

# Freedom of Information Act Annual Report

Fiscal Year 2008



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**NATIONAL RAILROAD PASSENGER CORPORATION**  
**FREEDOM OF INFORMATION ACT ANNUAL REPORT**  
**FISCAL YEAR 2008**

**I. BASIC INFORMATION REGARDING 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. Sharron Hawkins  
National Railroad Passenger Corporation  
Freedom of Information Office  
60 Massachusetts Avenue, NE  
Washington, DC 20002

Phone: 202-906-3741

Fax: 202-906-3285

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](http://www.amtrak.com/foia)

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

[foiarequests@amtrak.com](mailto:foiarequests@amtrak.com)

## II. MAKING A FOIA REQUEST

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

Ms. Sharron Hawkins  
National Railroad Passenger Corporation  
Freedom of Information Office  
60 Massachusetts Avenue, NE  
Washington, DC 20002

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

[www.amtrak.com/foia](http://www.amtrak.com/foia)

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

Fax number: 202-906-3285

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

[foiarequests@amtrak.com](mailto:foiarequests@amtrak.com)

### **RESPONSE TIME:**

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.

## **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 pages 5 and 6 in Section III of this report.

### **III. ACRONYMS, DEFINITIONS, AND EXEMPTIONS**

#### **1. Amtrak-specific acronyms or terms:**

- a. **National Railroad Passenger Corporation** – NRPC, commonly known as Amtrak.  
Amtrak is a private corporation and not a federal agency. It is, however, subject to the FOIA by statute. See . 49 U.S.C. § 24301.

#### **2. Basic terms used in the report:**

- a. **Administrative Appeal** – a request to a federal agency or other entity subject to the FOIA asking that it review at a higher administrative level a FOIA determination made at the initial request level.
- b. **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 the end of the fiscal year that are beyond the statutory time period for a response.
- d. **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.
- e. **Exemption 3 Statute** – a federal statute that exempts information from disclosure and which an agency relies on to withhold information under subsection (b)(3) of the FOIA.

- f. **FOIA Request** – a FOIA request is generally a request to a federal agency or other entity subject to the FOIA 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). 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 an agency or other entity subject to the FOIA 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.)

- g. **Full Grant** – an agency decision to disclose all records in full in response to a FOIA request.
- h. **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.
- i. **Median Number** – the middle, not average, number. For example, of 3, 7, and 14, the median number is 7.
- j. **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 or entity 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 or entity 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 or entity using multi-track processing places in a slower track based on the high volume and/or complexity of the records requested.

- k. **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 a procedural reason.
- l. **Pending Request or Pending Administrative Appeal** – a request or administrative appeal for which an agency or entity has not taken final action in all respects.
- m. **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.
- n. **Processed Request or Processed Administrative Appeal** – a request or administrative appeal for which an agency or entity has taken final action in all respects.
- o. **Range in Number of Days** – the lowest and highest number of days to process requests or administrative appeals.
- p. **Time Limits** – the time period in the statute for an agency or entity to respond to a FOIA request (ordinarily twenty working days from receipt of a perfected FOIA request).

**3. 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 disclose 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 STATUTES**

A. Exemption 3 Statutes Relied upon to Withhold Information

<b>Statute</b>	<b>Type of Information Withheld</b>	<b>Case Citation</b>	<b>Total Number of Times Relied upon by Agency</b>
49 U.S.C. § 24301 note	Bid proposals not incorporated in contracts.	None	7

**V. FOIA REQUESTS**

A. Received, Processed and Pending FOIA Requests:

	Column 1	Column 2	Column 3	Column 4
	<b>Number of Requests Pending as of Start of Fiscal Year</b>	<b>Number of Requests Received in Fiscal Year</b>	<b>Number of Requests Processed in Fiscal Year</b>	<b>Number of Requests Pending as of End of Fiscal Year</b>
<b>AGENCY OVERALL</b>	10	258	240	28

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									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	
<b>AGENCY OVERALL</b>	35	28	12	9	0	13	64	11	35	3	28	2	240

B. (2) Disposition of FOIA Requests – “Other” Reasons for “Full Denials Based on Reasons Other than Exemptions” from Section V, B (1) Chart

<b>Component</b>	<b>Description of “Other” Reasons for Denials from Chart B (1) &amp; Number of Times Those Reasons Were Relied upon</b>	<b>TOTAL</b>
<b>Agency Overall</b>	Authorization needed from third party.	2

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
<b>AGENCY OVERALL</b>	0	10	7	8	22	12	2	0	5	0	1	0	0	0

**VI. ADMINISTRATIVE APPEALS OF INITIAL DETERMINATIONS OF FOIA REQUESTS**

A. Received, Processed and Pending Administrative Appeals:

Column 1	Column 2	Column 3	Column 4
<b>Number of Appeals Pending as of Start of Fiscal Year</b>	<b>Number of Appeals Received in Fiscal Year</b>	<b>Number of Appeals Processed in Fiscal Year</b>	<b>Number of Appeals Pending as of End of Fiscal Year</b>
0	2	1	1

B. Disposition of Administrative Appeals – All Processed Appeals:

<b>Number Affirmed on Appeal</b>	<b>Number Partially Affirmed &amp; Partially Reversed/Remanded on Appeal</b>	<b>Number Completely Reversed/Remanded on Appeal</b>	<b>Number of Appeals Closed for Other Reasons</b>	<b>TOTAL</b>
0	0	0	1	1

C. (1) Reasons for Denial on Appeal – Number of Times Exemptions Applied:

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

C. (2) Reasons for Denial on Appeal – Reasons Other than Exemptions:

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

C. (3) Reasons for Denial on Appeal – “Other” Reasons from Section VI, C (2) Chart:

<b>Description of “Other” Reasons for Denial on Appeal from Chart C (2) &amp; Number of Times Those Reasons Were Relied upon</b>	<b>TOTAL</b>
	0

C. (4) Response Time for Administrative Appeals:

<b>Median Number of Days</b>	<b>Average Number of Days</b>	<b>Lowest Number of Days</b>	<b>Highest Number of Days</b>
44	44	44	44

C. (5) Ten Oldest Pending Administrative Appeals:

	10 <sup>th</sup> Oldest Appeal	9 <sup>th</sup>	8 <sup>th</sup>	7 <sup>th</sup>	6 <sup>th</sup>	5 <sup>th</sup>	4 <sup>th</sup>	3 <sup>rd</sup>	2 <sup>nd</sup>	Oldest Appeal
<b>Date of Receipt of Ten Oldest Appeals</b>	0	0	0	0	0	0	0	0	0	03/10/08
<b>Number of Days Pending</b>	0	0	0	0	0	0	0	0	0	143

**VII. FOIA REQUESTS: RESPONSE TIME FOR PROCESSED AND PENDING REQUESTS**

**A. Processed Requests – Response Time for All Processed Perfected Requests**

	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
<b>AGENCY OVERALL</b>	4	10	< 1	26	14	27	<1	228	10	10	2	17

**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
<b>AGENCY OVERALL</b>	10	12	< 1	26	14	25	< 1	156	0	0	0	0

C. Processed Requests – Response Time in Day Increments

**Simple Requests**

	<b>1-20 Days</b>	<b>21-40 Days</b>	<b>41-60 Days</b>	<b>61-80 Days</b>	<b>81-100 Days</b>	<b>101-120 Days</b>	<b>121-140 Days</b>	<b>141-160 Days</b>	<b>161-180 Days</b>	<b>181-200 Days</b>	<b>201-300 Days</b>	<b>301-400 Days</b>	<b>401+ Days</b>	<b>TOTAL</b>
<b>AGENCY OVERALL</b>	6	2	0	0	0	0	0	0	0	0	0	0	0	8

**Complex Requests**

	<b>1-20 Days</b>	<b>21-40 Days</b>	<b>41-60 Days</b>	<b>61-80 Days</b>	<b>81-100 Days</b>	<b>101-120 Days</b>	<b>121-140 Days</b>	<b>141-160 Days</b>	<b>161-180 Days</b>	<b>181-200 Days</b>	<b>201-300 Days</b>	<b>301-400 Days</b>	<b>401+ Days</b>	<b>TOTAL</b>
<b>AGENCY OVERALL</b>	65	11	13	6	1	0	2	1	0	0	2	0	0	101

### 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+ Days	TOTAL
<b>AGENCY OVERALL</b>	2	0	0	0	0	0	0	0	0	0	0	0	0	2

#### 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
<b>AGENCY OVERALL</b>	0	0	0	26	34	81	0	0	0

Note: Two of the requests at year end were not perfected.

E. Pending Requests – Ten Oldest Pending Perfected Requests

<b>Agency Overall</b>	<b>10<sup>th</sup> Oldest Request and Number of Days Pending</b>	<b>9<sup>th</sup></b>	<b>8<sup>th</sup></b>	<b>7<sup>th</sup></b>	<b>6<sup>th</sup></b>	<b>5<sup>th</sup></b>	<b>4<sup>th</sup></b>	<b>3<sup>rd</sup></b>	<b>2<sup>nd</sup></b>	<b>Oldest Request and Number of Days Pending</b>
	07/01/08 63	06/25/08 67	06/24/08 68	06/4/08 82	03/31/08 128	03/12/08 141	03/10/08 143	02/21/08 155	12/31/07 201	03/06/06 671

**VIII. REQUESTS FOR EXPEDITED PROCESSING AND REQUESTS FOR FEE WAIVER**

A. Requests for Expedited Processing:

	<b>Number Granted</b>	<b>Number Denied</b>	<b>Median Number of Days to Adjudicate</b>	<b>Average Number of Days to Adjudicate</b>	<b>Number Adjudicated Within Ten Calendar Days</b>
<b>AGENCY OVERALL</b>	3	1	4	7	3

Note: One expedited request was pending at year end.

B. Requests for Fee Waiver

	<b>Number Granted</b>	<b>Number Denied</b>	<b>Median Number of Days to Adjudicate</b>	<b>Average Number of Days to Adjudicate</b>
<b>AGENCY OVERALL</b>	1	2	13	28

**IX. FOIA PERSONNEL AND COSTS**

	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  (At initial request and appeal levels)	Litigation-Related Costs	Total Costs
<b>AGENCY OVERALL</b>	1	0	1	\$120,370	\$44,648	\$165,018

**X. FEES COLLECTED FOR PROCESSING REQUESTS**

	Total Amount of Fees Collected	Percentage of Total Costs
<b>AGENCY OVERALL</b>	\$3,663	2.2%

**XI. FOIA REGULATIONS:**

No changes were made in Amtrak’s FOIA regulations (49 CFR 701) during FY2008. 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](http://www.amtrak.com/pdf/FOIA/FOIA_Regulations.pdf)

## **XII. BACKLOGS, CONSULTATIONS, AND COMPARISONS**

### **A. Backlogs of FOIA Requests and Administrative Appeals**

	<b>Number of Backlogged Requests as of End of Fiscal Year</b>	<b>Number of Backlogged Appeals as of End of Fiscal Year</b>
<b>AGENCY OVERALL</b>	17	1

#### **Discussion of Backlog:**

Amtrak experienced a 17 percent increase in the number of FOIA requests received during FY08. At the end of FY08, there were 27 requests pending, 17 of which were perfected requests beyond the statutory limit. Additional resources have been devoted to reducing the backlog, and at the time of this report, Amtrak has reduced the FY08 year-end backlog by over half.

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

	Column 1	Column 2	Column 3	Column 4
	<b>Number of Consultations Received from Other Agencies that Were <u>Pending</u> at Your Agency as of <u>Start</u> of the Fiscal Year</b>	<b>Number of Consultations <u>Received</u> from Other Agencies During the Fiscal Year</b>	<b>Number of Consultations Received from Other Agencies that Were <u>Processed</u> by Your Agency During the Fiscal Year</b>	<b>Number of Consultations Received from Other Agencies that Were <u>Pending</u> at Your Agency as of <u>End</u> of the Fiscal Year</b>
<b>AGENCY OVERALL</b>	0	1*	0	1*

\*Consultation requested by state agency.

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

<b>Agency Overall</b>	<b>10<sup>th</sup> Oldest Consultation and Number of Days Pending</b>	<b>9<sup>th</sup></b>	<b>8<sup>th</sup></b>	<b>7<sup>th</sup></b>	<b>6<sup>th</sup></b>	<b>5<sup>th</sup></b>	<b>4<sup>th</sup></b>	<b>3<sup>rd</sup></b>	<b>2<sup>nd</sup></b>	<b>Oldest Consultation and Number of Days Pending</b>
	Date Number of Days	0	0	0	0	0	0	0	0	0

D. Comparison of Numbers of Requests from Previous and Current Annual Report – Requests Received, Processed, and Backlogged

	Column 1	Column 2	Column 3	Column 4
	<b>NUMBER OF REQUESTS <u>RECEIVED</u></b>		<b>NUMBER OF REQUESTS <u>PROCESSED</u></b>	
	<b>Number Received During Fiscal Year from Last Year's Annual Report</b>	<b>Number Received During Fiscal Year from Current Annual Report</b>	<b>Number Processed During Fiscal Year from Last Year's Annual Report</b>	<b>Number Processed During Fiscal Year from Current Annual Report</b>
<b>AGENCY OVERALL</b>	220	258	221	240

	Column 1	Column 2
	<b>Number of Backlogged Requests as of End of the Fiscal Year from Previous Annual Report</b>	<b>Number of Backlogged Requests as of End of the Fiscal Year from Current Annual Report</b>
<b>AGENCY OVERALL</b>	5*	17

Note: Ten requests were reported as pending in FY07; however, only five were beyond the statutory time period.

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

	Column 1	Column 2	Column 3	Column 4
	<b>NUMBER OF APPEALS <u>RECEIVED</u></b>		<b>NUMBER OF APPEALS <u>PROCESSED</u></b>	
	<b>Number Received During Fiscal Year from Last Year's Annual Report</b>	<b>Number Received During Fiscal Year from Current Annual Report</b>	<b>Number Processed During Fiscal Year from Last Year's Annual Report</b>	<b>Number Processed During Fiscal Year from Current Annual Report</b>
<b>AGENCY OVERALL</b>	3	2	3	1

	Column 1	Column 2
	<b>Number of Backlogged Appeals as of End of the Fiscal Year from Previous Annual Report</b>	<b>Number of Backlogged Appeals as of End of the Fiscal Year from Current Annual Report</b>
<b>AGENCY OVERALL</b>	0	1

F. Discussion of Other FOIA Activities (Optional)

- Amtrak, like other entities subject to the FOIA, re-assessed its web site in FY08. The format of the web site was revised to make it more user friendly, and additional links to other web pages on Amtrak's web site were established to make information more readily available to the public.
- *Amtrak's FOIA Handbook* and *Instructions for Making a Request* were updated to reflect minor changes in phone and fax numbers of FOIA personnel. In addition, *The OPEN Government Act of 2007* was posted to Amtrak's FOIA web page for ease of reference of FOIA requesters.
- Amtrak plans to install the latest version of FOIAExpress in FY09 to facilitate the tracking and data collection of FOIA requests and appeals

IM-54756