Requests granted expedited processing are placed in yet another track. Requests in each track are processed on a first-in/first-out basis.

(A) **Expedited Processing** – an agency will process a FOIA request on an expedited basis when a requester satisfies the requirements for expedited processing set forth in the statute and in agency regulations.

(B) 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.

(C) 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.

12. **Partial Grant/Partial Denial** – in response to a FOIA request, an agency decision to disclose some 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 a procedural reason (e.g., no records located).
13. **Pending Request or Pending Administrative Appeal** – a request or administrative appeal for which an agency has not taken final action in all respects.
14. **Perfected Request** – a request for records 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.
15. **Processed Request or Processed Administrative Appeal** – a request or administrative appeal for which an agency has taken final action in all respects.
16. **Range in Number of Days** – the lowest and highest number of days to process requests or administrative appeals.
17. **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).

C. The nine FOIA exemptions are described as follows:

1. **Exemption 1:** Classified national defense and foreign relations information.
2. **Exemption 2:** Information that is related solely to the internal personnel rules and practices of an agency.
3. **Exemption 3:** Information that is prohibited from disclosure by another federal law.
4. **Exemption 4:** Trade secrets and other confidential business information.
5. **Exemption 5:** Inter-agency or intra-agency communications that are protected by legal privileges.
6. **Exemption 6:** Information involving matters of personal privacy.
7. **Exemption 7:** Records or information compiled for law enforcement purposes, to the extent that the production of those records:
 - (7)(A) could reasonably be expected to interfere with enforcement proceedings;
 - (7)(B) would deprive a person of a right to a fair trial or an impartial adjudication;
 - (7)(C) could reasonably be expected to constitute an unwarranted invasion of personal privacy;
 - (7)(D) could reasonably be expected to disclose the identity of a confidential source;
 - (7)(E) would disclose techniques and procedures for law enforcement investigations

or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions; or

(7)(F) could reasonably be expected to endanger the life or physical safety of any individual.

8. **Exemption 8:** Information relating to the supervision of financial institutions.

9. **Exemption 9:** Geological information on wells.

IV. Exemption 3 Statutes

| Statute | Type of Information Withheld | Case Citation | Agency/Component | Total Number of Times Relied upon by Agency / Component | Total Number of Times Relied upon by Agency Overall |
|---------|------------------------------|---------------|------------------|---|---|
| N/A | N/A | N/A | N/A | 0 | 0 |

V.A. FOIA REQUESTS -- Received, Processed, and Pending FOIA Requests

| Agency / Component | 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 |
|--------------------|---|--|---|---|
| Agency Overall | 6 | 16 | 19 | 3 |

After reviewing its database, DNFSB updated the number of requests pending as of the start of the fiscal year.

V.B.1. Disposition of FOIA Requests – All Processed Requests

| Agency / Component | 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 | | | | | | | | | TOTAL |
|--------------------|-----------------------|--|--|---|---|-------------------|--------------------|----------------------------------|--|-------------------|-------------------|-------------------------------|-------|
| | | | | No Records | All Records Referred to Another Component or Agency | Request Withdrawn | Fee-Related Reason | Records not Reasonably Described | Improper FOIA Request for Other Reason | Not Agency Record | Duplicate Request | Other *Explain in Chart Below | |
| Agency Overall | 2 | 9 | 1 | 2 | 4 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 19 |

V.B.2. Disposition of FOIA Requests – “Other” Reasons for “Full Denials Based on Reasons Other Than Exemptions

| Agency/Component | Description of "Other" Reasons for Denials from Chart B(1) | Number of Times "Other" Reason Was Relied Upon | TOTAL |
|------------------|--|--|-------|
| Agency Overall | N/A | 0 | 0 |

V.B.3. Disposition of FOIA Requests – Number of Times Exemptions Applied

| Agency / Component | 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 |
|--------------------|-------|-------|-------|-------|-------|-------|----------|----------|----------|----------|----------|----------|-------|-------|
| Agency Overall | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |

VI.A. Administrative Appeals of Initial Determinations of FOIA Requests

| Agency / Component | 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 of Fiscal Year |
|--------------------|--|---|--|--|
| Agency Overall | 0 | 1 | 1 | 0 |

VI.B. Disposition of Administrative Appeals – All Processed Appeals

| Agency / Component | 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 |
|--------------------|---------------------------|---|---|--|-------|
| Agency Overall | 0 | 1 | 0 | 0 | 1 |

VI.C.1. Reasons for Denial on Appeal – Number of Times Exemptions Applied

| Agency / Component | 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 |
|--------------------|-------|-------|-------|-------|-------|-------|----------|----------|----------|----------|----------|----------|-------|-------|
| Agency Overall | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |

VI.C.2. Reasons for Denial on Appeal – Reasons Other Than Exemptions

| Agency / Component | 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 |
|--------------------|------------|---|-------------------|--------------------|----------------------------------|------------------------------------|-------------------|-----------------------------|-----------------------|---|-------------------------------|
| Agency Overall | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 |

VI.C.3. Reasons for Denial on Appeal – “Other” Reasons

| Agency / Component | Description of "Other" Reasons for Denial on Appeal from Chart C(2) | Number of Times "Other" Reason Was Relied Upon | TOTAL |
|--------------------|---|--|-------|
| Agency Overall | Agency conducted adequate search | 1 | 1 |

VI.C.4. Response Time for Administrative Appeals

| Agency / Component | Median Number of Days | Average Number of Days | Lowest Number of Days | Highest Number of Days |
|--------------------|-----------------------|------------------------|-----------------------|------------------------|
| Agency Overall | 24.00 | 24.00 | 24.00 | 24.00 |

VI.C.5. Ten Oldest Pending Administrative Appeals

| Agency Overall | Date of Appeal | N/A | 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 | 0 |

VII.A. FOIA Requests – Response Time for All Processed Perfected Requests

| Agency / Component | 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 | 19 | 35 | 1 | 262 | N/A | N/A | N/A | N/A | 29 | 24 | 4 | 40 |

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

| Agency / Component | 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 | 19 | 36 | 1 | 262 | N/A | N/A | N/A | N/A | 22 | 22 | 4 | 40 |

VII.C. Processed Simple Requests – Response Time in Day Increments

| Agency / Component | <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+ Days | TOTAL |
|--------------------|------------|------------|------------|------------|-------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|-----------|-------|
| Agency Overall | 10 | 3 | 0 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 16 |

VII.C. Processed Complex Requests – Response Time in Day Increments

| Agency / Component | <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+ Days | TOTAL |
|--------------------|------------|------------|------------|------------|-------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|-----------|-------|
| Agency Overall | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |

VII.C. Processed Requests Granted Expedited Processing – Response Time in Day Increments

| Agency / Component | <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+ Days | TOTAL |
|--------------------|------------|------------|------------|------------|-------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|-----------|-------|
| Agency Overall | 1 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 3 |

VII.D. Pending Requests – All Pending Perfected Requests

| Agency / Component | 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 |
| Agency Overall | 2 | 221 | 221 | 0 | N/A | N/A | 0 | N/A | N/A |

VII.E. Pending Requests – Ten Oldest Pending Perfected Requests

| Agency / Component | | 10th Oldest Request | 9th | 8th | 7th | 6th | 5th | 4th | 3rd | 2nd | Oldest Request |
|--------------------|------------------------|---------------------|-----|-----|-----|-----|-----|-----|-----|------------|----------------|
| Agency Overall | Date of Receipt | N/A | N/A | N/A | N/A | N/A | N/A | N/A | N/A | 2017-09-11 | 2017-09-05 |
| | Number of Days Pending | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 18 | 156 |

VIII.A. Requests for Expedited Processing

| Agency / Component | Number Granted | Number Denied | Median Number of Days to Adjudicate | Average Number of Days to Adjudicate | Number Adjudicated Within Ten Calendar Days |
|--------------------|----------------|---------------|-------------------------------------|--------------------------------------|---|
| Agency Overall | 3 | 1 | 3 | 3 | 3 |

VIII.B. Requests for Fee Waiver

| Agency / Component | Number Granted | Number Denied | Median Number of Days to Adjudicate | Average Number of Days to Adjudicate |
|--------------------|----------------|---------------|-------------------------------------|--------------------------------------|
| Agency Overall | 5 | 0 | 4 | 4 |

IX. FOIA Personnel and Costs

| Agency / Component | PERSONNEL | | | COSTS | | |
|--------------------|--------------------------------------|---|--|------------------|--------------------------|-------------|
| | Number of "Full-Time FOIA Employees" | Number of "Equivalent Full-Time FOIA Employees" | Total Number of "Full-Time FOIA Staff" | Processing Costs | Litigation-Related Costs | Total Costs |
| Agency Overall | 0 | 0.5 | 0.5 | \$43,000 | \$0.00 | \$43,000 |

X. Fees Collected for Processing Requests

| Agency / Component | Total Amount of Fees Collected | Percentage of Total Costs |
|--------------------|--------------------------------|---------------------------|
| Agency Overall | \$0.00 | 0.00% |

XI.A. Number of Times Subsection (C) Used

| Agency / Component | Number of Times Subsection Used |
|--------------------|---------------------------------|
| Agency Overall | 0 |

XI.B. Number of Subsection (A)(2) Postings

| Agency / Component | Number of Records Posted by the FOIA Office | Number of Records Posted by Program Offices |
|--------------------|---|---|
| Agency Overall | 3 | 522 |

XII.A. Backlogs of FOIA Requests and Administrative Appeals

| Agency / Component | Number of Backlogged Requests as of End of Fiscal Year | Number of Backlogged Appeals as of End of Fiscal Year |
|--------------------|--|---|
| Agency Overall | 1 | 0 |

XII.B. Consultations on FOIA Requests – Received, Processed, and Pending Consultation

| Agency / Component | Number of Consultations Received from Other Agencies that were <u>Pending</u> at the Agency as of <u>Start</u> of the Fiscal Year | Number of Consultations <u>Received</u> from Other Agencies During the Fiscal Year | Number of Consultations Received from Other Agencies that were <u>Processed</u> by the Agency During the Fiscal Year | Number of Consultations Received from Other Agencies that were <u>Pending</u> at the Agency as of <u>End</u> of the Fiscal Year |
|--------------------|---|--|--|---|
| Agency Overall | 0 | 2 | 2 | 0 |

XII.C. Consultations on FOIA Requests – Ten Oldest Consultations Received from Other Agencies and Pending at the Agency

| Agency / Component | | 10th Oldest Consultation | 9th | 8th | 7th | 6th | 5th | 4th | 3rd | 2nd | Oldest Consultation |
|--------------------|----------------|--------------------------|-----|-----|-----|-----|-----|-----|-----|-----|---------------------|
| Agency Overall | 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.1. Comparison of Numbers of Requests from Previous and Current Annual Report – Requests Received and Processed

| Agency / Component | NUMBER OF REQUESTS <u>RECEIVED</u> | | NUMBER OF REQUESTS <u>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 |
| Agency Overall | 31 | 16 | 26 | 19 |

XII.D.2. Comparison of Numbers of Requests from Previous and Current Annual Report – Backlogged Requests

| Agency / Component | 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 |
|--------------------|--|---|
| Agency Overall | 1 | 1 |

XII.E.1. Comparison of Numbers of Administrative Appeals from Previous and Current Annual Report – Appeals Received and Processed

| Agency / Component | NUMBER OF APPEALS <u>RECEIVED</u> | | NUMBER OF APPEALS <u>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 |
| Agency Overall | 0 | 1 | 0 | 1 |

XII.E.2. Comparison of Numbers of Administrative Appeals from Previous and Current Annual Report – Backlogged Appeals

| Agency / Component | 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 |
|--------------------|---|--|
| Agency Overall | 0 | 0 |