National Archives and Records Administration (NARA)
Freedom of Information Act (FOIA) Advisory Committee Meeting

Meeting Minutes – July 20, 2017

The FOIA Advisory Committee convened at 10:00 a.m. on Thursday, July 20, 2017 in the William G. McGowan Theater at the National Archives Building, 700 Pennsylvania Avenue, N.W., Washington, D.C. 20408-0001.

In accordance with the provisions of Public Law 92-463, the meeting was open to the public from 10:00 a.m. to 1:00 p.m.

Meeting materials are available on the Committee's website at https://ogis.archives.gov/foia-advisory-Committee/2016-2018-term/Meetings.htm

Committee members present in the McGowan Theater:
- Alina Semo Chair, Office of Government Information Services, NARA
- Chris Knox, Deloitte
- David Pritzker, Administrative Conference of the United States
- Ginger McCall, Department of Labor
- Jill Eggleston, U.S. Citizenship and Immigration Services
- Melanie A. Pustay, U.S. Department of Justice
- Thomas Susman, American Bar Association
- Sean Moulton, Project on Government Oversight
- Logan Perel, Department of the Treasury
- Margaret Kwoka, University of Denver, Sturm College of Law
- Nate Jones, National Security Archive
- Michael Bell, Department of Health and Human Services

Committee members on the phone:
- Sarah Kotler, Food and Drug Administration
- James Valvo, Cause of Action Institute
- Lynn Walsh, Society for Professional Journalists
- James Hershberg, George Washington University
- Raynell Lazier, Consumer Financial Protection Bureau
- Stephanie Carr, Department of Defense

Committee members absent from the meeting:
- Michael Bekesha, Judicial Watch
- Mitra Ebadolahi, American Civil Liberties Union

Others present or participating in the meeting:
- David Ferriero, NARA
- Laurence Brewer, NARA
- Amy Bennett, Designated Federal Officer, NARA

Introduction and Announcements
Archivist of the United States David Ferriero offered opening remarks for the meeting. Mr. Ferriero spoke of the recent Fourth of July celebration hosted by the National Archives, and noted that the National Archives also serves as the home of the original Freedom of Information Act (FOIA) document. Mr. Ferriero explained that FOIA has consistently served as a critical vehicle for helping the public access agency records and improve our understanding of our government, and added that the Committee is charged with ensuring FOIA continues to meet challenges in the coming years.

Mr. Ferriero then introduced Michael Bell, the newest member of the Committee. He provided a brief overview of Mr. Bell's career and experience with FOIA and noted that Mr. Bell is the FOIA Public Liaison at the Department of Health and Human Services. Mr. Ferriero then introduced Alina Semo and turned the meeting over to her. Ms. Semo provided information about the Committee, and invited the Committee members to introduce themselves and provide their affiliations.

Administration
After the Committee members introduced themselves, Ms. Semo informed the audience that the live chat for the meeting was being monitored, and that participants online should feel free to comment.

Ms. Semo then directed the Committee's attention to the minutes for the April 20, 2017 meeting. The Committee voted to adopt the minutes.

Ms. Semo explained that the rest of the meeting would include updates from each of the Committee's subcommittees, a presentation by Laurence Brewer about records management, and a question and answer period. She then proceeded to introduce Mr. Brewer as the Chief Records Officer (CRO) at the National Archives and Records Administration (NARA), and commented on how the presentation would highlight the importance of good records management to FOIA.

Presentation on Records Management and Open Government
Mr. Brewer began the presentation by offering some information about his office's role in Federal records management. He stated that his office, often referred to as CRO, comprises approximately 100 of 3,000 National Archives and Records Administration (NARA) employees. He explained that the duties of CRO include leading program and training, both face-to-face and online; oversight and inspection; policy outreach and guidance; and operations, such as appraisal and scheduling of agency records.

Mr. Brewer articulated that records are central to agencies' missions across the government, and that records management is part of a larger scheme of information governance. He stated that records management must be transparent to users, but with minimal intervention by users. He suggested that agencies could work with others in the public sector to accomplish this goal.

Mr. Brewer shared two of NARA's goals for modernization of records management: the first was a requirement for electronic recordkeeping, and the second was compliance with existing rules and regulations. He continued on to share several of NARA's transformational goals concerning modernization of records management. By December of 2016, NARA aims for all agencies to manage

emails electronically. By 2019, NARA aims for all agencies to manage all permanent records in an electronic format.

Delving into the issue of email management, Mr. Brewer explained that NARA issued Capstone as a means of managing email. Rather than being a content-based approach, he explained, Capstone is a role-based approach. He said that under Capstone agencies identify accounts where temporary or permanent records might be found based on the user. He explained that under Capstone, agencies name certain officials whose email will be kept permanently and that all other employee email accounts will be treated as temporary records. He added that while agencies generally chose to make top agency officials' email accounts permanent, a cross-section of email accounts from across the agency are also permanent.

Mr. Brewer noted that Capstone is an interim approach that is subject to change as technology continues to improve. He provided data on the agencies that are using Capstone, stating that 88 percent of agencies have a Capstone approach in place or are in the process of implementing it, and NARA is actively following up with the remaining 12 percent of agencies to determine how they are managing email.

Mr. Brewer stated that NARA's criteria for email management include policies, systems, access, and capacity to enact disposition. He added that NARA has a robust oversight program and that agencies are asked to self-assess and report on their records management practices annually. Mr. Brewer then stated that 100 percent of agencies have reported information about their policies and practices to NARA, and that all of these reports are publically available. With respect to reporting, Mr. Brewer stated that during the current Fiscal Year NARA has conducted three major reports about records management at agencies, and would release an overall summary of the reports this summer. He observed that most agencies were at a low risk of losing records, and that NARA continues to follow up with high-risk agencies. He noted that over time the percentage of agencies that were high-risk was consistently decreasing.

Mr. Brewer discussed the position of Senior Agency Official for Records Management, clarifying that it is a new position created and implemented at each agency. Senior Agency Officials are designed to bridge the gap between high-level political officials and records offices. He explained that this position was integrated into the Office of Management and Budget (OMB)'s recently-updated Circular No. A-130. He also noted that Senior Agency Officials were especially helpful during the recent administration transition, as they were able to conduct briefs on policies and emerging issues. He said that NARA was working on a new bulletin to better define the roles and responsibilities of Senior Agency Officials.

Mr. Brewer stated that the third version of the U.S. Government's National Action Plan for Open Government included three commitments to improve records management. These three commitments included posting Capstone proposals, posting agency records schedules, and improving the repository of records control schedules. He clarified that improving the repository of records schedules is an ongoing effort, including enhancing searchability and usability. Mr. Brewer also explained five internal commitments dedicated to records management in NARA's Open Government Plan. He explained that these commitments relate to: records management reporting, oversight on records management compliance, guidance for the presidential transition, upgraded software for records control schedules, and providing regulatory updates.

Mr. Brewer discussed how records management policies and guidelines aim to keep up with the pace of change in technology, and that officials are consistently brainstorming new approaches. He explained that a primary goal is to make policies both wider and deeper. He went on to explain that wider policies would help to expand NARA's knowledge of the implications of technology on records management, while deeper policies would consist of a more tailored focus on information issues, including email, text messaging, and websites. He cited electronic messaging as a prime example of the increasing challenges

posed by technology. He explained that while NARA issued a new policy that employees must forward personal electronic messages to their work accounts, in practice he has observed that agencies tend to take one of three approaches to electronic messaging: forbidding it, which is generally ineffective since these communications happen anyway; forgetting about the use of such messages; or fudging the use of these messages.

Mr. Brewer concluded by discussing a number of NARA's goals for the future. He pointed to NARA's success criteria for 2019, and addressed the need for guidance, tools, and training regarding electronic records management. He noted an upcoming web guidance update, which, he elaborated, was currently a "refresh" of the 2015 update. He mentioned a goal of greater efficiency and effectiveness that would involve streamlining programs and processes, and concluded with a goal of advocacy and outreach.

Questions

Nate Jones whether an agency that had implemented Capstone would be able to conduct searches related to FOIA requests, particularly of emails. Mr. Brewer responded that since agencies have only recently begun to implement Capstone, it might take some time to see progress, although the current iteration of Capstone is improved from the last version. He added that the search function would improve with increased familiarity with the technology.

Tom Susman commented that "electronic" can have different meanings, and asked how to manage changes in format. Mr. Brewer responded that NARA offers transfer guidance of acceptable formats for permanent records, which agencies must evaluate and transfer as required. He explained that while he did not believe paper records would disappear, they will likely decline with digitization. He noted that by 2019, if a record was created digitally, it should be maintained digitally.

Sean Moulton asked if electronic management extended to FOIA disclosure. Mr. Brewer responded that he understands agencies who are electronically managing email can still print out records in order to process them for release under FOIA.

Mr. Moulton asked if Senior Agency Officials have sole responsibility for records management, or if they play several roles in the agency. Mr. Brewer answered that existing guidance indicates the level of official that possesses responsibility for records management. He explained that this individual is the Chief Information Officer for most agencies, but that agencies may also have Undersecretaries serving in the role, and that these individuals also have other responsibilities.

Ms. Semo then thanked Mr. Brewer for his presentation, and turned the meeting over to the Proactive Disclosure and Accessibility Subcommittee.

Proactive Disclosure and Accessibility Subcommittee Update

Margaret Kwoka began this portion of the meeting by outlining a plan for draft recommendations. The first proposed recommendation concerned Section 508 compliance, and she explained that this recommendation would involve legal research, speaking with experts, and interviewing agencies. She added that the goal of the draft recommendation would be to help agencies meet legal requirements to make all records posted on a government website accessible to people with disabilities without unduly hindering proactive disclosure. Mr. Jones added that the Subcommitte wanted the recommendation to be a useful guide for agency personnel. Ms. Kwoka agreed, elaborating that the Subcommittee hoped it would be a practical guide to bolster initiatives and meet legal requirements.

Ms. Kwoka then discussed the Subcommittee's efforts to identify records or categories of records that could be good candidates for proactive disclosure. She stated that the Subcommittee wanted to develop a

list of these records and would be gathering ideas from the public for what types of records should be on the list. The Subcommittee then plans to evaluate the list of suggestions to determine recommended targets for proactive disclosure.

Ms. Kwoka then invited questions from the audience and the rest of the Committee.

Logan Perel asked if the Subcommittee was considering recommending records or types of records that should be proactively disclosed by all agencies. Ms. Kwoka answered affirmatively that the lists did contain ideas for types of records that would be held by all agencies, such as calendars or reports to Congress. She added that the Subcommittee is also considering recommending a universal format for FOIA logs, and would consider whether a universal or agency-specific format would be more useful.

Ms. Semo then invited the Search Subcommittee to share their update.

Search Subcommittee Update
Mr. Jones thanked the Subcommittee for bearing with him as he spent time in Ukraine. He noted that Ukraine recently passed a law opening their own National Archives, and commented that it was clear that the United States was regarded as a model in this arena. He also commented on an update of OMB's FOIA fee guidance, stating that the Subcommittee needed to continue to encourage OMB to update the guidance.

Mr. Jones explained that the Subcommittee had conducted a survey of stakeholders, with the goal of developing recommendations for how agencies can conduct searches. He observed that the survey results indicated several possible recommendations. He specified that possible recommendations could include: that agencies report and monitor more closely the methods that they are using to search; that agencies should ensure that FOIA searches are a component of each job evaluation; that agencies consider FOIA implications of developing technologies; and the first step towards increasing efficiency should be improved communications. Mr. Perel commented that a more ambitious goal would be to identify what practices have been most effective, but that the Subcommittee lacks the data to make such observations.

Efficiencies and Resources Subcommittee Update
Ginger McCall began the update by stating that the Subcommittee had analyzed data from a number of agencies to identify high performers. She then explained that the Subcommittee's plan is to follow up with the identified agencies to discuss the agencies' challenges, technologies, backlog strategies, training programs, searches, and a number of other factors.

Ms. McCall added that volunteers from the Subcommittee will be sending out letters later in the week asking to interview FOIA officials at high-performing agencies and providing them with a list of specific questions of interest. She went on to explain that the Subcommittee planned to collect and analyze responses and develop recommendations. Ms. McCall further added that the Subcommittee would share any relevant responses with the other Subcommittees.

Ms. McCall invited any questions or comments. When there were none, Ms. Semo thanked her for her update and opened the meeting to public comments, reminding the audience that the live chat was being monitored and remained open.

Public Comments
David Pritzker asked broadly if there was any interest from the Committee in following up on the recommendations from the previous term. Melanie Pustay commented that since the recommendation was made by the Archivist of the United States, the first step would be for Ms. Semo to follow up with his

office. Ms. Semo responded that she had been engaged with NARA's Office of General Counsel to determine the best way forward. Ms. Semo also noted that she understood that the Office of Information and Regulatory Affairs within OMB was under new leadership and that she would follow up to ensure that that leadership had been properly briefed. Mr. Moulton further commented that it was also the responsibility of nonprofit groups to follow up with the government, as they are subject to less legal regulation. Ms. Semo asked Mr. Moulton if they had received any responses, and Mr. Moulton replied that they had not heard many responses recently, likely due to the administration transition.

I certify that, to the best of my knowledge, the foregoing minutes are accurate and complete on October 19, 2017.

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Amy Bennett
Designated Federal Officer, 2016-2018 Term

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Alina M. Semo
Chair