



## NATIONAL LABOR RELATIONS BOARD

### Privacy Act of 1974; System of Records

**AGENCY:** National Labor Relations Board (NLRB).

**ACTION:** Notice of a modified system of records and rescindment of systems of records notices.

**SUMMARY:** Pursuant to the provisions of the Privacy Act of 1974, the National Labor Relations Board (“NLRB” or “Agency”) publishes this notice of a modified system of records entitled Next Generation Case Management System (NxGen) (NLRB-33), which includes records from twelve systems of records that are no longer being maintained, and so those twelve systems of records notices are being rescinded. NxGen, an electronic case tracking system, permits the accurate and timely collection, retrieval, and retention of information maintained by offices of the Agency regarding those offices’ handling of matters before them, including unfair labor practice and representation cases. This notice also includes the rescindment of two other systems of records that the Agency has stopped maintaining: Investigative Services Case Files (NLRB-16, Federal Register, May 16, 1988), and Telephone Call Detail Records (NLRB-19, Federal Register, August 17, 1994). All persons are advised that, in the absence of submitted comments considered by the Agency as warranting modification of the notice as proposed, it is the intention of the Agency that the notice shall be effective upon expiration of the comment period without further action.

**DATES:** Written comments on the system's routine uses must be submitted on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. The routine uses in this action will become effective on **[INSERT DATE 30**

**DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** unless written comments are received that require a contrary determination.

**ADDRESSES:** All persons who desire to submit written comments for consideration by the Agency in connection with the proposed notice of system of records notice shall file them with the Senior Agency Official for Privacy (SAOP), National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570. Comments on this notice may also be submitted electronically to [privacy@nrlb.gov](mailto:privacy@nrlb.gov) or through <http://www.regulations.gov>, which contains a copy of this proposed notice and any submitted comments.

**FOR FURTHER INFORMATION CONTACT:** Ibrahim M. Ibrahim, Privacy and Information Security Specialist, Office of the Chief Information Officer, National Labor Relations Board, 1015 Half Street S.E., Third Floor, Washington, DC, 20570-0001, (202) 273-3733, or at [privacy@nrlb.gov](mailto:privacy@nrlb.gov).

**SUPPLEMENTARY INFORMATION:** NxGen contains information from the twelve legacy systems, listed below, which are now consolidated into NxGen. The system of records notices for these twelve legacy systems are being rescinded.

The Agency previously published a *Federal Register* notice that it was consolidating six of its legacy electronic case tracking systems into a new electronic system, NxGen. 77 FR 5062 (Feb. 1, 2012). The system of records notices for those six systems had been published at 71 FR 74,941 (Dec. 13, 2006). Those six systems were:

1. Judicial Case Management System—Pending Case List (JCMS-PCL) and Associated Headquarters Files (NLRB-21);
2. Judicial Case Management System-eRoom (JCMS-eRoom) (NLRB-22);
3. Solicitors System (SOL) and Associated Headquarters Files (NLRB-23);

4. Case Activity Tracking System (CATS) and Associated Regional Office Files (NLRB-25);
5. Regional Advice and Injunction Litigation System (RAILS) and Associated Headquarters Files (NLRB-28); and
6. Appeals Case Tracking System (ACTS) and Associated Headquarters Files (NLRB-30).

In addition to the six legacy systems cited in the 2012 notice, NxGen now includes records from the following five additional legacy systems, whose system of records notices were also published at 71 Fed. Reg. 74,941 (Dec. 13, 2006):

7. Trial Information Gathered on Electronic Record (TIGER) and Associated Agency Files (NLRB-24);
8. Litigation Information on the Network (LION) (NLRB-26);
9. Special Litigation Branch Case Tracking System (SPLIT) and Associated Headquarters Files (NLRB-27);
10. Work in Progress (WIP) and Associated Headquarters Files (NLRB-29); and
11. Office of Appeals Extension of Time System (NLRB-31).

NxGen also contains records from a legacy system called:

12. Agency Disciplinary Case Files (Nonemployees) (NLRB-20), whose system of records notices were published at 58 FR 57633 (Oct. 26, 1993) and 61 FR 13884 (March 28, 1996), concerning disciplinary proceedings of non-Board attorneys pursuant to 29 CFR 102.177 (“102.177 cases”).

In addition to rescinding the twelve legacy systems listed above, the Agency is also rescinding two other systems of records that the Agency has stopped maintaining:

- Investigative Services Case Files (NLRB-16), 53 FR 17262 (May 16, 1988), concerning Agency investigations related to unfair labor practice cases (including compliance processing, as explained below) where, for charges that appear meritorious, there is concern about whether the correct party has been alleged or whether the charged party's financial condition raises questions about its ability to remedy unfair labor practices. For those records formerly contained in NLRB-16 that are not contained in NxGen, the Agency has treated those records pursuant the NLRB's Comprehensive Records Schedule (with National Archives and Records Administration (NARA) filename NC1-025-81-01) for "transitory files" (Standard Number 101-04), with a disposition of destruction after 90 days; and
- Telephone Call Detail Records (NLRB-19), 59 FR 42315 (August 17, 1994), concerning records relating to use of Agency telephones to place long-distance calls. The Agency has treated records from NLRB-19 pursuant to the disposition instructions in NARA General Records Schedule 5.6 for "Records of credit card abuse and postal irregularities" (Item 050).

NxGen contains case information regarding matters before the Board (including matters before the Office of the Solicitor, the Office of Representation Appeals, and the Office of the Executive Secretary), the Division of Judges, the Division of Operations-Management, Regional Offices, the Appellate and Supreme Court Litigation Branch, the Division of Advice's Regional Advice and Injunction Litigation Branches, the Office of Appeals, and the Contempt, Compliance, and Special Litigation Branch.

Records in NxGen include administrative unfair labor practice and representation proceeding documents, litigation files, transcripts, exhibits, briefs, motions, Board decisions, court opinions and orders made in the adjudication of cases, 102.177 case records, correspondence, legal research memoranda, and other related documents.

Pursuant to 5 U.S.C. 552a(k)(2), the Agency has exempted portions of NxGen from the following provisions of the Privacy Act: 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I) and (f). *See* 29 CFR. 102.119, published at 82 FR 11754, Feb. 24, 2017, as amended at 84 FR 70425, Dec. 23, 2020, and 85 FR 75855, Nov. 27, 2020. Pursuant this *Notice of a modified system of records and rescindment of system of records notices*, the Agency, in a Direct Final Rule that appears elsewhere in this issue of the *Federal Register*, is setting forth consolidated exemptions for the NxGen system to make technical changes that would eliminate references to the legacy systems listed above. A report of the proposal to significantly revise this system of records has been filed pursuant to 5 U.S.C. 552a(r) with Congress and the Office of Management and Budget.

References to the Agency's "unfair labor practice cases" in this notice include the portion of such cases known as "compliance," during which the Agency seeks effectuation of remedial provisions of a settlement agreement, Board order, or court judgment enforcing a Board order. *See* NLRB Casehandling Manual, Part 3, Compliance Proceedings (October 2020).

**SYSTEM NAME AND NUMBER:** Next Generation Case Management System (NxGen) (NLRB-33).

**SECURITY CLASSIFICATION:** Controlled Unclassified Information.

**SYSTEM LOCATION:** Records are maintained at the National Labor Relations Board Headquarters in Washington, DC and in NLRB field locations, which are available on the

NLRB's website (<https://www.nlr.gov>), and in electronic databases.

**SYSTEM MANAGER:** Chief Information Officer, National Labor Relations Board.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:** 29 U.S.C. 153(d), 159, 160, 161; 44 U.S.C. 3101; the Government Performance and Results Act of 1993, Public Law 103-62, 107 Stat. 285 (codified in sections of Titles 5, 31, and 39 of the U.S. Code); the Government Performance and Results Modernization Act of 2010, Public Law 111-352 (codified as amended in scattered sections of 5 U.S.C. and 31 U.S.C.); 29 CFR 102.177; and E.O. 9397 (8 FR 16094, Nov. 30, 1943), as amended by E.O. 13478 (73 FR 70239, Nov. 20, 2008), relating to federal use of Social Security numbers.

**PURPOSE(S) OF THE SYSTEM:** NxGen is an electronic case management system used by offices of the Agency to facilitate the accurate and timely collection, retrieval, and retention of information regarding the processing of unfair labor practice and representation cases, as well as other matters. The following offices of the Agency use NxGen for the purposes described:

- the Offices of the Board (Members and their staffs, the Office of Representation Appeals, the Office of the Solicitor, and the Office of the Executive Secretary) to facilitate collaborative drafting of decisions and disposition of cases and other matters before the Board;
- the Division of Judges for managing cases before the Division;
- the Division of Operations-Management and the Regional Offices for the processing of unfair labor practice charges, representation petitions, and matters arising under 29 CFR 102.177;
- the Appellate and Supreme Court Litigation Branch for cases referred to the Branch for enforcement or review in the federal courts of appeals, pursuant to Section 10(e) and

(f) of the National Labor Relations Act (NLRA), 29 U.S.C. 160(e) and (f), as well as for consideration of Supreme Court matters in consultation with the United States Solicitor General's office;

- the Division of Advice, for cases referred by the Regions to that Division;
- the Contempt, Compliance, and Special Litigation Branch (CCSLB) to facilitate case handling by the Branch; and
- the Office of Appeals for reviewing appeals of decisions by Regional Directors to dismiss or defer unfair labor practice charges and requests for extensions of time to file appeals.

The information and activities tracked by the system may be generated by parties' filings of briefs, motions, and other documents, or by deliberative, analytical processes undertaken by Agency employees assigned to cases. This system stores current and historical information and is used to: facilitate and document casehandling; generate data for managing the Agency's case processing and resources; create the Agency's budget; prepare monthly and annual reports of casehandling activities; provide responses to requests pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552; and provide information to the public, Congress, and other governmental entities. The information in this system may be used to assist in evaluating performance of Agency employees.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:** Individual charged parties and individual charging parties in unfair labor practice cases; individual petitioners and individual employers in representation cases; individual representatives and named contacts of parties in unfair labor practice and representation cases, as well as related judicial or administrative proceedings; individual discriminatees in unfair labor practice cases filed with the Agency; individuals who have filed petitions for rulemaking with the Board; non-Agency attorneys who are the subjects of disciplinary proceedings under Section 102.177 of the Board's

Rules and Regulations; current Agency employees assigned to cases or other matters or judicial proceedings involving the Agency.

**CATEGORIES OF RECORDS IN THE SYSTEM:** The records contain such data elements as the names of parties, case status, Agency personnel assignments, due dates, hearing dates, court judgment dates, case-docketing information, parties' home addresses and home telephone numbers, personal email addresses, signatures, and health and/or medical information. For certain discriminatees in unfair labor practice cases, the records may also include the discriminatee's name, date of birth, date of death (if applicable), Social Security number, amounts of certain earnings, bank account information (where the discriminatee elects to receive funds through direct deposit), as well as the name, address, identification number of discriminatee's employer.

**RECORD SOURCE CATEGORIES:** Record source categories include parties, representatives, witnesses, Agency employees, and the Social Security Administration in the following types of matters: unfair labor practice and representation cases; petitions for rulemaking; Section 102.177 cases; and other matters handled by Agency offices.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING**

**CATEGORIES OF USERS AND PURPOSES OF SUCH USES:** In addition to those disclosures generally permitted under 5 U.S.C. 552a(b), all or a portion of the records or information contained in this system may be disclosed outside the NLRB as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

1. To a federal, state, or local agency (including a bar association or other legal licensing authority), charged with the responsibility for investigating, defending, or pursuing violations of law or rule (civil, criminal, or regulatory in nature), in any case in which there is an indication of a violation or potential violation of law or rule;

2. In a federal, state, or local proceeding or hearing, which is administrative, judicial, or regulatory, in accordance with the procedures governing such disclosure and proceeding or hearing, including, but not limited to, National Labor Relations Board Rule 29 CFR 102.118, and such records are determined by the Agency to be arguably relevant to the litigation;
3. To the Agency's legal representative, including the Department of Justice and other outside counsel, where the Agency is a party in litigation or has an interest in litigation, including when any of the following is a party to litigation or has an interest in such litigation: (a) the Agency, or any office thereof; (b) any employee of the Agency in his or her official capacity; (c) any employee of the Agency in her or her individual capacity, where the Department of Justice has agreed or is considering a request to represent the employee; or (d) the United States, where the Agency determines that litigation is likely to affect the Agency or any of its offices;
4. To a party or his or her representative in an Agency administrative unfair labor practice or representation proceeding or related judicial proceeding, for the purpose of: (a) negotiation or discussion on matters in furtherance of resolving the proceeding; (b) providing such persons with information concerning the progress or results of the Agency administrative or judicial proceeding; or (c) ensuring due process in the Agency's administrative proceedings by disclosing copies of all documents referenced by the Agency's Case-handling Manual, Part 1, Unfair Labor Practice Proceedings Section 11842, or releasing documents in accordance with the Board's Rules and Regulations;

5. To any person who, during the course of an Agency administrative unfair labor practice or representation proceeding or related judicial proceeding, is a source for information or assists in such proceeding, to the extent necessary to obtain relevant information or assistance or for a reason compatible with the purpose for which the record was collected;
6. To a federal, state, local, or foreign agency or agent, in order to: (a) aid in the Agency's collection, administration, and disbursement of remedial funds owed under the NLRA; or (b) assist in collecting an overdue debt owed to the United States by an unfair labor practice respondent;
7. To an arbitrator to resolve disputes under a negotiated Agency grievance arbitration procedure;
8. To officials of labor organizations recognized under 5 U.S.C. Chapter 71, when disclosure is not prohibited by law, and the data is normally maintained by the Agency in the regular course of business and is necessary for a full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining. The foregoing shall have the identical meaning as 5 U.S.C. 7114(b)(4);
9. To a member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the request of the constituent about whom the records are maintained;
10. To the public, news media, and other individuals and organizations, where such information would be required to be disclosed if requested under the Freedom of Information Act (FOIA), 5 U.S.C. 522.

11. To FOIA requesters, when the Agency discloses requested documents under the circumstances of the Agency's discretionary release policy, set forth in the Agency's FOIA Manual;
12. To the news media and the public, with the approval of the Senior Agency Official for Privacy in consultation with counsel, when there exists a legitimate public interest in the disclosure of the information, when disclosure is necessary to preserve confidence in the integrity of the NLRB, or when disclosure is necessary to demonstrate the accountability of the Agency, except to the extent the Senior Agency Official for Privacy determines that release of the specific information in the context of a particular case would constitute a clearly unwarranted invasion of personal privacy;
13. To the following Federal agencies: (a) the Office of Management and Budget in order to obtain advice regarding the Agency's obligations under the Privacy Act, or to assist with the Agency's budget requests; (b) the Department of Justice in order to obtain advice regarding the Agency's obligations under the Freedom of Information Act; or (c) the National Archives and Records Administration, in records management inspections conducted under the authority of 44 U.S.C. 2904, 2906;
14. To appropriate agencies, entities, and persons when (1) the National Labor Relations Board suspects or has confirmed that there has been a breach of the system of records; (2) the National Labor Relations Board has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the National Labor Relations Board (including its information systems, programs, and operations), the federal government, or national security; and (3) the disclosure made to such agencies, entities, and persons is

reasonably necessary to assist in connection with the National Labor Relations Board's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm;

15. To another federal agency or federal entity, when the National Labor Relations Board determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the federal government, or national security, resulting from a suspected or confirmed breach;
16. To contractors, for the purpose of reproducing or processing any record within the system for use by the Agency;
17. To contractors and other federal agencies, for the purpose of assisting the Agency in further development and continuing maintenance of electronic case tracking systems; and
18. To NARA, pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906, as well as to NARA's Office of Government Information Services (OGIS), to the extent necessary to fulfill its responsibilities in 5 U.S.C. 552(h), to review administrative agency policies, procedures and compliance with the FOIA, and to facilitate OGIS's offering of mediation services to resolve disputes between persons making FOIA requests and administrative agencies.

**POLICIES AND PRACTICES FOR STORAGE OF RECORDS:** Currently, the data is maintained as electronic records in NxGen. Limited historical information is on electronic media.

**POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:** Data may be retrieved by Agency employees through the application's query search by case number, case type, dispute state, case status, region, date filed, date created, issued date, document source, document type, and NxGen action, as well as by using the iSearch function, which is a free-form search of all text, including individual names.

Visibility protocols are in place to ensure that General Counsel-side employees and Board-side employees may only view their own side's internal documents.

**POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:**

NxGen records will be retained and disposed of in accordance with the NLRB's Request for Records Disposition Authority, Records Schedule Number DAA-0025-2017-0001, approved by NARA on April 9, 2018. Any subsequent versions of the NxGen records schedule will be posted on NARA's website (<https://www.archives.gov>).

**ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:** Electronic system-based access controls are in place to prevent data misuse. Access to electronic information is controlled by administrators who determine users' authorized access based on each user's office and position within the office.

Access criteria, procedures, controls, and responsibilities are documented and consistent with the policies stated in applicable guidance from the NLRB Office of the Chief Information Officer. All network users are also warned at the time of each network login that the system is for use by authorized users only and that unauthorized or improper use is a violation of law.

**RECORD ACCESS PROCEDURES:** For records not exempted under 5 U.S.C. 552a(k)(2), an individual seeking to gain access to records in this system pertaining to such individual should contact the System Manager in accordance with the procedures set forth in 29 CFR 102.119(b) and (c). Specific materials in this system have been exempted from Privacy Act provisions at 5 U.S.C. 552a(c)(3) and (d), regarding access to records. The section of this notice titled “Exemptions Promulgated for the System” indicates the kind of material exempted and the reasons for exempting them from access.

An individual requesting access in person must provide identity documents sufficient to satisfy the custodian of the records that the requester is entitled to such access, such as a government-issued photo ID. Individuals requesting access via mail must furnish, at minimum, name, date of birth, and home address in order to establish identity. Requesters should also reasonably specify the record contents being sought.

**CONTESTING RECORD PROCEDURES:** For records not exempted under 5 U.S.C. 552a(k)(2), an individual may request amendment of a record in this system pertaining to such individual by directing a request to the System Manager in accordance with the procedures set forth in 29 CFR 102.119(d). Specific materials in this system have been exempted from Privacy Act provisions at 5 U.S.C. 552a(d), regarding amendment of records. The section of this notice titled “Exemptions Promulgated for the System” indicates the kinds of material exempted and the reasons for exempting them from amendment.

An individual seeking to contest records in person must provide identity documents sufficient to satisfy the custodian of the records that the requester is entitled to contest such records, such as a government-issued photo ID. Individuals seeking to contest records via mail must furnish, at minimum, name, date of birth, and home address in order to establish identity. Requesters should also reasonably identify the record, specify the information they are contesting, state the corrective action sought and the reasons for the correction along with supporting

justification showing why the record is not accurate, timely, relevant, or complete.

**NOTIFICATION PROCEDURES:** An individual may inquire as to whether this system contains a record pertaining to such individual by sending a request in writing, signed, to the System Manager at the address above, in accordance with the procedures set forth in 29 CFR 102.119(a).

An individual requesting notification of records in person must provide identity documents sufficient to satisfy the custodian of the records that the requester is entitled to such notification, such as a government-issued photo ID. Individuals requesting notification via mail must furnish, at minimum, name, date of birth, and home address in order to establish identity.

**EXEMPTIONS PROMULGATED FOR THE SYSTEM:** Pursuant to 5 U.S.C. 552a(k)(2), the Agency has exempted portions of this system, including, with respect to General Counsel–side information, investigatory records pertaining to unfair labor practice and representation cases, and with respect to Board-side information, investigatory records relating to requests to pursue proceedings under Section 10(j) of the NLRA (29 U.S.C. 160(j)), requests to pursue federal court contempt proceedings, and certain requests that the Board initiate litigation or intervene in non-Agency litigation, from the following provisions of the Privacy Act: 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I) and(f). This system may contain the following types of information:

Investigatory material compiled for law enforcement purposes, other than material within the scope of 5 U.S.C. 552a(j)(2): Provided, however, that if any individual is denied any right, privilege, or benefit to which he would otherwise be entitled by Federal law, or for which he would otherwise be eligible, as a result of the maintenance of such material, such material shall be provided to such individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished

information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence.

*See* 29 CFR 102.119.

**HISTORY:** 53 FR 17262 (May 16, 1988); 58 FR 57633 (Oct. 26, 1993); 9 FR 42315 (Aug. 17, 1994); 61 FR 13884 (Mar. 28, 1996); 71 FR 74941 (Dec. 13, 2006); and 77 FR 5062 (Feb. 1, 2012).

Dated: April 2, 2024.

By direction of the Board

**Roxanne L. Rothschild,**

*Executive Secretary.*

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