

Freedom of Information Act Annual Report

Fiscal Year 2007



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NATIONAL RAILROAD PASSENGER CORPORATION

FREEDOM OF INFORMATION ACT ANNUAL REPORT

FISCAL YEAR 2007

I. Basic Information Regarding the Report

The Freedom of Information Act (FOIA) Office of the National Railroad Passenger Corporation (Amtrak) is responsible for the preparation of Amtrak's FOIA Annual Report. To obtain additional information or a copy of the report, contact:

Ms. Medaris Oliveri
National Railroad Passenger Corporation
Freedom of Information Office
60 Massachusetts Avenue, N.E.
Washington, DC 20002

Phone: 202/906-2728

Fax: 202/906-2169

A copy of Amtrak's annual FOIA report can also be obtained by accessing Amtrak's home page on the Internet at:

www.amtrak.com/foia

The report may also be obtained by e-mail at:

foiarequests@amtrak.com

II. How to Make a FOIA Request

A. Name, Address, Phone Number, and Fax Number for Obtaining Information:

Specific information on how to submit a FOIA request to Amtrak can be obtained by writing to:

Ms. Medaris Oliveri
National Railroad Passenger Corporation
Freedom of Information Office
60 Massachusetts Avenue, N.E.
Washington, DC 20002

Information on how to make a FOIA request is also available at Amtrak's website at:

www.amtrak.com/foia

A FOIA request may be sent to Amtrak via fax at the following number:

Fax Number: 202/906-2169

A FOIA request may also be submitted via e-mail to:

foiarequests@amtrak.com

B. Response Time Ranges

Amtrak makes every effort to answer FOIA requests within the time frame mandated by the 1996 Electronic FOIA amendments. Responses may be delayed, however, when it is necessary for the FOIA Office to contact field offices for information; to consult with other components of Amtrak having substantial interest in the records; and/or to confer with parties having a vested interest in the records sought in the request.

Other factors impacting Amtrak's response time are: (1) requests that are improperly addressed, (2) requests that do not clearly describe the records sought, (3) requests that seek voluminous records, or (4) requests that do not include a statement that the requester is willing to pay applicable processing fees.

Amtrak's response time for FY2007 requests has been reported in both "calendar days" and "business days" for comparison with data reported for prior years. For information regarding response times and the status of pending requests, refer to Section VII of this report.

C. Why Some Requests Are Not Granted

It is Amtrak's policy to make records publicly available unless the record qualifies for one or more of the nine exemptions to the FOIA or the (c)(1) and (c)(2) exclusions. For example, some requests cannot be granted because of the need to protect confidential, privileged, or proprietary information; personal privacy interests; ongoing law enforcement proceedings; records containing information that would pose a security risk; or records concerning Amtrak's decision-making process. For these reasons, Amtrak may be unable to disclose certain records or parts of records. For a description of exemptions that may be asserted pursuant to the FOIA, refer to Section XII of this report.

III. Definition of Terms and Acronyms Used in This Report

A. Amtrak-specific acronyms or terms:

1. **National Railroad Passenger Corporation** -- NRPC, commonly known as Amtrak.
2. **President** -- President and Chief Executive Officer (CEO) of Amtrak or designee.

B. Basic terms used in the report:

1. **Appeal** -- A request at a higher administrative level asking for review of a full or partial denial of access to records under the Freedom of Information Act (FOIA) or any other adverse determination such as a matter pertaining to fees.

2. **Business days** -- The number of “working days” (excluding intervening weekends, holidays, and any other day on which an entity subject to the FOIA is closed for official business). “Working days” are used in determining the response time for FOIA requests from the date of “perfection” to the date of completion.
3. **Calendar days** -- The number of days from “date of perfection” to “date of completion” for each request used in compiling statistics for the annual FOIA report. Weekends, holidays, and other days during which an entity subject to the FOIA is closed for business are included in this calculation.
4. **Complex request** -- A FOIA request placed in a slower track for processing based upon the volume and/or complexity of the records sought in the request.
5. **Consultations** -- Consultations involve responsive records originated by an agency that contain information furnished by another agency.
6. **Denial** -- A decision not to release records or any part of a record in response to a FOIA request because all information in the requested records is determined to be exempt from disclosure under one or more of exemptions to the Act or for some procedural reason (i.e., no records could be located in response to a FOIA request).
7. **Executive Order 13,392** – An Executive Order entitled *Improving Agency Disclosure of Information* issued by President George W. Bush on December 14, 2005. The Order established a “citizen-centered” and “results-oriented” approach to the administration of the FOIA. It required each entity subject to the FOIA to conduct a review of its FOIA operations, develop a plan to improve the administration of the Act, and provide a description of progress made in meeting milestones and goals established in its improvement plan in its Annual FOIA Report.
8. **Executive Order Implementation Plan** – A plan developed to improve the administration of the FOIA. The Implementation Plan includes a description of FOIA operations, areas selected for review, the results of the analysis, and areas selected for improvement along with goals and milestones for accomplishing the improvements.
9. **Exemption 3 statute** -- A federal statute prohibiting the disclosure of a certain type of information and authorizing the withholding of such information under subsection (b)(3) of the FOIA.
10. **Expedited processing** -- Processing of a FOIA request on an expedited basis when a requester has shown an exceptional need or urgency for records that warrants prioritization of that request over other requests that have been submitted for processing. Refer to 49 CFR § 701.7(e).
11. **Fiscal year (FY)** -- October 1 through September 30.
12. **Freedom of Information Act (FOIA)** -- (5 U.S.C. § 552) Generally provides any person with a right to access to records of entities subject to the Freedom of Information Act, except to the extent that such records or parts thereof are protected from disclosure by one of nine exemptions or one of three special law enforcement record exclusions.

13. **FOIA request** -- A Freedom of Information Act (FOIA) request. A FOIA request is generally a request for access to records concerning a third party, an organization, or a particular topic of interest.
14. **Grant** -- A decision to disclose all records in full in response to a FOIA request.
15. **Initial request** -- A request for access to records under the FOIA.
16. **Median number** -- The middle number.
17. **Multi-track processing** -- A system in which requests that require relatively minimal review are classified as simple requests and are placed in one processing track. Requests that seek voluminous records or that are complex in nature are placed in one or more other tracks. Requests in which there is an exceptional need or urgency for records are placed in still another track. Requests in each track are processed on a first-in/first-out basis. A requester with an urgent need may request expedited processing.
18. **Partial grant** -- A decision to disclose a record in part in response to a FOIA request, deleting information determined to be exempt under one or more of the exemptions to the FOIA or a decision to disclose some records in their entireties and to withhold other records in full or in part.
19. **Pending request** -- A perfected or unperfected FOIA request that is pending at the end of the reporting period.
20. **“Perfected” request** -- A FOIA request for records received by the FOIA Office that adequately describes the records sought and for which there is no remaining question regarding the payment of applicable fees.
21. **Processed request or appeal** -- A request or appeal in which final action has been taken in all respects.
22. **Referrals** -- Instances in which FOIA-requested records are sent to the agency that originated the records to make a determination regarding disclosure.
23. **Segregability review** -- The act of reviewing a document and removing portions that are exempt from disclosure under the FOIA.
24. **Simple request** -- A FOIA request placed in the fastest (nonexpedited) track for processing based upon the volume and/or complexity of the records sought in the request.
25. **Time limits** -- The time period specified in the Freedom of Information Act for a response to a request (ordinarily twenty business days from proper receipt of a “perfected” FOIA request).

“Other Reasons” cited on initial and appeal determinations:

1. **Duplicate request** -- A request for the same information by the same requester. This includes identical requests received via different means (e.g., e-mail, fax, mail, courier) at the same or different times.
2. **Fee-related reason** -- The requester has not agreed to pay fees associated with the request, is past due paying fees associated with a previous FOIA request, or disagrees with a fee estimate.
3. **Forwarding of a request** – The discretionary transmittal of a request to a federal agency.
4. **No records** -- A reasonable search failed to identify records responsive to the request.
5. **Not a proper FOIA request for some other reason** -- The requester failed to comply with legitimate procedural requirements that are not fee-related.
6. **Not an Amtrak record** -- The information requested was not a record within the meaning of FOIA.
7. **Other reasons for nondisclosure** -- Any other reason that a requester does not comply with published rules.
8. **Records not reasonably described** -- The request could not be acted upon due to the fact that records sought in the request were not sufficiently described to permit Amtrak 's staff to locate them by conducting a reasonable search.
9. **Referrals** -- The request was referred to a federal agency for action.
10. **Withdrawn** -- The request was withdrawn by the requesting party.

IV. Exemption 3 Statutes

Statute	Type of Information Withheld	Case Citation
49 U.S.C. § 24301 note	Bid proposals not incorporated in contracts.	None

V. Initial FOIA Access Requests

A. Numbers of Initial Requests:

1.	Number of requests pending at the end of Fiscal Year 2006	11
2.	Number of requests received during Fiscal Year 2007	220
3.	Number of requests processed during Fiscal Year 2007	221
4.	Number of requests pending at the end of Fiscal Year 2007	10

The term "pending" encompasses unanswered, perfected or unperfected requests.

B. Disposition of Initial Requests:

1.	Number of total grants	54
2.	Number of partial grants	36
3.	Number of denials	5

a. Number of Times Each FOIA Exemption Used: (each exemption counted only once per request)

(1)	Exemption 1	0
(2)	Exemption 2	7
(3)	Exemption 3	9
(4)	Exemption 4	13
(5)	Exemption 5	15
(6)	Exemption 6	21
(7)	Exemption 7 (A)	1

(8)	Exemption 7(B)	0
(9)	Exemption 7(C)	5
(10)	Exemption 7(D)	0
(11)	Exemption 7(E)	1
(12)	Exemption 7(F)	0
(13)	Exemption 8	0
(14)	Exemption 9	0

4. Other Reasons for Nondisclosure:		Total:	126
(a)	No records		11
(b)	Referrals to other entities subject to the FOIA		0
(c)	Request withdrawn		9
(d)	Fee-related reason		38
(e)	Records not reasonably described		7
(f)	Not a proper FOIA request for some other reason		35
(g)	Not Amtrak records		0
(h)	Duplicate request		24
(i)	Other reasons for nondisclosure *		2

*Failure to respond.

VI. Appeals of Initial Denials of FOIA Requests

A. Number of Appeals:

1.	Number of appeals received during FY2007	3
2.	Number of appeals processed during FY2007	3

B. Disposition of Appeals:

1.	Number of completely upheld	1
2.	Number of partially reversed	0
3.	Number completely reversed	0

a. Number of times each FOIA exemption asserted (each exemption counted only once per appeal)

(1)	Exemption 1	0
(2)	Exemption 2	1
(3)	Exemption 3	0
(4)	Exemption 4	1
(5)	Exemption 5	1
(6)	Exemption 6	0
(7)	Exemption 7 (A)	0

(8)	Exemption 7(B)	0
(9)	Exemption 7(C)	0
(10)	Exemption 7(D)	0
(11)	Exemption 7(E)	0
(12)	Exemption 7(F)	0
(13)	Exemption 8	0
(14)	Exemption 9	0

4. Other Reasons for Nondisclosure		Total:	2
(a)	No records		0
(b)	Referrals to other entities subject to the FOIA		0
(c)	Appeal withdrawn		0
(d)	Fee-related reason		2
(e)	Records not reasonably described		0
(f)	Not a proper FOIA request for some other reason		0
(g)	Not an Amtrak record		0
(h)	Duplicate request		0
(i)	Other reasons for nondisclosure		0

VII. Compliance with Time Limits and Status of Pending Requests

A. Median Processing Time for Requests Completed during FY2007

1. Simple Requests Processed during FY2007		
(a)	Number of requests processed	45
(b)	Median number of days to process	1 calendar day 1 business day

2. Complex Requests Processed during FY2007		
(a)	Number of requests processed	176
(b)	Median number of days to process	16 calendar days 11 business days

3. Expedited Requests Processed during FY2007		
(a)	Number of requests processed	0
(b)	Median number of days to process	Not Applicable

B. Status of Pending Requests:

1.	Number of requests pending at the end of FY2007	10
2.	Median number of days that requests were pending	32.5 calendar days 22 business days

VIII. Comparative Data

A. Below is a table showing the number of requests received by Amtrak during fiscal years 1997 through 2007:

FY97	FY98	FY99	FY00	FY01	FY02	FY03	FY04	FY05	FY06	FY07
72*	101	172	193	202	197	178	223	206	214	220

*January-September

B. Below is a table that shows the number of requests processed during the eleven-year period:

FY97	FY98	FY99	FY00	FY01	FY02	FY03	FY04	FY05	FY06	FY07
77*	108	173	194	215	167	203	230	208	217	221

*January-September

C. Below is a table that shows the number of requests pending at the each of each fiscal year for the past eleven years:

FY97	FY98	FY99	FY00	FY01	FY02	FY03	FY04	FY05	FY06	FY07
7*	1	15	31	18	48	23	16	14	11	10

*January-September

D. During FY2007, Amtrak received one request for expedited processing. The request did not provide information that met the criteria stipulated in Amtrak's FOIA regulations regarding expedited requests and was denied.

E. Refer to Section XII of this report for actions undertaken by Amtrak during FY2007 to improve the timeliness of FOIA responses and to make records available to the public:

IX. Administrative Costs and FOIA Staffing

A. Staffing Levels

1.	Number of full-time FOIA personnel	0
2.	Number of personnel with part-time or occasional FOIA duties (total work years)	0.60
3.	Total number of personnel (work years)	0.60

B. Total Costs (including staff and all resources)

1.	FOIA processing (including appeals)	\$171,000*
2.	Litigation-related activities	\$46,141*
3.	Total costs	\$217,141*

*Estimated salaries and benefits and outside counsel fees. Amtrak does not track all costs associated with processing FOIA requests and appeals.

X. Fees

1.	Fees collected for processing requests	\$9,460
2.	Percentage of total costs	4.36%

XI. FOIA Regulations (including Fee Schedule)

No changes were made in Amtrak's FOIA regulations (49 CFR 701) during FY2007. These regulations are attached to this report. These regulations can also be accessed through the Internet at: http://www.amtrak.com/pdf/FOIA/FOIA_Regulations.pdf

XII. REPORT ON EXECUTIVE ORDER 13,392 IMPLEMENTATION

Section XII of the Annual FOIA Report provides information regarding the implementation of milestones and goals established in Amtrak's FOIA Improvement Plan under Executive Order 13,392. The majority of the milestones established in the Plan were implemented in 2006. This section of the Annual Report provides information regarding progress made during calendar year 2007.

Element F of Section XII of this Report provides data regarding pending requests and consultations as of January 1, 2008. Sections I through XI of the Amtrak's Annual FOIA Report provide statistical data for Fiscal Year 2007.

A. Description of Supplementation/Modification of the Improvement Plan

Amtrak has not supplemented or modified its Improvement Plan.

B. Report on Implementation of Amtrak's Plan, Including Performance in Meeting Milestones with Respect to Each Improvement Area

Amtrak has met or exceeded its goals and milestones set forth in its June 14, 2006 Executive Order Implementation Plan.

As outlined in the Implementation Plan, Amtrak undertook steps to enhance the administration of its FOIA program in the following areas: customer relations/communications, training, FOIA processing and backlog reduction, information technology, reading room materials/FOIA website, automated tracking of requests, and updating of informational materials provided to FOIA requesters.

FOIA Processing and Backlog Reduction/Elimination

During 2007, Amtrak continued to evaluate the processing of FOIA requests in an effort to improve the administrative process and reduce response times as well as its backlog. Monthly staff meetings were held to discuss FOIA issues and procedures as well as pending requests. A number of improvements have been made as the result of suggestions made at these meetings. As an example, the time required for the submitter notification process has been reduced as the result of more frequent use of electronic and air-borne mail. Other improvements included the development of forms to track the progress of requests through the FOIA process and the recording of processing fees.

Improvements described in the FY06 FOIA Annual Report have continued and in some cases, have been refined. For example, to improve response times, target dates specified in search memos have been further reduced, and field offices are contacted for responsive records upon receipt of the request instead of waiting until the request is "perfected."

With regard to backlog reduction, Amtrak exceeded its goal of reducing its backlog of pending FOIA requests by ten percent at the end of FY06 and achieved its goal of another ten percent reduction at the end of FY07. Amtrak has established a goal of no more than three requests that are beyond the statutory limits of the Act at the close of FY08. The median time for pend-

ing requests at the end of FY07 was 22 business days compared to 29 days in FY06. As the result of the focus on completing the older, more complex FOIA requests, the median days for complex requests in FY07 increased slightly when compared with FY06. Processing time for simple requests remained unchanged. (Refer to Section VII of this Report for this data.)

The FOIA Office plans to issue a memo to field personnel regarding the recent amendments to the FOIA, as it did regarding Executive Order 13,392, for the purpose of advising them about recent changes to the FOIA and to gain their continuing support and cooperation.

Training

Amtrak's FOIA staff has continued to enhance its knowledge of the FOIA through training. During the reporting period, Amtrak's FOIA staff attended training sessions provided by the Department of Justice (DOJ) as well as the American Society of Access Professionals (ASAP). In addition, each FOIA request processed by the Assistant FOIA Officer has been reviewed and critiqued during 2007.

Customer Relations/Communications:

During the October-December 2006 time frame, Amtrak initiated a number of actions to enhance customer relations, and these practices have continued. In October 2006, Amtrak initiated the process of sending acknowledgement letters within ten days of receipt of a request and providing requesters with a FOIA request tracking number. Amtrak also developed a card containing contact information for the FOIA Service Center, FOIA Public Liaison, and FOIA staff, which is included in acknowledgement letters and/or final responses. These practices will continue going forward.

As reported in the FY06 FOIA Annual Report, contact information was posted on Amtrak's FOIA web site, and an FOIA e-mail account established. FOIA requesters and others are utilizing the FOIA e-mail account to submit requests for information. Efforts to continue to enhance customer relations will continue post-Plan. Amtrak plans to develop an e-mail FOIA request form and an inquiry form for Amtrak's FOIA web page. FOIA requesters will be able to inquire about the status of their requests both electronically and telephonically.

Amtrak has taken other steps to enhance customer relations. For example, when requested, Amtrak responds to FOIA requests electronically and when feasible, sends responsive documents by e-mail or provides the information on computer disks (CDs).

As reported in the FY06 Annual Report, a Requester Service Center was established with a dedicated phone number. Procedures were developed for documenting calls and reviewing responses to the calls. To date, no calls have been received by the Service Center.

Use of Information Technology and Automated Tracking of Requests:

Amtrak met its milestones with regard to information technology and automated tracking of requests. The new version of the FOIA request tracking software was tested and went into full production in March 2007. A new fax machine was also purchased and installed in the FOIA Office. Amtrak is continuing to explore technology as a means of enhancing the efficiency of the FOIA process.

Reading Rooms and Web Site:

With regard to Amtrak's FOIA website, a review of the website is undertaken on a monthly basis, and updates to the website were made during the reporting period.

Amtrak undertook a review of its major information systems following the completion of an assessment of the corporation's electronic information systems. The updated list of major information systems was incorporated into the FOIA Handbook and posted on Amtrak's website.

As reported in the January 2006 FOIA Annual Report, Amtrak has taken steps to provide FOIA requesters with ready access to reading room materials by setting up a computer terminal for visitors.

FOIA Annual FOIA Report, FOIA Handbook and Amtrak FOIA Regulations:

Amtrak revised both its FY06 and FY07 Annual FOIA Reports to reflect the data and definitions required by Executive Order 13,392. Amtrak's FOIA Handbook underwent a significant revision to make it more comprehensive and user-friendly. Since the revision, the number of FOIA requests without fee commitments dropped by 15.5 percent in FY07 when compared with FY06. Some of the requesters who submitted requests seeking voluminous records have provided an advance deposit upfront. Such requests have enabled Amtrak to respond in less time to their requests. Amtrak's Instructions for Making a FOIA Request were revised in August 2006.

Amtrak has undertaken a comprehensive review of its FOIA regulations and made revisions that reflect provisions of Executive Order 13,392. The Implementation Plan did not specify a milestone for publication of the regulations in the Federal Register since it was unclear when Congress would enact the amendments to the FOIA. Publication of the revised regulations in the Federal Register will occur following any additional revisions resulting from the "OPEN Government Act of 2007" and the issuance of guidance by the Department of Justice regarding the new FOIA amendments.

C. Identification and Discussion of Any Deficiency in Meeting Plan Milestones

Not Applicable.

D. Additional Narrative Statements regarding Other Executive-Order Related Activities (Optional)

E. Concise Description of FOIA Exemptions

There are nine exemptions to the FOIA which authorize entities subject to the FOIA to withhold information. A brief description of these exemptions appears below:

Exemption 1: Classified national defense and foreign relations information.

Exemption 2: Internal agency rules and practices.

Exemption 3: Information that is prohibited from disclosure by another federal law.

Exemption 4: Trade secrets and other confidential business information.

Exemption 5: Inter-agency or intra-agency communications that are protected by legal privileges.

Exemption 6: Information involving matters of personal privacy.

Exemption 7: Records or information compiled for law enforcement purposes, to the extent 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 disclose guidelines for law enforcement investigations or prosecutions or
- (F) could reasonably be expected to endanger the life or physical safety of any individual.

Exemption 8: Information relating to the supervision of financial institutions,

Exemption 9: Geological information.

F. Additional Statistics

1. Ten oldest pending FOIA requests as of January 1, 2008 listed by date of receipt:

Calendar Year	2000	2001	2002	2003	2004	2005	2006	2007
Dates Requests Received	0	0	0	0	0	0	Mar 6	Jan 22 Feb 15 Oct 18 Oct 25 Oct 26 Nov 6 Nov 30 Dec 3 Dec 11

2. Number of consultations received, processed and pending from Federal Agencies:

Consultations Received from Federal Agencies during FY07	Consultations Processed by Amtrak during FY07	Consultations Pending as of October 1, 2007
0	0	0

3. Ten Oldest Pending Consultations Received from Federal Agencies:
Amtrak has no pending consultations.

Calendar Year	2000	2001	2002	2003	2004	2005	2006	2007
Consults Received	0	0	0	0	0	0	0	0

F. Attachment: Amtrak's Improvement Plan

The link to Amtrak's FOIA Report and Plan under Executive Order 13,392 is <http://www.amtrak.com/pdf/FOIA/FOIA-Plan-EO13392.pdf>