

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Freedom of Information Act Annual Report for Fiscal Year 2019



February 2020

I. BASIC INFORMATION ABOUT THIS REPORT

- A. Questions about this Report may be sent to the Board by mail, e-mail, or telephone as follows:

By mail, to: Glenn Sklar
Chief FOIA Officer
Defense Nuclear Facilities Safety Board
625 Indiana Avenue N.W., Suite 700
Washington, DC 20004

By telephone: (202) 694-7000 (Toll Free (800) 788-4016)

By e-mail: FOIA@dnfsb.gov

- B. The Report is available online at <https://www.dnfsb.gov/foia-reading-room>.
- C. Requests for printed copies of the Report should be addressed to the FOIA Public Liaison and may be made by mail, telephone, or e-mail as indicated above.

II. MAKING A FOIA REQUEST

- A. FOIA requests may be sent directly to the Board by mail or e-mail as follows:

By mail: FOIA Office
Defense Nuclear Facilities Safety Board
625 Indiana Avenue, N.W., Suite 700
Washington, D.C. 20004

By e-mail: FOIA@dnfsb.gov

- B. FOIA requests may also be sent to the Board through the National FOIA Portal, which can be accessed at <https://www.foia.gov>.
- C. Historically, the Board has found it appropriate to release most of the records that have been requested under the FOIA.¹ On those occasions when the Board has not released all or part of a record, it has most frequently been because the Board found that the record falls within the scope of either FOIA Exemption 6, which protects information related to personal privacy interests, or FOIA Exemption 5, which applies to specific categories of information, such as pre-decisional agency deliberations or attorney – client communications.
- D. The Board’s FOIA regulations can be found online at: <https://www.dnfsb.gov/sites/default/files/page/DNFSB%20FOIA%Regulations.pdf>. Its most recent FOIA 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.

¹ This statement applies to those records over which the Board has exclusive decision-making authority under the FOIA. When the Board is in possession of responsive records containing information in which another agency or agencies have an equitable interest, FOIA grants those agencies the authority to decide whether to release such information. See definition of “Consultation” in Section III. B. 5, below.

- 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 perfected 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 individuals seeking records concerning themselves (*i.e.*, a “first-party” request) when those persons 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.
 11. **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).
 12. **Pending Request or Pending Administrative Appeal** – a request or administrative appeal for which an agency has not taken final action in all respects.
 13. **Perfect 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.
 14. **Processed Request or Processed Administrative Appeal** – a request or administrative appeal for which an agency has taken final action in all respects.
 15. **Range in Number of Days** – the lowest and highest number of days to process requests or administrative appeals.
 16. **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	Number of Times Relied upon by Agency / Component	Total Number of Times Relied upon by Agency Overall
N/A	N/A	N/A	DNFSB	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
DNFSB	3	17	16	4
				0
AGENCY OVERALL	3	17	16	4

VI.A. Administrative Appeals of Initial Determinations of FOIA Requests – Received, Processed, and Pending Administrative Appeals

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
DNFSB	0	0	0	0
				0
AGENCY OVERALL	0	0	0	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
DNFSB	0	0	0	0	0
					0
AGENCY OVERALL	0	0	0	0	0

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
DNFSB	0	0	0	0	0	0	0	0	0	0	0	0	0	0
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
DNFSB	0	0	0	0	0	0	0	0	0	0	0
AGENCY OVERALL	0	0	0	0	0	0	0	0	0	0	0

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
DNFSB	N/A	0	0
AGENCY OVERALL			0

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
DNFSB	0.00	0.00	0.00	0.00
AGENCY OVERALL	0.00	0.00	0.00	0.00

VI.C.5. Ten Oldest Pending Administrative Appeals

Agency / Component		10th Oldest Appeal	9th	8th	7th	6th	5th	4th	3rd	2nd	Oldest Appeal
	Date of Appeal										
	Number of Days Pending										
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
	Number of Days Pending	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	22	78	3	488	N/A	N/A	N/A	N/A	30	30	30	30

Highest Number of Days figure (488) is misleading. The DNFSB timely released all appropriate records under its control in March 2017. It did not receive responses to its requests for consultation on responsive records that originated with other agencies until February 2019. While those consultation requests were pending, i.e., until it was in a position to release all of the documents that had been identified as responsive to the request, the DNFSB kept the request open. If that request is removed from the calculation, the response time figures for processed perfected requests are: Median Number of Days, 20; Average Number of Days, 46; Lowest Number of Days, 3; Highest Number of Days, 248.

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	21	93	3	488	0	0	0	0	30	30	30	30

See note to Section VII. A., above. If the 488 Highest Number of Days value is removed from the calculation, the response time figures for perfected requests in which information was granted are: Median Number of Days, 21; Average Number of Days, 47; Lowest Number of Days, 3; and Highest Number of Days, 248.

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
DNFSB	7	3	0	1	1	0	0	0	0	0	1	0	1	14
AGENCY OVERALL	7	3	0	1	1	0	0	0	0	0	1	0	1	14

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
DNFSB	0	0	0	0	0	0	0	0	0	0	0	0	0	0
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
DNFSB	0	1	0	0	0	0	0	0	0	0	0	0	0	1
														0
AGENCY OVERALL	0	1	0	0	0	0	0	0	0	0	0	0	0	1

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	102	102	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
	Date of Receipt										
	Number of Days Pending										
AGENCY OVERALL	Date of Receipt	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	2019-06-21	2019-03-26
	Number of Days Pending	0	0	0	0	0	0	0	0	70	133

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	1	0	30	30	0

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	15	27

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
DNFSB	0	0.5	0.5	\$45,000.00	\$0.00	\$45,000.00
			0			\$0.00
AGENCY OVERALL	0	0.5	0.5	\$45,000.00	\$0.00	\$45,000.00

X. Fees Collected for Processing Requests

Agency / Component	Total Amount of Fees Collected	Percentage of Total Costs
DNFSB	\$0.00	0.00%
AGENCY OVERALL	\$0.00	0.00%

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

Agency / Component	Number of Times Subsection Used
DNFSB	0
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
DNFSB	7	522
AGENCY OVERALL	7	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
DNFSB	2	0
AGENCY OVERALL	2	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
DNFSB	0	1	1	0
				0
AGENCY OVERALL	0	1	1	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
	Date										
	Number of Days										
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 RECEIVED		NUMBER OF REQUESTS PROCESSED	
	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
DNFSB	16	17	19	16
AGENCY OVERALL	16	17	19	16

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
DNFSB	1	2
AGENCY OVERALL	1	2

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

Agency / Component	NUMBER OF APPEALS RECEIVED		NUMBER OF APPEALS PROCESSED	
	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
DNFSB	1	0	1	0
AGENCY OVERALL	1	0	1	0

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
DNFSB	0	0
AGENCY OVERALL	0	0