

FOIA Advisory Committee Transcript:

January 16, 2018.

>> FERRIERO. Good morning and welcome to the first meeting of the FOIA Advisory Committee in 2018. As you all know, the end of this term of the FOIA Advisory Committee is rapidly approaching. I want to take this opportunity to once again thank the Committee Members for generously lending their time and expertise to this effort.

This Committee is charged with no small feat: to look broadly at the challenges that agency FOIA programs face in light of an ever-increasing volume of electronic records, and chart a course for how FOIA should operate in the future. I understand that the Committee's three subcommittees - Search, Proactive Disclosure, and Efficiency and Resources - have been very busy over the last year and that this Committee has a number of

recommendations to consider and vote on today. I look forward to receiving your recommendations and the Committee's final report during your final meeting scheduled to be held in this room on April 17, 2018.

Before I leave you to your deliberations, I would like to take a moment to invite you all to join us in this room for a very special event during the afternoon of Monday, March 12 celebrating Sunshine Week. As you all know, Sunshine Week is an annual nationwide celebration of access to public information. Since the American Society of News Editors launched the initiative more than a decade ago, it has been embraced by journalists, librarians, elected officials, government employees and concerned citizens as an opportunity to discuss the importance of government and its impact. It's an initiative that the

National Archives proudly embraces, and I hope you will all mark your calendars to join us. I am sure that OGIS will keep you up to date as the program and participants are affirmed out.

Before I turn over the program I want to thank the OGIS Deputy Director, Nikki Gramian. After serving as an important part of OGIS she will be leaving later this month to serve as the FOIA Public Liaison at NASA. She served twice as acting director of OGIS and in that capacity represented NARA in front of Congress and served as this committee chair. Please join me in thanking her for her service to NARA.

As I warned her she's still in the FOIA community and we will be in touch.

Thank you all for your hard work I look forward to reading your recommendations and final report and I will turn it over.

>>SEMO. Thank you, David. Good morning everyone. Thank you again for joining

us for today's quarterly meeting of the federal FOIA advisory committee. We have some folks on the phone participating and some of you are watching us via live stream, and some of you braved the colder weather and the impending snowstorm so thank you.

As the Director of the Office of Government Information Services and this committee's chair it's my pleasure to welcome you to the William G McGowan Theater. This is the seventh quarterly meeting of this committee meeting and it's our second to last meeting, so we are in the home stretch. As you all know, members are appointed to the committee by the Archivist and tasked with collaboratively developing census solution and recommendations that will be sent to Archivist and address some of the greatest challenges related to the FOIA process. We all agreed on a very ambitious schedule of target dates in order to ensure they have the time to

fully consider the recommendations resulting from all the hard work of the subcommittee. Thank you all for embracing the challenge. I want to thank you all for your enthusiasm for honing and fine tuning all the recommendations and I am very excited to talk about all of that today. I especially want to thank our six subcommittee co-chairs who have been instrumental in guiding the subcommittees work and keeping the momentum going and you will hear from each of them later in the meeting. I want to thank Nicki who does not necessarily like to be called out. She has been a wonderful asset to the FOIA community and OGIS, having served as a deputy director for five years. We are very excited for you as you begin this new chapter in your life but we are going to miss you. We will also be calling you a lot.

We have a number of recommendations to

get through today. No speakers so that's good. I want to be sure we have enough time for our deliberations. I want to move things along. We have administrative things to go through: first house speaking rules and a review of our agenda and to set expectations for today's meeting. Let's introduce all of the committee members that are participating today. Let's begin with those members on the telephone.

>>KOTLER. This is Sarah Kotler from FDA.

>>KWOKA. Hi this is Margaret from the University of Denver.

>>KNOX. This is Chris Knox from Deloitte.

>>WALSH. This is Lynn Walsh from the society of professional journalist.

>>VALVO. This is James Valvo with Cause of Action Institute.

>>MOULTON. This is Sean Moulton with Project On Government Oversight.

>>SEMO. Let's begin with and Michael he's on his way. Michael will be

joining us shortly. He will be sitting right there. Let me begin with folks sitting around the table. Let's start with David.

>>PRITZKER. David Administrative Conference of the United States and I'm on temporary detail for the Consumer Financial Protection Bureau.

>>CARR. Stephanie Office of the Secretary of Joint Staff.

>>BELL. Michael Department of Health and Human Services.

>>McCall. Ginger Department of Labor.

>>SUSMAN. Tom, public member.

>>PUSTAY. Melanie Department of Justice.

>>LAZIER. Raynel Consumer Financial Protection Bureau.

>>SEMO. Okay and this is our DFO, Amy Bennett, for those of you who don't know. Thank you for all of those introductions I just want to remind everyone I always have a hard time remembering this myself. Make sure you identify yourself by name every time you

speaking it helps keep the meeting minutes and also remember this is I am also very bad about this there's a slight delay between the time that members are going to be talking on the phone and then when the speakers are turned back on in the room just pause walk around and then speak. So let's go on to administration as everyone knows this committee provides a forum of FOIA issues and offers members of the public an opportunity to provide feedback and ideas for improving the FOIA process. We encourage the public to share the written comments to learn more about submitting public comments please -- it's not new any more. www.archives.gov/ogis or e-mail FOIA-committee@nara.gov I believe that information is behind me. We will have a time for public comments we look forward to hearing as many noncommittee members with thoughts they would like to share. We are monitoring the live stream. If

you have any comments you may submit them and we will read them out loud during the public comment period. To promote openness and transparency we post Committee materials on our website. You can also keep up with Committee activities on our blog and on twitter at FOIA underscore ombuds. Stay up to date on FOIA committee news by following us on twitter. Information about the committee including members biography's and committee documents and public comments are all available on the OGIS website. We are live streaming the meeting today and we will make meeting transcript and meeting minutes. We generally expect meeting materials to be posted within approximately 30 days. Thanks for hanging in there before we post.

We are going to take one 15 minute break today as we normally do. Hopefully we will be around 11:55 a.m. During the break you may wish to purchase food or

drink from the Charters Cafe located on the level. There's no food or drink allowed in the auditorium. Please note there are restrooms directly outside the Theater and another set downstairs outside the cafe.

During our last meet anything October the three subcommittees offered a preview of their recommendations to the committee and gathered initial feedback.

In the intervening months everyone has been very hard at work to further shape and refine our recommendations. Today we are going to further discuss, finalize, and vote on each of the subcommittees recommend duration.

To begin our discussion I am going to ask the subcommittee co-chairs to briefly discuss the substance of their recommendations. I will then open it up for a brief period of general comments and then after general comments we will entertain the specific suggestions for edits and Amy is prepared to stand up at

the lecturn and type away. Everyone can follow along we will be displaying the text of those recommendations and the red line edit on the screen behind me. After discussing the suggested edits and reaching an agreement on the text we will vote we will vote on the recommendation. In your folders we included hand-outs outlining voting procedures. For members on the phone, the procedures were included in an email from Amy last week. Briefly any member of the committee can move to vote on a recommendation. The motion does not need to be seconded. The vote can pass by unanimous decision which means every voting member is in favor of a particular motion. General consensus is two-thirds of the total vote that is are cast or general majority which is a majority of the total vote on a motion. In the event of a tie we will reopen discussion and the committee will continue to vote until there's a

majority so we might be here all night
so hang in there.

The approved recommendations will need
to be combined into a comprehensive
final report in which the committee will
vote on at the final meeting on Tuesday
April 17, 2018, so here a drum roll
please. I am going to ask for any
committee members who would like to
volunteer for a small working group to
help prepare and finalize the committees
final report. Okay. Well, okay. I
didn't expect such great enthusiasm.

>>MCCALL. I'll volunteer. This is
Ginger.

>>SEMO. Great. Michael bell thank you.
David, thank you. Anyone on the phone?
Nate is volunteering. Anyone on the
phone interested in participating in the
working group?

>>KNOX. This is Chris Knox I will help.

>>SEMO. Anyone else going once or twice.
David, Nate and Chris. Okay thank you
very much for volunteering and we will

be in touch about logistics and most efficient.

>> So I am now going to turn my attention to the October 19th approval minutes I think everyone has had a chance to review them and all comments have been received. I will now entertain a motion to approve the minutes. So thank you. Do we have a second. even though we don't need it? Thank you ginger. All in favor. Aye. All opposed. Okay the minute has been approved and will be available for public inspection on the committees website. Before we get into the subcommittees I know Melanie wanted to share a few comments before we get started and I will also add a couple of my own as well.

>>PUSTAY. I obviously am happy to be participating in the discussion today. I wanted to let the committee members know that because some of the recommendations we are talking about

directly or directed to OIP and the totality of the recommendations concern the work of OIP I will take no position on the recommendations themselves so I will be abstaining from the vote. I wanted people to know that right from the beginning. What I do look forward to is receiving the recommendations and the report at the end and incorporating that work going forward. I do want to add especially that I think that the topic that is have been addressed by this advisory committee, the proactive disclosures and finding efficiencies using technology are all area that is OIP has been looking at for some time. There's issued guidance in many of these areas and best practices and we think these are all incredibly important. I think the work of the FOIA advisory committee has been particularly useful and helpful to have to help form a common understanding between our nongovernment and the government members

about the issues and challenges connected with those topics so I think that's really been a very productive and fruitful adventure and as I said but because of the connection with our work I will be abstaining but really do look forward to reviewing everything when it's finished.

>>SEMO. I just want to add that I found myself in a slightly similar position in a sense that we have some subcommittee recommendation that ask the Archivist to make the recommendations for OGIS to take action. I do find a bit of a conflict. I am the director of O G I S as well as the chair of the committee I will respectfully abstain from those OGIS specific recommendations but will be happy to vote on the rest. We will see how it goes we will play it by ear so thank you for that opportunity, so any questions before we get started? We are going to hear first so Margaret and sarah are you planning to, are you

taking turns introducing the recommendations? How do you want to proceed?

>>KWOKA. This is Margaret. I think that yeah we have divvied them up and I am going to talk about two of them and if Sarah doesn't mind if I can go first I have a six hour time difference from you all now and at some point my children will show up if I can get through what I am going to introduce first will that be okay Sarah?

>>KOTLER. So that is fine.

>>KWOKA. Yeah okay. I am going to take that as a yes. So the two recommendations that I am going to introduce are the ones concerning the publication of FOIA logs and the one that enumerates criteria, proposed criteria, for deciding what materials agencies should proactively disclose, so I will start with the FOIA logs recommendation first since it's a bit narrower and more specific. This

recommendation which I introduced a bit last meeting flows from research that the committee took note of, including some of my own, including many other people as well that shed light on FOIA operations and agency activities out of FOIA logs themselves and then pertains to the presentation this committee saw by Max Galka last meeting in terms where I think he very ably described the kind of interesting things one can learn about government and transparency operations from FOIA logs and also the difficulty in obtaining a kind of standardized versions of the logs. So this recommendations out of the subcommittee seeks to kind of with some specificity recommend to an agency that regular publication of FOIA logs and a particular format to the extent the agency is able to do that. I will try to hit on the key points here and then open it up for discussion maybe before we move onto the second recommendation.

So the first key point is that agencies should generally publish their FOIA logs to their electronic reading room on an ongoing basis -the subcommittee recommends at least monthly unless it's an agency that receives a really small number of requests in which case less than a once per year or less frequent posting would be appropriate. The second portion of the recommendation delineates the fields that should be contained where possible in order to be most useful and these are fields that in our experience are commonly kept by agencies and in some cases are required to be kept by the agencies by law. This set of fields would also have been most useful in the kind of reporting and research that we detailed in the background section of this memo and then the third point suggest that is the logs be posted in a more accessible format. So the one thing I wanted to highlight and then I will open it up to any

comments or questions, is that the subcommittee itself did not reach a conclusion on the question of the fields containing the name of the requester. We were somewhat divided I think in terms of whether all names should be included perhaps with the exception of first party requester who are requesting their own records. DOJ has taken this position. Or whether it should be much more limited and only, for example, commercial requesters and preferred category requester - news media educational institution—those are the only names that should be exposed and any individual requester or individual non-first party requester name would not be published. The subcommittee was in broad agreement that those names that are are not first party requesters are not exempt under FOIA but there was some disagreement about whether proactive disclosure was appropriate. I'll put that and the rest of the recommendations

with the committee for discussion.

>>SEMO. Let me open up the floor for any general comments. I will kick it off by asking the question that I have when I noted when I was reading through the other recommendations they were in the second set of recommendations they were talking about there is also another discussion of FOIA logs. I just wondered if anyone had picked up on that or whether it should be subsumed or whether you want to have it as a stand alone recommendation?

>>KWOKA. I saw that recommendation as consistent and but I see value in our committee saw some value in having a stand alone recommendation because of the laws of their potential to shed light not just on particular government actions but on FOIA operations as part of improving FOIA as giving more data as they look for other kinds of improvements. I welcome the views of the rest of the committee on that

question.

>> My position I understand it's a bit
of a -- Inaudible.

>> Inaudible.

>> I think it's beneficial to see
without the -- Inaudible.

>> Thanks.

>>

>> Inaudible.

>> Margaret are you still there?

>> Hi ALINA you are the only person I
can actually hear so I have not heard
the previous comments.

>> I couldn't hear any comments in the
room I don't know if it's a microphone
issue or what?

>>

>> So can you hear her now?

>> We can just hear you.

>>

>>EGGLESTON: Okay this is Jill my
question had to do with a comment that
Margaret made she said to the extent
practical that agencies would be

required to provide the information or the fields identified in the logs. And so I guess my question is just clarify to the extent practical so in other words if and agency didn't have the ability or didn't currently track that information or it wasn't readily available to the agency without you know contracting out services to run special queries I am assuming that the subcommittee would not require the agency to take those extra step in order to get the information?

>>KWOKA. Thanks. I heard you this time thank you. We had this discussion in the subcommittee and your characterization accurately reflects what we intended which was that to the best of their abilities that this would serve as a guide for agencies about what fields are useful to publish and should be published where they can but that in the event that and agency does not have the data available within some reasonable

means and therefore we phrase number part two of the proposal "in order to be most useful agency logs should contain" but that's backed away from perhaps a stricter language of "must at all costs contain" or something along those lines, other members of the subcommittee have different views please feel free to weigh in.

>>KOTLER. I agree with what you just said. Sarah.

>>SEMO. Thank you both anyone else want to comment on this recommendation?

Okay does anyone have any specific edits they would like to make to the recommendation. Amy stands ready.

David go ahead.

>>PRITZKER. When I read what's currently written for the name of the requester I am not in favor of the advising that all requesters names be listed on the log and so I would and to say or to word it so that something like in order to be most useful or it should contain each of

the following fields and under C name of commercial requesters and those in preferred fee status category. To identify those that should be posted on the log is not to say that you can't post anything else so that wouldn't undo this status quo that Nate referred to.

>>SEMO. Okay thank you David. Reactions to what went on the record he said globally it should be more third parties.

>>KWOKA. This is Margaret. Now in my individual not subcommittee capacity, I would agree with Nate. I would prefer them to say the name of third party requesters. There has been no case law or DOJ guidance or any other authority that I am aware of that has ever considered that there is any privacy interest in simply the name of the requester, and without you know, any of the data that we might, you know, as individuals making a request otherwise want to protect like our addresses or

contact information, which is not included in any event, and I have found the name to be very helpful especially because people sometimes don't list their affiliations but if it's a well known reporter, reporter or you know something like that you can often tell what their affiliation is and you know if a request is a short request it's not going to be a fee charged anyway.

Sometimes people won't state the affiliation might not come with their name in the log and or I get reported in there for the names can be quite useful in that regard. For individual who is don't have any public persona at least in my experience you can't get that from a name anyway. It doesn't really have much impact in my view.

>>SEMO. Thank you for those comments.

Anyone else want to comment on David's proposal?

>>JONES. I will just have a brief comment I believe most agencies already

taken into consideration the fact that there are first party requesters and they don't release those and release all others and to have us do something different would make us less transparent than we have been.

>>SUSMAN. Yeah. This is Tom. I agree with Nate I think the status quo is important. It does seem to me that perhaps agencies ought to be urged or directed to make clear in their websites where they provide FOIA procedure that is they are going to make names of requesters public. So that frankly if a requester wants to use a cut out or a lawyer or a FOIA firm they can do that and maintain confidentiality which is perfectly acceptable under the process.

>>SEMO. Okay thanks Tom. Anyone else want to make individual comment in reaction to David or any of the other proposals? David a reaction to your own comment.

>>PRITZKER. There's been references

limiting this to third party. I don't see that phrase anywhere in here.

>>KWOKA. This is Margaret we left the phrasing of this item open and left this committee as a whole to decide status of what would be subject to the requirement and so I personally would be happy if they name it had third party.

>>SEMO. Any other comments are we ready to vote on this particular?

>> No we are not ready to vote.

>> PRITZKER. The organizational affiliation of the requested. I thought we should say something like you can figure it out.

>> That might be relevant. If the agency is familiar with who the requester is but whether it's not part not identified it seems that it's inappropriate.

>>SEMO. Thank you for that comment any want to react to that.

>>PRITZKER. By adding at the end of these I will have some is pertinent to

the request

>>KWOKA. This is Margaret. David I didn't mean to suggest that agencies weren't filling in.

>> Hello? Can you hear me?

>> I think the thinking is --

>> I don't think they can hear us.

>> It would be pertinent.

>>EGGLESTON. This is Jill what if we say affiliation identified in the request?

>> PRITZKER: Yes that's fine.

>> That's good. Thank you.

>> SEMO: Anyone else want to comment on that everyone else okay with that change?

>> can we be heard on the phone?

>> Anyone on the phone have thought or reactions we just made two D.

>> Okay.

>> ALINA?

>> Ready to vote.

>> I e-mailed Amy.

>> I did too.

>> We will find out soon when we call

for a vote. I know.

>>BENNETT: I don't think we have an agreement the way it's written. Right now we have "and/or" on name of requester. So most of the comments were that the people were happy with the name of the all third party requesters and that the agency should alert requesters if they published. David's proposal was that we should say published names of commercial requesters and preferred category that is' not limiting it.

>>SEMO. I thought David conceded to saying third party name of requester?

>>PRITZKER. I am not sure that phrase is inserted in the right place.

>>SEMO. Okay I'm sorry. Thank you.

David are you okay with us cutting?

>> That's too big now.

>>

>> There's a certain amount of explanatory phrasing in the benefit of our consideration now that really doesn't belong in a final text.

>>SEMO. So are you okay with cutting the part that I have highlighted right now?

>> Is everyone okay with cutting that explanatory part starting with note right?

>> Are we going to insert a third party requester and the rest of the note is going to be deleted?

>>PRITZKER: I would make the word name second line C plural. Names of all third party requesters that looks good thank you.

>> Thank you.

>>SEMO: Okay. Any other comments or any line edits we need to make to this recommendation? Everyone good? All right. Are we ready to vote. I am excited about our first vote? Everybody ready totally. Okay so do I have a motion to except for the votes approval for the first recommendation regarding FOIA log that is we just finished discussing.

>> I don't need a second but I will take

it. Thank you Tom. All in favor. Aye.

>> Aye.

>> Are all again what about folks on the phone we can't really hear you?

>> Yeah.

>> Yeah.

>> You haven't been able to hear us for awhile.

>> Anyone again please say nay?

>> okay.

>> Thank you I believe that passed.

Probably the most painless one. Good job everyone. Let's keep going please.

Are you going to talk about the next one is that Sarah?

>>KWOKA. Can you hear me?

Great yes I am talking about the next one which is I am going to move onto the proposed recommendation, but the subcommittees thinking on this recommendation is that one useful contribution we could make would be to provide agencies with a set of criteria or a framework for deciding what records

they have should be proactively disclosed. And so in doing that of course the memo outlines some background legal requirements and various courses of hard and soft law that govern agency decision making on proactive disclosures to date and from that grew to two broad goals that those principles are trying to advance. They are trying to allow access to records that memorialize agency action, that is effect the public, and preempt the need to FOIA request for the extent possible -to post affirmatively to the public that which is of most interest to them. So and then I also the memo also said that details some of the other way ins which agencies already decide to release information proactively so various public concerns they take into account and the memo details examples of those and so that section really documents how agencies already in many ways attempt to publish records that the public will

have the most interest in including government held data in various ways that the public might be concerned. The proposal has three parts. The first part seeks to further the core objective of allowing public access to records that memorialize agency actions taken pursuant to their statutory mandates and this gives examples but that's not exclusive. This part of the recommendation also lists various considerations that agency might take into account when deciding whether a certain category of records is amenable to proactive disclosure and then so including you know necessary review and redaction weighed against the benefit to the public. The second category of records are records that are original government collected or maintained data like scientific data or census data or anything that the government publishes but many other agencies hold and they should consider publishing. This is in

line with many recent where it's not so recent government initiatives like data.gov and things like that. Again, this type of recommendation outlines it is recommendations is at an agency whether a particular government record is right for exposure and the third is about frequently requested records just beyond the statutory mandate currently in the reading room provision of FOIA which states an agency should publish any particular record that has been requested three or more times under FOIA. This takes that statutory starting point and recommends that agencies go one step further to publish categories of records that are frequently requested by the public to the extent that it is feasible given other considerations which are also listed in this recommendation. Those three categories which they viewed in line with the proactive disclosure requirements and initiatives of

government in the past and -- in each of those three areas. I will open it up to committee comments.

>>SEMO. Thank you very much. I heard someone beep in is there someone else that joined us on the phone? Any general comments about this recommendation?

Anyone on the phone have any comments?

Do we have any specific line edits that anyone would like to offer on this particular recommendation? You noted that there's a reference there's no point in having a second thought?

>> That was a question that I raised yes.

>> I can speak to that a little bit the reason that the FOIA logs which is notes as a --

>> Okay not having or hearing any other concerns and any of the line edits or general line comments are we ready to vote on this particular recommendation.

>>PRITZKER. Under J there's some indication of variance of opinion within

the subcommittee so perhaps we should address that?

>>KOTLER: I think you are looking at the other recommendation that's the front and the back. Margaret is talking about the proposed recommendation for proactive disclosures criteria.

>> Okay.

>> That's okay.

>>SEMO. We have a motion to vote. Okay all of those in favor of this particular proposal the subcommittee on proactive disclosures recommending specific for active disclosure criteria all in favor say aye.

>> Aye.

>>SEMO. Anyone opposed?

>>SEMO. Anyone abstaining?

>> Okay we passed that one too. two down.

>> Margaret is it Sarah's turn now?

>>KWOKA. Yep.

>>KOTLER. Thank you. Thank you Margaret. I am going to start with the

proposed recommendation for agency proactive disclosure priorities it's the one dated January 11, 2018 it's the front and the back. This lays out how our committee came up with the category that we are recommending for proactive disclosure one that is also the basis of the first recommendation that Margaret discussed more in depth so we will get to that one but just to set forth a summary of our methodology we kind of brainstormed on a lot of possible ideas for type of record that is can be proactively posted and everyone on the committee ranked these categories of record based on the ease of which agency would be able to post them or on the other hand the difficulty and the important of posting them and everyone gave their own subjective viewpoint on these categories and we spent a lot of time discussing the priorities of would be based on those rankings making sure that was all recorded so thank you for

that. We tried to focus on we tried to focus on records that were cross-cutting so they would apply to a lot of different agencies and not be something that would apply to something that was one or two. I will go on and just list for you what we came out with as the final list. The first of which is FACA committee materials they are already requirements for making certain FACA related material proactively available so that we would be recommending that additional or related records similarly be made proactively beyond what we are already required post under the law the next category would be unclassified reports provided to Congress that these may well need to be redacted. In FOIA directories a phone directly frequently requested records there was already something to post records and this would be that we this would be the idea that we would recommit to this goal as well and extent there's other changes to that

policy that may happen we would commit to that as well. Statements of administrative policy and documents of lobbying activities and FOIA lives which we discussed in depth and calendars for our top officials and contract information which we can get back to in a minute because that's one where there is an open question and then the last one which was declassified information for example the Department of state make it a priority to newly classified material that is withheld during the foreign relations and unless there's questions on one or more of the others we can go back and discuss the open issue on the contract which is one we debated in our subcommittee a lot in terms of both the number of contracts that we would make public and dollar amount what we have got in the proposal is the top ten contracts and task orders and granted measured by dollar value and all contracts, task orders and grants

valued at a hundred million dollars from the note there was a lot of discussion about whether 10 was the right number and whether a hundred million dollars was too high and so we wanted to get some input from the group on that the version dated January 11 but our ss the 16th but it's the same?

>> The date is something we can disregard but the content is still there

>> Sorry about that?

>> SEMO. No it's okay. Any general comments about J?

>> Jill is shaking her head No. any comments on this side any comments on the phone?

>> They are looking to the top ten amount and one hundred million the right amount? And maybe after all of our back and forth we came up with the right numbers? Who knows?

>> So okay. I am not hearing any - -

>>MOULTON. Hi this is Sean with Project On Government Oversight. I just wanted

to remark on the contracts stuff and so the idea there and what was that agencies would post at the very least their top ten if they didn't have anything over a hundred million if they had more than ten over a hundred million. It's kind of and either or is an idea of a recommendation and as said we went through some different numbers and I would love to see the dollar value a little bit lower there's a number of agencies that when you start adding up agency they have a number of contracts that go over a hundred million. It's at least a good place to start.

>>SEMO. I guess I am going to ask this is ALINA with one working Mic do we want an and or added to J is that what you are suggesting?

>>SEMO. I think it's fine if we want to word Smith it. I wanted to clarify in case it wasn't that we had it as an and so it's top ten contracts is sort of a minimum and anything that goes over a

hundred million even if it's more than ten if people would prefer it worded differently it's fine that was the gist of what we were getting at.

>> If it's over a hundred million you won't have to post the top ten. I think and is proper in that place.

>> Is everyone comfortable with the top ten? And one hundred million is the numbers. It seems like you did hit it right.

>> Okay any other general comments to the rest of the recommendation?

>> Ly need your Mic again.

>>EGGLESTON. I will try and speak up. I just wanted to ask that this recommendation would not require an agency to create a record that it currently doesn't already have correct?

>>KOTLER. I would agree with that since one would not be required to release such a record on FOIA and if it didn't exist. I don't know that we could require it to be proactively posted if

it's information that you don't have if it's information that you are speaking of.

>>CARR. I just wanted to say for the record that DOD would be able to comply with item C because we have a list of names and policies and we would not post on our website the names of and contact information for DOD personnel. Perhaps that's one addition of a caveat that might be added in.

>> What is the justification is it a privacy issue?

>>CARR. A safety issue after the events of 9-11 that became the policy of DOD.

>>MOULTON. This is Sean with POGO I was wondering, do you think that the DOD would be able to post information about contact information for offices like the name of and office and how to get in touch with them main phone number or main e-mail without identifying individual personnel?

>>KOTLER. This is Sarah and I don't work

at DOD they must have some type of information tree that you know would allow the organizational charts and there must be some way to figure out people at DOD. We have names up there and we have the names of public spokesperson in contact information for a public spokesperson.

>>MCCALL. If the Department of labor does publish low level employees I am unaware of that. I would find it very troubling if it's a recommendation you are making especially when you look at people in the contracting area. They are just buried. Routine agency employee who work in a particular office are going to be buried by commercial contractors who want to get an in on a contract. This is going to take up a lot of employee time getting random contacts from the public. I don't think this is a recommendation we really want to make. I think that it's one thing to say that the agency should be publishing

a directory of their offices and contact information per every office but publishing contact information for every single employee I think that would set a troubling precedent and end up wasting a lot of employee time.

>>PRITZKER. I would like to suggest an amendment to this one. I don't understand if it's a great burden to furnish e-mail addresses is any less of a burden to furnish phone numbers. My suggested amendment is to have the second sentence read if for any reason an agency is overburdened by this requirement contact information for individual offices should be provided.

>>KOTLER. Yeah I think that's great David. Thank you this is Sarah.

>>

>>MCCALL. I would like to propose that we change this recommendation to eliminate directors and contact information and instead require agencies to put up an org chart and contact

information for each office.

>> Including a phone number and e-mail address.

>>KOTLER. What if it's just like we are part of HHS and we have this directory on this website for everyone in HHS where it creates a new burden on us do you have we do put org charts up but I am sure you know the constant challenge of keeping organizational charts up to date. Unless you meant a very general organizational chart is there a way for people to choose which one so they don't have to if they already got one of them satisfied they don't have to choose the other one and then do that?

>>

>> The general organizational chart would be enough to satisfy what I think is in this organization but I am interested in what others think.

>>SUSMAN. General organizational charts already required to be to make published for every agency. This wouldn't add to

this. My recollection is one of the reasons the freedom of information act was previously passed refusal to provide their employee phone directories to the public. Last I looked even labor Department employees are paid by tax dollars and supposed to serve the public. They are going to be burdened because they are going to be contacted by the public. I understand they may not want phone numbers for everybody and most agencies that I call rolls over to voice mail and say we will call you back anyway which is you know I am sort of used to that. Actually they said we will call you back in 24 hours but they don't. In any event I don't know this whole this is sort of foreign to me this whole notion of somehow keeping people who work for the government in the shadows.

>>MCCALL. This is ginger I think that's true but I think for any customer service organization if you need to get

in touch with Comcast they have a host of people you can get in touch with. If you need to get in touch with the target corporation. They are not going to publish the names and contact information of every single employee because I think most corporations recognize, and we as the government should probably recognize that to have everyone be open to contacts by every member of the public who might have free time in a telephone or a free time in a computer will potential waste the time of a people who do have other jobs to do and especially when you talk about personnel who are involved in contracting or personnel who are involved in offices that have a lot of contracts you know I have been contacted by people in the con - - who want names of folks in our CIO office. There's a reason those people aren't on-line because those people would be overwhelmed with contractors and other

members of the public contacting them.

>>SUSMAN. This is Tom again do you see we have some empirical bases for determining they will be overwhelmed I thought I heard a few minutes ago that HHS has directory public and on-line. I wonder whether the employees are overwhelmed with phone calls and do I remember we said service personnel I thought that's what government employees were?

>>KOTLER. This is Sarah it's hard to say what the burden is because as the FOIA office my information is on-line, so I can't measure what the burden is particularly with respect to the example you gave of people's in the contract office. We do get FOIA request for the names of people in our contracts office and anyone who own as credit card for those who have a credit card for the agency we release that information for FOIA because we have to. So from my perspective and obviously like people

who work at targeted we are public employees who's salaries are paid for with tax dollars. So I see Tom's point that I do understand in certain situations like at the Department of defense that there are legitimate reasons but the names of our under cover agencies are not posted in it there's a safety reason for not including their names in it. I certainly can see that exception that is not covered in the way the proposal is written. That's why I thought that David's proposal gave enough wiggle room if there's a reason individual names would be given there's some legitimate contact information being given.

>>MCCALL. Individual names that's fine those are already on-line but before we make this recommendation we have to do more recommendations for e-mail addresses I think we need to talk to agency information security folk ifs you are releasing everyone's e-mail address

that opens up a bunch of possibilities for potential spam and fishing attack that is can create security flaws I think we need to investigate this more before we make a recommendation. We need to have a better sense of what it would be before we create this.

>> We mentioned the DOD for reasons not having their identity exposed and all the law enforcement offices and agencies you know have long standing recognized protection by the courts for their employees names again for safety. It's DOD law enforcement personnel and the national security personnel and intelligence community. There's several categories of employee who is are public servants and tax payers funded in taxpayer funded positions, but most of them had no trouble recognizing they have a privacy interest in their safety.

>> I suggest now that the second if for any reason and agency is over burdened by this requirement or a security

concern is applicable, contact information for individual offices should be provided.

>>MCCALL: Could we make it broader to not just make it security but leave the idea that there could also be a more general in some situation as more general privacy security slash privacy. I don't know that you could make the argument that every single employee at DOD that their contact information is a security. I don't know what the burden is for a security risk. Depending on what they do there. Perhaps we don't want to make it so narrow.

>>

>> You don't think the introductory if for any reason?

>> I think the word security might be limited. That might be the only reason. There could be other reasons we are not thinking of.

>>MCCALL. Again, this is -- Inaudible. If we are putting hosts of e-mail

addresses on-lines. Imagine there's a machine readable spread sheet that has every employees address. You are going to turn it into a little program script and you are going to hit every single e-mail address and you need only a couple of people at the agency who are not savvy to click on your link is a fishing scam. I think this is a very problematic recommendation.

>>SUSMAN. Most organization including government have standardized e-mail addresses. You don't want to post their e-mail addresses my machine readable that can generate 90 % one after their name or middle in initial that others don't use but I mean e-mail addresses are not that difficult and we subscribe to directories on-line that I think provide that information right now leadership directories and federal agency directories and the courts the Congress, you know this information you can buy so I am not sure and these most

of these firm that is sell it to you keep it up by making phone calls by connecting or by FOIA requests and things of that sort. Why would we make it more difficult for the public to get this information and for those that can afford to buy it.

>>JONES. This is to answer the question what's the policy at national archives for e-mail addresses posted on-line?

>>SEMO. I am fairly confident we release that information yeah. We are very transparent at the national archives.

>>JONES. Generally NARA is a transparency leaders. I say whatever NARA does is a good policy to follow.

>> That's fair. I know - -

>> Sorry I would be okay. Ginger's suggestion that we not necessarily reach a conclusion on this item today, but there is empirical information which we could learn more about and you know I think we know some now NARA one thing is three requests for the information that

you have to give us anyway you have to post it. It may be that there are a series of points and counter point that is could help educate us a little better between now do we I don't know if the timing is if there's a problem but I would be prepared to vote on everything but C and hold that perhaps the first item of our next meeting. I was >>PRITZKER. I was going to suggest that as an option I was trying to think of language that might provide a solution and I was looking actually to say where we start the phraseology to the greatest extent possible. I am wondering if we could use it here as well to the greatest extent possible employee directories and contact information including e-mail addresses period and just delete the rest of the language. >>SUSMAN. So this is Tom again. If we do that I would still add the sentence that David suggested a second sentence that because if it's not possible to do

individuals then still the office and contact information needs to be made public.

>>MCCALL. This is Ginger. I think if we are going to say to the greatest extent possible. I think this bears more investigation. If we want to get a consensus recommendation for the day. If we are going to say for the greatest extent possible. We are going to flag the privacy concerns whoever it is implementing this which may not have any conversation with the CIO's office for instance they may just implement this without necessarily thinking about security concerns. I think we should flag that in there. That's a responsible thing to do. I think better thing to do is more investigation before we make a broader recommendation about employee directories and organizational charts and contact information for particular offices but this sort of recommendation is something I think

would require more investigation.

>>SEMO. Thank you. Let me just add Sarah and Margaret are you willing to carve out C to try to move forward on the rest of the proposal?

>>KOTLER. I don't know if Margaret is still on the phone this is Sarah. I mean I am if there are people with concerns for obviously security and very important concern and it sounds like even putting in language makes clear that this is in some cases not required. It seems like this almost shouldn't even be encouraged even if people are willing to do it. I don't profess to be and IT security person by any stretch I don't recall we had that conversation so anyone that's there could jump in and correct me. I don't see the harm in making sure that we are not inviting some type of harm we didn't anticipate.

>>

>>MCCALL. This will potentially be one on over on this and it turns out

agencies are already doing this. It wouldn't necessarily be responsible for us to make recommendation without the first potential ramification of that recommendations.

>>SEMO. So Margaret is not on remaining subcommittee cochair with the subcommittee be willing to undertake that kind of investigation so we can discuss it further in our next meeting.

>>KOTLER. I could talk to Margaret how we will do that and I will discuss it with her.

>> I am this is - -

>>SUSMAN. We already heard from two major agencies today that don't have a problem with it and we heard from two others that they have a problem what sort of investigation would we do?

>>MCCALL. I think it would be helpful to talk to people who know about computer security especially releasing all of the e-mail addresses that's a useful piece of the investigation. You know I don't

know what labor does. I honestly don't know what most agencies do so I think if we could ask around to other agencies and maybe talk to someone who knows about security agency that would be helpful.

>>KOTLER. I know just in FOIA responses we add FDA released the names of our employees and their e-mail addresses excepting very specific sensitive situation where is I know from getting referrals and consults from other agencies, other agencies it's typical when releasing e-mails under FOIA to take out the e-mail addresses of any employee. I have never entirely understood that my guess is that those agencies that won't release employee email address under a FOIA request are the same ones hopefully that wouldn't put it up under directory it's up there in a directory that's a little odd they are going to have to figure out why they are doing what they are doing. This has

been something that's a bit of a distinction for awhile that I have seen.

>> I'm sorry we can't hear on the phone.

>>MCCALL. There's a distinction between a higher level employee and someone who is a relatively low level attorney like myself for instance.

>>KOTLER. Some agencies like mine we don't make that distinction. If you work at FDA your e-mail is out there.

>> It maybe useful for us to distinction why are some agencies not releasing these e-mail addresses and phone numbers there could be some real policy reason that is justify that lack of release and we should know about that before if we are going to make a recommendations I think being responsible about it and doing that sort of recommendation beforehand is necessary. My question is do you want to upset that apple cart, you know we were David suggested language that would have sort of given

agencies the ability to be consistent with whatever their policy was now we are going to go look into it and do you want and see what we find out and you know that could change thing for people down the line.

>>MCCALL. I think if we are going to caveat the language and that could potentially be that's satisfying to at least me. I don't know how others feel about this or if anyone else has and objection to it. As long as we are willing to caveat the language and make it nuanced enough then I could potentially agree with this.

>> Do you want to discuss that language now?

>> Awe yeah I am happy to discuss that.

>>SEMO. David did you want to reiterate what your proposal was?

>>PRITZKER. The first sentence I would not change unless we want to well, thinking allowed someone pointed out to the phrase greatest extent possible.

Here's my current proposal. C should read "to the greatest extent possible employee directories and contact information including e-mail addresses, second sentence if for any reason and agency is over burdened by this requirement or a security concern is applicable, contact information for individual offices will be provided."

>>SEMO. Is that something people can live with?

>>

>>PRITZKER. I am a little bit concerned about the investigation because we have a procedural problem with the committee that decisions need to be made and public session and if we don't have a final text of by the next meeting what are we going to do then to get the final text?

>>SEMO. To respond to that what the back up plan is we can have another meeting between now and April if we have disagreement on some of the other

recommendations I want to hear from Amy who had an editorial suggestion.

>>BENNETT. To reflect that it was both a security and privacy concern I think we were hearing from ginger and others particular concern for examples security is applicable.

>>

>>SUSMAN. Every time the privacy crops up that will swallow the whole recommendation I don't understand any government employee that wouldn't discern that they have a privacy issue keeping the public from contacting her during working hours. I have the opposite issue if there's not a security safety you know or you know law enforcement I will list all of those if it's just a personal concern about not having been bored by the members of the public during working hour I will object to that.

>> What if we keep Amy's idea for example security but not adding in the

word privacy. Do you feel the need to list everyone's security but thinking of the legitimate finite LIST a little bit. I understand that privacy is not a good one in that case, but something like for example security or something like that then it's clear that we need a specific reason.

>>MCCALL. I would leave privacy in there. They ensure that the person that's potentially implementing the policy consults with the privacy attorney's and CIO's office. These words are a flag that indicate that a person office should then be consulting before a policy is ruled out. I would change the language here this is just me again. To the extent possible employee directories and contact information and I would cut the including e-mail addresses but that's just me because I don't think we have done enough investigations to make it a recommendation.

>> I would definitely leave privacy in.
As much as Tom may object to this I know particularly at labor and as we discussed some other agencies we do believe government employees DO have some extent of privacy in their contact information even work contact information. You routinely redact out those e-mail addresses.

>>LAZIER. This is raynell. I would like to say that can we acknowledge that both the public and everybody is still going to be able to get this information without this recommendation and so I am wondering if it's probably best to leave this out and rely on frequently requested records and that we have an obligation to post our organize chart and other supplementary information already and then where does this become an issue and have folks submit a general FOIA request where they are interested in it. I think I don't know I don't want to attack what the committee

accomplished but maybe we can go forward with the rest of it if you are comfortable.

>> I would be more comfortable with tabling it and studying it or either voting yes or no. I don't really want another meeting but I think if there, I think that it is a valid question. I know Congress generally putted their e-mails on-line and some agencies do or don't. I am not ready to say it's a bad idea or proactive disclosure. I don't want to say you have to do FOIA right now.

>>MCCALL. This is Ginger this is not a bad idea necessarily. I don't have the information I would need to evaluate that. I would be happy to volunteer to help gather that information.

>>SEMO. For the record you are not being a pain.

>>MCCALL. I am the person with the strongest objection I would be happy to help gather the information and do the

work necessary to help gather the information.

>>PRITZKER. I would like to try one more edit to this.

>> Replace the word particular with significant. Everything is a particular concern and replace the IE with an EG.

>> Do we have a way to adopt this tentatively and reconsider it if investigation along the way suggests the change is needed?

>>SEMO. No, I think from a procedural standpoint it's clean or to carve it out and vote on the rest or vote in with whatever language we are hearing. I am hearing generally that consensus for tabling say for the time being. I am seeing nods and shaking. Let's carve out C for the time being and with Ginger volunteering because she has nothing else to do and you will work with Margaret to get us some feedback. We will figure out a way to communicate that feedback and we can work out

language or it just will move forward without it.

>>SEMO. Are we prepared to vote on the rest of the recommendation carving out C and moving on with the rest?

>> Are we dropping H?

>> Are we dropping H?

>> Yeah I think the vote was not to drap it.

>> Can I have a vote on recommendation without C in it?

>> SEMO. Thank you and we have two movers and all in favor please say aye.

>> All opposed please say nay. Okay any abstainments? I am trying to move along. We have a lot to get along. The subcommittee. Sarah is this you?

>>KOTLER. Yes it is and I wish I could say it's something that won't generate a lot of interest to discuss I don't think that's true. So I don't know how you want to handle that it's about 508 it's the document on proactive disclosure and the rehabilitation act section 508 dated

January 16, 2018. So I can run through the document but you know be mindful we don't want to monopolize this entire meeting you can decide on how you want to proceed. This is a separate issue for the archivist to do several bulleted items that I will try to run through quickly which would be to volunteer agency standard requirements to ensure that the tools and their outputs are compliant with section 508. To encourage agencies not to remove documents because they aren't compliant we would encourage remediation rather than removal but would discourage removal in any event and request that OGIS conduct an assessment of the methods taken by agencies in preparing documents for agency FOIA reading rooms. And that OGIS highlight the proactive disclosure requirements and 508 compliance in it's report to Congress and recommend legislation be enacted to clarify agency requirements under the

act. Recommend that agencies conduct and undue burden analysis by balancing section 508 and our FOIA obligations and in summary agencies should be creating 508 documents before they requested under FOIA or proactively posted.

Agency should develop requirements for FOIA processing tools and the tools and the outputs are compliant and agencies should not remove their documents when they are not compliant. We could probably talk about this for three days, so I will leave you with that also let me see if anyone from the committee wants to jump in on this.

>>JONES. This was the recommendation that was under drafting during the last meeting. Part of the thinking is our first meeting as a FOIA advisory committee, we had people from the Access Board come and from the minutes I read two of them said, "no never take documents off the website," and one of them said, "yes take documents off the

website." It's unclear as a FOIA transparency person is that I don't want documents down. It's also topical because actually according to recent reporting 92 documents on climate change were taken off of National Park Service website. The reason cited for this is they were not 508 compliant. They had not been put back last I checked so it's important. The general background and we can hash through specifics I think you can trust the subcommittee spent a lot of time trying to make these work and I think they do I don't, I will look for the comment. I just want to say for the record my position I think the position of the subcommittee is absolutely reasonable for documents to be OCR'd when they go on a reading room. It's, it makes it easier for everyone. If and agency misses a character or has a typo I don't think that's the reason not to post the document. It still should be posted. The real problem is

this example of a document has a picture of a clown in there. Some government employee has to go through and type in picture of a clown juggling in the document that I don't think in the grand scheme of thing is reasonable. What is reasonable is to use the words of the rehabilitation act that say that when there's an undue burden agencies can post the documents on-line anyways, so what this recommendation essentially does in my opinion is make some common sense stuff and point out how it should be done. I think it's needed because I am not seeing on OGIS or OIP say this. I look forward to discussing it.

>>MCCALL. This is Ginger. I have a question generally does section 508 create a private right of action?

>>SEMO. It does.

>>MCCALL. Okay. Is there potentially an issue here if we are telling agencies not to take down noncompliant we are open to litigation?

>>JONES. The language says encourage.

>>MCCALL. If this is adopted that could open agencies up to litigation?

>>JONES. I think there's lots of things that they can recommend to do that. I think it's possible. I think you have to the language that encouraged agency not to remove documents already posted. I am happy writing that whether or not it could open up agencies to litigation.

>>MCCALL. What we would be encouraging agencies here to be clear would be out of compliant with the law.

>> Nope that's not my understanding.

>>SUSMAN. I think we actually some of us press to make the recommendation that agencies error on the side of posting and we were I think convinced in the end that we shouldn't be giving legal advise, but we do stress the undue burden part without trying to explain exactly what it means because of the courts have never clearly explained what it means and it's as we heard the access

board we weren't terribly clear about what all of this means and so the idea I supposed of suggesting that the freedom of information advisory committee should opt in favor more information getting out shouldn't be surprising and I supposed an agency could be sued if it doesn't let names and addresses out of it's employee so we wouldn't be encouraging litigation if we accepted those from proactive disclosure.

Anything we recommend there are people who are going to sue. I don't believe that's a reasonable objection Ginger do you disagree?

>>MCCALL: I don't generally disagree. The calculation we are making in this is educating agencies not to remove documents already posted on their website because they may not be compliant. These are documents where there's a private right of action and the agency could potentially be sued. What is our justification for

encouraging? That it's openness as a policy matter.

>>JONES: It looks really bad when the United States government takes documents off of its website that are still up there anyway it looks even worse when the FOIA advisory subcommittee on proactive disclosure. Our biggest effort is giving more information to the public balancing but in the end I wouldn't phrase it but letting the public have access to information.

>>MCCALL: I think the rest of it is great. We would be making a recommendation that 508 not be in conflict with FOIA. But the issue is if we are encouraging agencies to potentially not be in compliance with this law that problematic. I just >> This is the potential conflict between 508 and FOIA but I don't know if we want to encourage agencies to do things that might lead them to not be in compliance.

>>HERSHBERG: This is Jim can you hear me as one of the few historians I would like to strongly endorse Nate's comments this is particularly relevant for historical documents which might not be in a form that can easily convert. Okay can anyone hear me?

>>

>>PUSTAY: The 508 committee saying don't worry about FOIA they only think the main focus should be 508. You know one should be put above the other I think the two laws are intended to work together and in fact when you think of 508 it's designed to make sure that everybody has access so it's 508 compliance is enhancing of transparency. It's not pulling back on transparency.

>>JONES: I certainly see what you are saying but in this specific case 508 again and again specifically is decided not to post documents on-line so when we have this potential release to one release to all policy agencies are

saying we are not going to do that because of 508. In a perfect world yes and in a real world it's a topic. I don't want to talk for the 508 advisory committee. I am they are putting the 508 above the interest of FOIA.

>>MCCALL: I think the rest of these recommendations strike the right balance that we would encourage a report to Congress on swearing the legislation that we would encourage agencies to conduct and undue burden balance. My concern about private rights of action and potentially encouraging agencies to be out of compliance with the law remains. I think that's problematic.

>>JONES. I can't in good conscious I can't vote for something I don't I personally would vote against taking out the simple statement saying don't take documents off of websites?

>>HERSHBERG. I don't know if anyone can hear me? Jim completely endorse what Nate just said.

>>MCCALL. I supposed I am wondering if there's a compromise in there we could say leave them up while you are remediating that way is it's a good compromise.

>> If there's an undue burden. If you can demonstrate an undue burden don't take the documents down. I think that's fine. you are making a legal judgment that's okay to do. I find that's the same.

>> Are you telling me every agency now with documents up there is violating the law have you made that legal decision?

>>MCCALL. What I am saying is I really think it's we saw from the presentation that is we have from 508, how complicated this area of the law is. I would be the last person to think that we should be opining. I wouldn't want to make a judgment as to whether something is -- or not. I am raising the point for the benefit of the committee that the committee might not

want to weigh into that.

>> There might be a particular employee that decides to implement them and they might not talk to the attorneys who would be able to make a better call on 508 compliance. We are making this recommendation. I just don't think operationally I foresee an operation they are

>> You could say that about any recommendation that we are making all day today. This is one where we are saying there's a law that might not be compliance. We are encouraging them to be noncompliant.

>> I would suggest for the interest of time we should see if there's a middle road or we should have a vote. I was going to make an editorial suggestion we can get around this issue. They are not 508 compliant. I think it's absolutely true that this subcommittee that said they are primary point is they don't want agencies to remove documents

from their website. If we take it out of the first sentence then we have a point about that we encourage agencies to remediate documents then we remove it at the bottom here where it says even if 2 information posted if not fully compliant then we are still getting at the heart of the recommendation without, you know we shouldn't take them down a >> It eats right here.

>>PRITZKER. I would amend Amy's suggestion to put in boldface the second sentence here. As part of the recommendation. It strikes me that this is very different from saying to an agency that it's okay to post non-508 compliance documents. This says if you already posted it, then the governing principles should be don't take it down but try to fix it.

>> By emphasizing the second sentence yeah. We may have to work a little bit with the syntax of this to make it fit. I think the two exceptions together is

take it out of 508 compliance out of the first sentence and emphasize the second one.

>> This is Ginger go ahead.

>>EGGLESTON. Jill. I would suggest we take tout word nevertheless.

>> Part of what I had in mind when fixing the syntax.

>> We should take out the end of that sentence even if it's not fully compliant with the section 508. We are editing it to say encourage agencies not to remove documents already posted on their website. We are encouraging agencies to remediate those that are not 508 compliant and OCR'd documents in addition are easier for all individuals to search through and utilize and -- that's useful to the public agencies should ensure, et cetera. I think that's the right balance.

>> It discourages taking information down but it also doesn't necessarily encourage noncompliance.

>> I can live with that but I don't love it.

>> I was about to throw out the question. I see the difficulty of acknowledging that they are not compliant and saying they should be left out. Given the uncertainty that everybody acknowledges as to whether something is compliant or not. It's compliant if they are unduly burdened to make it accessible. So perhaps just instead of because they may not be compliant because there's a question whether they are compliant or something to acknowledge that there may be doubt. I mean and suggesting that although I am okay taking out references completely. That's a punt. That's an easy punt.

>>SEMO. So Amy would you mind reading out loud the first two sentences are going to read.

>>BENNETT: Encourage agencies not to remove documents already posted on their website. We encourage agencies to

remediate documents that are not currently 508 compliant. Documents that are OCR'd are much easier for individuals to search through and utilize. We discourage the removal of information from agency websites that is useful to the public. Agencies should ensure there is contact information on the FOIA reading room that individuals with disabilities can use if they encounter inaccessible documents. Okay. it seems like--

>> Why don't we bold the second sentence?

>> Yes.

>> Anything else in this whole proposal that needs to be commented on or anyone have any other general comments they would like to make?

>> No.

>> Can anyone hear me this is Jim?

>> All right so I will take a vote. Can I have a motion? Nate? Are you moving?

>> I move it.

>>SEMO. Okay. So let's take a vote all in favor of this proposal from the subcommittee on for active disclosures please say aye. All against this recommendation please say nay.

>> Do we hear the folks on the phone?

>> I don't think you do?

>> No. We are trying to comment.

>> Jim, do you want to go?

>>HERSHBERG. I would like to express my strong agreement with Nate's comment about that the principle that information or documents should not be remove from websites that have already been posted due to issues concerning 508. I am fine with the compromise that we certainly would discourage any removal or nonposting of information it being understood that you know all reasonable efforts to increase as one of the historians on the group this is important for historians because historical documents are not always easily made to this should not

discourage posting documents or materials.

>>

>> Amy in the summary paragraph it repeats the third sentence from the bottom it need it is conforming edit.

>> Thank you it's got that language.

>> It should not remove those to document. Period.

>> Okay any other comments from folks I missed on the phone.

>>HERSHBERG. This is Jim again should that line be expanded not only agencies should not remove posted documents or refuse to post documents or important documents you know prospectively.

>> I too was going to point out that what I would suggest that the sentence under the discussion agency should not remove documented from agency website but under take remediation where needed.

>> Where needed and feasible or not causing undue burden?

>>

>> This gets at an information as a member of the working group you can play around with the wording if you like after the meeting. Agencies should not remove posted documents and undertake remediation where needed and feasible.

>> Agency websites in that first sentence.

>> That do not comply with section 508.

>> Right David? Okay. Let's try this again. Any other comments on the phone I'm sorry I do not mean to ignore anyone on the phone.

>> Any other comments from the table?

>> Thank you for the motion. Let's take a vote on the recrafted section 508 compliance recommendations from the proactive disclosure subcommittee all of those in favor please say aye.

>> All those against the recommendation please say nay. All those who wish to abstain?

>>PUSTAY. Here.

>>SEMO. I am going to go on the record

from abstaining from the two OGIS recommendations I am in favor of the other ones.

>>SEMO. I am looking at the time I know I was trying to go into get efficiencies and resources subcommittee presentation next I am wondering if we should take a break. It's 11: 53. Let's come back at 12: 03. That's not right. 12: 08. We can resume our deliberations and we will get through the other two subcommittees on the tail end of 24 okay. Thank you very much everyone. Break.

>> the other two then.

>> I know we have two more subcommittee recommendations to go through. Folks on the phone do we still have you?

>> Yes.

>> This is Sarah.

>> SEMO. Okay. I am going to turn it over to Ginger and Chris to talk about the proposals for the efficiencies and resource subcommittee.

>>MCCALL. To direct you to the hand outs and they have neatly outlines set of proposals that have charts that are helpful so over to you to Ginger. I will be covering it Chris is on the phone. I want to thank Amy who went through the pain staking process for making these charts 508 compliant. I am going to attempt to be very brief here but feel free to subject me to the same level of scrutiny I have been subjecting others to. I am just going to read our recommendations but you can see there's another column within that chart for benefits and there's also a section above with our observations. Just to review the way we came to review the recommendations and also looking at OGIS assessments and that observations is included above each recommendations, so recommendations so first under the broad heading of management of process our first recommendation is to advise FOIA offices through best practices to work

with requesters early on when necessary. Our second recommendation is to promote collaboration between employees to ensure coverage of cases during periods of leave and peak time. Then we are also recommending that teams are formed with common strengths to handle particular types of request. Under the sub heading of accountability we are recommending to introduce case closure pages reviewed and quality requirements as part of the employee performance evaluations and to track status of request for records and ensure visibility and establish protocols of overdue request. On the expanded use of track sub heading we are recommending that agencies prioritize requests using separate tracks and simple contracts and assign resources accordingly and that agencies encourage simultaneous processing of simple process request processing of either category is not unduly delayed to the extent possible.

Our first recommendation is where appropriate centralized processing? Then under the heading of bringing in talent our first set of recommendations is on the sub heading of building a career path. For that we recommend rotational programs to expose young employees to FOIA and create a career model for career management. Under the sub heading of intern and contractors and we are recommending that agencies assign interns or temporary staff to complete straightforward time consuming task such as data entry and contact search the support staff that are used to aid and routine review. The next heading is using technology to improve the process with a sub heading of records management and search. There we are recommending that agencies create add-ons to IT systems for exporting systems. The designated point of contact to approve search records and that agencies make the end goal of

responding to FOIA request a major components when developing the records management system and work flows. Under the sub heading of tracking systems we are recommending the adoption of a centralized Department wide FOIA tracking platform or that agencies alternatively can consolidate to fewer tracking systems where possible to leverage and established I am forgetting what the acronym stands for. Government off the shelf or commercial off the shelf product across the organization. If a commercial off the shelf product does not meet the need for an in-house system and have a developer on standby for updates, so those are our recommendations and I am also want to turn it over to amply briefly to talk about a specific practical solution that we have been talking about under one of these recommendations.

>>BENNETT. Thanks. Some committee members might remember doing the last

meeting it was noted that FOIA offices sometimes or often have a hard time contacting for FOIA support because there are a lot of contractors and it is hard to find the right vendor to go through that process. Logan stepped up for the subcommittee and he reached out to GSA to see if there's anything we can do to address this practical problem. GSA got very excited about helping agencies contract FOIA support more efficiently. They have already gone through a process of identifying vendors of a particular general schedule contract that can supply FOIA support. They are going to be going out to ensure they have the full itself list available and then we are going to be working with GSA on creating a FOIA contracting page that agencies can use so that they can quickly or as easily possible identify the appropriate vendors and bring that support into the agencies as soon as possible.

>>SEMO. I just want to ask Chris if he has anything to add to GINGER's great presentation.

>>KNOX. No. This is Chris I don't have anything to add thank you very much for presenting.

>>SEMO. I want to open up now to any general comments on this set of recommendations?

>> Anyone on the phone? Any specific edits to any of the recommendations to efficiencies and resources that's Amy cue to go up there? Anyone on the phony specific edits from anyone on the phone? Clearly everyone wants to go to lunch.

>> I have one comment I want to thank LOGAN again. We got excellent edits on this which is probably why we have less edits now. Thank you to the subcommittee and thank you to Chris.

>> Can I have a motion I am not hearing edits or comments is everyone ready to vote?

>> David?

>> Yes?

>>

>> I was looking at copy that is were distributed toe. Do they?

>> Thank you Tom for the motion. I would like to take a vote now all those in favor of adopting recommendations of the efficiencies and resources of the subcommittee please say aye.

>> Aye.

>> All those against the recommendation please say nay. There was not a nay from me. Those who wish to abstain?

All right. That was very painless.

Very nicely done. Thank you Chris and DINGER. Let's move on we are going to hear from the third subcommittee. Last but not least.

>> Is LOGAN are you on the phone?

>> No?

>> Sure. You are on your own.

>>JONES. This is largely what we discussed in the last meeting with a few I think relatively small tweaks and a

couple of additions I will point out. I won't take too long what the search subcommittee found after researching FOIA searches was that they are a very large part of the re, a very large reason for the FOIA delays and often very inefficient. They often put FOIA professional in a really bad spot because non-FOIA people don't conduct searches well so the FOIA people can't refer to documents. There's not a lot of public information about how FOIA searches are conducted. With that in mind here are recommendations essentially fall into two pots. One is a pot of action items that we recommend archivist take action on and another is a pot of general search recommendation that is every agency should probably be doing that we recommend the OGIS I don't want to use the wrong word not promulgate but pass around that OGIS make sure that agencies have these general best practices on how to conduct

searches efficiently. So we request that the Department of Justice Office of Information Policy collect detailed information as part of each agency chief FOIA office of report regarding the specific methods and they are using to search for their electronic records including e-mail. Potential topics to that there's a typo that merit further attention include agency procurement of technology, build search e-mail and active discovery tools and act of agency website that helps requestor help keep recordkeeping system and submit target request. As you might see one of the suggestions last time was to more specifically state things to include in the chief officer report which is drawn from later on in this report and these are I would read them as suggested not required. Point two direct OGIS to review the use of appropriate performance standards in work plans to ensure requirements and we further

recommend that OGIS submit the result in any recommendations to the President and Congress. Essentially that is trying to amplify that the DOJ's instruction that FOIA's everyone responsibility using OGIS statutory responsibility. We also propose that the chief FOIA office counsel seeks to establish subcommittee and partnership with the CIO counsel to study the utilization and the deployment of FOIA technology across agencies and identify best practices and recommendations that can be implemented across agencies. That's a new one; essentially we are asking the tech people to get involved with FOIA searches. Suggested modification to the suggested, require all electronic record and other records related information technology take into consideration features which will help facilitate the agencies responsibilities under the freedom of information act to provide access to federal records. That's new

essentially it's saying part of the reason that searches are not always conducted well is because the software is not built for FOIA searches and to tell the FAR to require that. To recommend that to the archivist and then moving onto the second basket of recommendations that agencies should be following so direct OGIS the following recommendations the timeliness and the efficiency of agency one increase and technology to aid, federal agencies and more effectively and record search to greatest extent as possible. Ensure that agency e-mails can be efficiently and actively searched electronically by FOIA offices. Next in light of the potential legal cost of untimely or inadequate FOIA searches they should explore the process of obtaining software and E discovery tools more accurate and timely FOIA searches and that one was tweaked a little bit from suggestions in our last meeting.

Effectively explain how agency records are maintained after ensure that had FOIA public liaison and other personnel to submit well targeted request. I believe that's added due to comments from our last meeting as well. So with that I welcome many of our subcommittee members to pitch in and clarify anything with this clarification and welcome the discussion?

>>

>>SEMO. General comments? On the phone do we have any general comments?

>> Do we have any specific line edit that is anyone would like to suggest?

>>

>>JONES. I don't know if this is appropriate. I did see typos. But not enough to merit a copy editor.

>> Sure.

>> A lot of these have substantial overlap with the efficiency committee. Sort of reconcile things.

>>SEMO. That was our vision that the

working group would try to indicate that there's overlap, bundle them and address them and layout the recommendations.

>> I find it very encouraging by the way there's so much overlap that we have come to that amount of consensus. David do you have any line edits or comments.

>> I second what Nate said about typos in here. Last opportunity for folks on the phone anyone have any comments or suggestions?

>>PRITZKER. Can you speak into the Mic? I do have questions somewhat related to the procedure after today which is to get some sense from OGIS or the committee is how much of the explanatory material or subcommittee have presented should be incorporated into the committees final report. Part of the reason for this is that some goes into detail about what we heard from whom and others and others talk about general principle.

>>SEMO. Does anyone have thoughts on

that? I appreciate any sense of the committee or from OGIS on how to handle that.

>>SUSMAN. This is Tom. Because of the incredible detail of the note keeping and recordkeeping and transcripts and minutes et cetera there is a rich legislative this advisory committee. I think to for purposes of gaining the attention of readers that less maybe more in the finals that focused on the recommendations and the reasons and then go from there. I was going to note earlier especially in the FOIA logs I mean there's actually a lot of personal references Margaret said I did it because it was taken from one of her memo's obviously those sorts of things we can get a much more lean final recommendation. I am hearing Tom volunteering for the working group. Did anyone else hear that? No. I think we can leave it up to the working group to talk about. We had talked about the

fact that we would provide background and certainly some of the subcommittees want to talk about the methodology they use to arrive at some of the conclusions they arrived at. I am open to ideas and suggestions does anyone have any other thoughts? How much or how little should be in the final report?

>>JONES. I just have a procedural question and other issues. I mean I understand that we are abiding by the rules but it seems that the rules are a bit annotated to me for me it would make more sense to discuss tweaks over text electronically. I am a bit worried we are going to do a lot of energy drafting this final report and then just to clarify it, it's we can not discuss it until the day of sitting around the table. It's impossible to circulate and discuss it before that that's inefficient. Is there a way around it and I am hearing no.

>> I don't think there is.

>> Amy?

>>BENNETT. So the subcommittees can meet and discuss. We could always if you wanted to suggest edit you could send them to us and we can share them with the full committee. All deliberations must be open to the public. If you wanted to if you like how David provided us with edits then we are able to share with the committee today we can take edits on the full committee report and discuss those and at the final meeting, but all deliberations must be open. Would the committee be open to posting the draft on the website?

>> Yes.

>>BENNETT. As soon as we have a draft that the working group is happy with sharing. I am happy to put that on our website and all of today's recommendations are already on the FOIA Advisory Committee website. We will post things as soon as possible.

>> So I am hearing that the solution is

for the working group to get their product done quickly and get it on-line and help people prepare their edit tots present there.

>>SEMO. I just don't want to hold out the possibility we absolutely need to we could try to have a meeting. I know that folk have a really busy schedule and it would be tough. We could try to do it if we really need it. So look at your march calendars and let me know what might work. Okay. So back to the subcommittee I don't want to take the spotlight away from eight any other general comments or specific line edits I didn't hear any. Folks on the phone? Quiet I am assuming everyone is good. Can I have a motion?

>> So moved. Thank you. Let's take a vote. All in favor of the subcommittees recommendation please say aye.

>> Aye.

>> All those opposed please say nay and folks on the phone we didn't hear your

vote?

>> Aye.

>> Aye.

>> And Melanie abstaining. I just want to add I will be abstaining as well with regard to matters concerning OGIS for that matter I have to say also regarding the chief FOIA's officer counsel since Melanie and I are cochairs of that. I am in favor of everything else okay.

Any other homework that we want to talk about amongst the committee members in terms of how we go forward? No okay.

At this point we are just about ready to turn to public comments. I know that Melanie wanted to share some updates with everyone so I will give her the floor.

>>PUSTAY. Thank you. I thought I would be proactive about something that I typically get a question on in this forum and that's the release to one and release to all projects. I don't have a substantive update to give you at this

point but it remains under review and I just continued to extend my appreciation to everyone's patience. What happened is the discussion we had on proactive discussion illustrate the difficult issue that is are associated with proactive disclosure and this' what we are working for. We are working so that we continue to appreciate your patience and I look forward to being able to close the loop on this. Believe me more so than anyone this is the project we have been spearheading for a long time. I have a bonus update. That's on the national FOIA because we are really getting close to being able to go live with our first iteration of the national FOIA portal so we are obviously really excited. We worked with lots of people here along the way on development of the features and functionality of the portal. We are in the final testing and configuration testing stages right now. We are really once we go live with the

portal of course then as people start using it. It will really really be helpful for us to continue to get feedback both from agency receiving request and from the requestor community on how their experience is making their request because this is definitely something that we view as a project that we will work on a continuum and we want to continue to add features and functionalities as we go along.

>>SEMO. So I want to let folks come up to the Mic and ask any questions or make any comments now is the time. I also need to invite my wonderful colleague Sheila who is kind enough to be monitoring the live stream. It's been a very lime streaming day folk have been making a lot of comments. Sheila was going to summarize the gist of most of them.

>> Yeah there's no Mic.

>>PORTONOVO. The live chat has been lively today. Some of the topics that

generate it had most interest was about the FOIA laws. They want toddlers close as much as possible or agencies to disclose as much as possible of the FOIA laws and regards to government and employers information. They were in favor of disclosure as well as not in favor because of security reasons.

There was interest in 508 in just the way that it was being discussed and the way that people were analyzing the risk and not the risk of keeping that on the website. And then rah lot of comments about people just enjoying watching this meeting and hoping and also enjoying that in general and hope to visit NARA someday.

>>SEMO. They are welcome to come.

Thanks Sheila.

>>HOWARD. Okay I have one step. Alex Howard. As one of the commenter on there and someone who shared your live stream again we would like to commend the Archives both for this and your efforts

in open government as people can see in your open government plan including the commitment and OGIS for the couple years. The FOIA list includes names and e-mails and has there been any negative consequences for posting that information. We would like to hear about them. That observation that it saves the public frustration and our feeling on this in recount to respects in providing public information with people providing people with access to public information should be public. If these people are subject to phishing attempts and they should be trained and given better tools and inbound filter that is are standard in commerce and the public eye elsewhere are given to them. If they are subject of attempts in greater frequency then they should be given better tools but removing that information from public access as has happened in certain agencies this past year is not something that supports as

you may be aware the Energy Department used to have a directory of people on it's website including scientists that members of the public could contact for other people doing research enabling better public understanding of public reproduced research data. We feel it's a best practice for FOIA officers and others to connected the public to these people not to remove their contact information from public access as indeed occurred there. We understand these are nonbinding recommendations. We also understand in the past these recommendations have not necessarily been given the full attention or the implemented agencies in the way that any of us would hope. We are extremely excited that had you past forward and move these forward and hope they get more attention and we will be doing what we can to give them back. I am very grateful that you proactively brought up the issue of this release to one release

to all policy for those who are unfamiliar Cause of Action, James Valvo, and the Sunlight Foundation officially petitioned the White House Office of Management and Budget and the Department of Justice to release the FOIA policy that President Obama can we say ordered you to release one year ago at the beginning of last year. As of yet we have received no official from the Department or White House so they can talk to members of the media who have brought this up, so today it's great to get that in person but I would note that our letter and petition has never been acknowledged from agencies in simply asking you all to put up a policy that we all worked on together. It would be unfortunate if it has to come out and perhaps and ironic through a FOIA request for lawsuit. It's exciting to hear that this portal is moving forward and I certainly hope to see the recommendation that is have been brought

up here applied there particularly with respect to FOIA law that is came up here. It's our position that's something that should be ongoing not released once a year. I would note that as we are take ago snapshot of where open government stands in this administration we have been calling agency FOIA officer this month and these numbers that have been posted up here are going straight to voice mail. We are not hearing back from them. Our e-mails and calls regarding open government contacts are being ignored or told we are not being monitored. Our request for last year from the Department of the Interior was met with an instruction to FOIA them the state of this is not good. The attention it is receiving under this administration appears to be one of either benign neglect or each malignant intent. I bring up one specific question that I would love to hear your opinions on with

respect to recommendations is it appropriate to assign senior civil servants in agencies to handle FOIA requests and do so in a way to indicate that it is a punishment or a demotion as opposed to someone contributing to efforts addressed of the public information. I am referring here to the state Department I am sure you have all seen the reports and you have seen people in government knocking the proud work of FOIA civil service. And I have not heard a defense of the role or of the law or responsibilities that everyone has to do it. I am curious today if you all would like to comment on that the role of FOIA and the role of people in your roles who are doing this work because we are very grateful for it. It's our roles as watchdogs to advocate, criticize constructively. We really are grateful for those efforts and we notice it had void of protection and defense of their role in this

administration and I hope it doesn't continue. Thank you for the opportunity to ask a question and raise these issues.

>>SEMO. Thanks. We really appreciate that. Anyone want to react or we will just let it sit and digest.

>>PUSTAY. One thing that comes to my mind of course Alex knows I am a proud advocate of FOIAs professional across the government. One of the thing that is we did that's very apropos when you were mentioning March I thought of sunshine week. Can we have an advisory meeting during sunshine week? No, we have all of our events. One of the things DOJ has done for the past couple of years we give out rewards for notable contributions by we have had a whole bunch of different categories new employees working with FOIA teams and lifetime achievement award. It's one example of something that we have done at my office to help give public

recognition to the really hard difficult work. I think this committee itself with all the work and all the discussion is very obvious how much we all recognize and appreciate the work that goes into administering the FOIA. It's one example and I know agency DOS other agency DOS similar things.

>> Thank you.

>>JONES. I will answer the specific question Nate Jones. I read that people are going on record to prominent newspapers saying that FOIA office is a joke or going to FOIA is like being sent to Siberia and somehow saying that allowing the public access information what the government is doing is not as important as another job it made me really angry. I thinking about it and stewing about it. Thanks for the question Alex. I really would have liked to see the FOIA only buds office or Department of justice go on the record or write and op Ed or speak

saying FOIA professionals are government treasures and maybe it's, maybe you are not allowed to do that. I wish you were. And if you are not allowed to I know that Congress is allowed to so I also was upset that no Congress people went on the record, so I guess this is a small step in that direction. Two other thing that is to rather than just kind of defend and talk about anger that can further fix the problem. Further instill two things I think we have to further instill that FOIA is everyone's responsibility. It would have been good to fold the person saying it wasn't I think FOIA professionals need to continue to develop and fully develop and inspectors general mentality. Both laws came about the same time. I don't think you would ever hear someone disparaging and IT's office. I think that's something that FOIA officials should aspire to and realize that their the freedom information is a strong law

they can follow no matter what
administration they can follow, FOIA is
the FOIA period. I will leave it at
that.

>>SEMO. Okay. Thanks Nate. Anyone else
want to add their thoughts? Anyone ton
phone? Only one has remained on the
phone.

>> I am here no comment thank you.

>>SEMO. Okay. Unless anyone has any other PROCEDURAL
issues that they want to talk about I think we can wrap
this up and everyone can go to lunch a little bit early. I
want to get credit for finishing 12 minutes early. I
invite everyone to go to OGIS website and for more
information about the events happening today. We are going
to have our final meeting on Tuesday April 17 unless there
are any questions or concerns we stand adjourned. Thank
you.