

Office of Government Information Services

Building a Better FOIA PROCESS



2018 Report for FY 2017



2017

Office of Government
Information Services

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Cover image: The National Archives and Records Administration (NARA) building in Washington, D.C.; photo by Brogan Jackson of NARA.

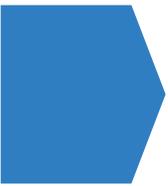
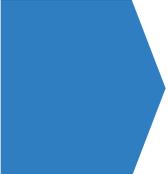


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Message from the **DIRECTOR**

I am pleased to present the 2017 [Office of Government Information Services \(OGIS\)](#) Annual Report to Congress and the President of the United States. This report, which covers Fiscal Year (FY) 2017, is OGIS's primary opportunity to share our observations about the implementation of the Freedom of Information Act (FOIA) across the government and describe our ongoing efforts to build a better FOIA process.

As the first full year in which OGIS operated under the [FOIA Improvement Act of 2016](#), FY 2017 was a critical period in our growth and development. The Act significantly expanded OGIS's visibility in the FOIA process, highlighted OGIS's crucial role in improving compliance with the statute, and improved our ability to communicate and share our observations with OGIS's varied stakeholders. We continued to explore the impact of the FOIA Improvement Act through our continued leadership and support of the [FOIA Advisory Committee](#), which brings together government and non-government FOIA experts to identify the greatest challenges in the implementation of FOIA and develop consensus recommendations. We also worked with our [National Archives and Records Administration \(NARA\)](#) colleagues to leverage existing agency activities to significantly enhance our understanding of FOIA policies across the government, to continue to provide high-quality training that gives agency FOIA professionals the skills they need to resolve and prevent disputes with requesters, and to organize well-received events that highlighted the importance of FOIA and open government.

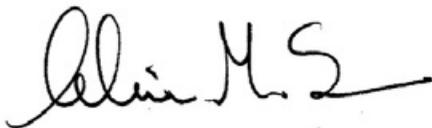
OGIS also met with challenges during FY 2017. In particular, we struggled to keep up with an increased demand for our dispute resolution services. Our new visibility in the FOIA process led to an immediate spike in requests for our services—in the fiscal quarter immediately following the enactment of the

FOIA Improvement Act (fourth quarter of FY 2016), requests for our services spiked by 142 percent over the same period in FY 2015. Throughout most of FY 2017, demand for our services continued to increase, leading to a 160 percent overall increase in our FY 2017 caseload compared to FY 2016. To address this influx, we adopted an “all-hands-on-deck” approach, streamlined our internal processes, and more than doubled the number of cases that we closed in FY 2017 compared to FY 2016. Despite these efforts we were unable to respond as quickly as we would have liked to requests for our assistance with more complex matters. As we describe in the “OGIS at Work: Improving the FOIA Process” section of this report, OGIS’s position gives us the unique ability to identify issues with FOIA implementation, and we have many tools to address potential problems. I look forward to continuing to develop OGIS’s programs in FY 2018 and expanding our important work in improving the FOIA process.

I would like to express my gratitude for the support and leadership of Archivist of the United States David S. Ferriero, Deputy Archivist Debra Steidel Wall, Chief Operating Officer William J. Bosanko, Executive for Agency Services Jay Trainer, and General Counsel (and Chief FOIA Officer) Gary M. Stern. With their support, OGIS’s mission has remained closely aligned with two of NARA’s four strategic goals—making access happen and connecting with our customers. A special thank you goes to the Chief Records Officer for the U.S. Government Laurence Brewer for allowing OGIS to leverage his office’s experience and expertise in developing self-assessments by including FOIA questions in the annual [Records Management Self-Assessment \(RMSA\)](#).

Finally, I am very grateful for the OGIS team who, despite numerous challenges, has remained singularly focused on assisting our customers and exploring ways to continue to improve the FOIA process.

Sincerely,

A handwritten signature in black ink, appearing to read "Alina M. Semo". The signature is fluid and cursive, with a long horizontal stroke at the end.

Alina M. Semo, Director

Office of Government Information Services*

*The views expressed in this report are those of the OGIS Director and do not necessarily represent the views of the President. See 5 U.S.C. § 552(h)(4)(C).



Executive SUMMARY

The Office of Government Information Services (OGIS) witnessed continued growth in requests for assistance with the Freedom of Information Act (FOIA) process in Fiscal Year (FY) 2017. In this reporting period, we received 4,559 requests for assistance, a 160 percent increase over FY 2016. OGIS closed 4,200 cases in FY 2017—more than double the 1,743 cases we closed in FY 2016. Despite this effort, we ended FY 2017 with 149 requests for assistance that had been pending for more than 90 days. We continue to explore ways to meet the demand of a growing caseload.

During FY 2017, OGIS completed and published [three agency compliance assessments](#), including a new type of assessment that examined whether the Chief FOIA Officer at the Department of Homeland Security (DHS) met several specific statutory responsibilities for that position by ensuring implementation of the FOIA statute, oversight, and customer service. We also published two agency compliance assessments, worked with 10 agencies on compliance issues we observed in the course of providing dispute resolution services, and participated for the first time in the [National Archives and Records Administration's Records Management Self-Assessment \(RMSA\)](#).

The passage of the [FOIA Improvement Act of 2016](#) provided OGIS with new opportunities to help Federal agencies meet their statutory obligations. In FY 2017, OGIS reviewed updated FOIA regulations published in the [Federal Register](#) by 50 departments and agencies. We worked with agencies to improve communications and reduce confusion through our dispute resolution training program, direct communications with agencies, and our role as co-chair of the [Chief FOIA Officers Council](#).

OGIS continued to coordinate closely with our stakeholders in FY 2017. We presented our observations to groups including Federal agencies and representatives of civil society groups, and hosted a very well-received celebration of [Sunshine Week at the National Archives](#). The [Chief FOIA Officers Council](#), co-chaired by OGIS and the U.S. Department of Justice [Office of Information Policy](#), met in July to discuss the implementation of the [FOIA Improvement Act of 2016](#). OGIS also held its first [Annual Open Meeting](#) to report on our activities and receive feedback and observations from our stakeholders. We promoted these activities on our growing social media presence and redesigned website.

OGIS & THE FOIA IMPROVEMENT ACT OF 2016

Several provisions of the FOIA Improvement Act of 2016 affected OGIS's work.

- Agencies are required to notify requesters about OGIS in the event of:
 - adverse determinations (requester may “seek dispute resolution services from the FOIA Public Liaison of the agency or the Office of Government Information Services ...”). (5 U.S.C. § 552 (a)(6) (A)(i)(III)(bb))
 - unusual circumstances (if agencies require 10 additional working days to respond, agencies must notify requesters of the right to seek dispute resolution services from the agency's FOIA Public Liaison and OGIS). (5 U.S.C. § 552 (a)(6)(B)(ii))
- Required agencies to amend their FOIA regulations to reflect changes in the statute, including a 90-day appeal period and procedures for engaging in dispute resolution through the FOIA Public Liaison and OGIS. (Pub. L. No. 114-185, 130 Stat. 538 (2016))
- Required OGIS to hold a public meeting at least once a year on the review and reports by OGIS and to receive oral and written public comments. (5 U.S.C. § 552 (h)(6))
- Creation of the Chief FOIA Officers Council to improve FOIA administration across the government (Directors of OGIS and the U.S. Department of Justice Office of Information Policy serve as co-chairs). (5 U.S.C. § 552 (k))



Dispute Resolution PROGRAM

The FOIA statute requires OGIS to “offer mediation services to resolve disputes between [FOIA requesters] and agencies as a nonexclusive alternative to litigation.” 5 U.S.C. § 552(h)(3). The assistance we provide depends on the complexity of a dispute and the issues involved; an inquiry about the status of a delayed request may be resolved quickly, while a dispute regarding an agency’s use of exemptions may call for a more involved facilitation.

Requests for OGIS’s assistance have grown steadily since we opened our doors in 2009, but no more so than after passage of the FOIA Improvement Act in the third quarter of FY 2016, when requests for OGIS’s assistance increased 142 percent over the same period in FY 2015. This sharp increase continued in FY 2017, when we received 4,559 requests for assistance, a 160 percent increase over FY 2016.

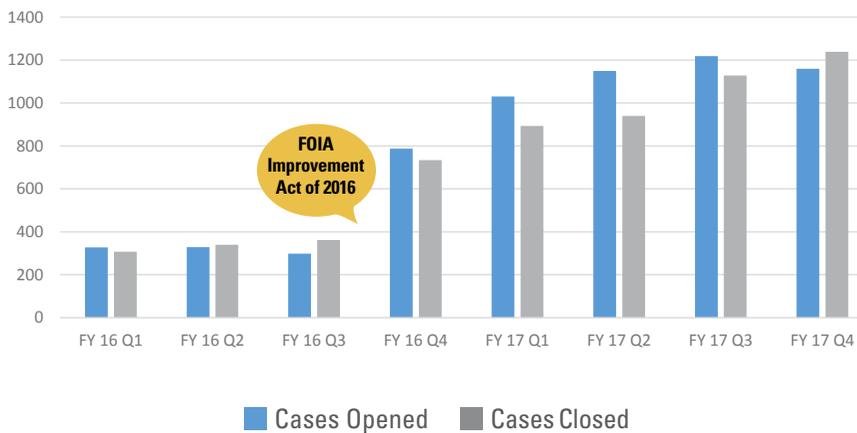
OGIS’s increased visibility earlier in the FOIA process has increased our understanding of confusion that requesters are experiencing. The largest increase in requests for OGIS’s assistance were simple inquiries and misdirected submissions, rather than complex disputes requiring extensive discussions with an agency. (See “OGIS at Work,” page 12.) While most of our cases before the FOIA Improvement Act related to requests that an agency had already addressed on appeal, the majority of our FY 2017 cases related to requests or issues raised throughout the FOIA administrative process. In addition to allowing us to observe issues early in the FOIA process, the changes have affected how OGIS works—specifically, the need to closely coordinate with agency FOIA staff, in particular [FOIA Public Liaisons](#), and to ensure that requesters do not miss administrative appeal deadlines.

OGIS staff adopted an “all-hands-on-deck” approach to the backlog. An employee on detail to OGIS from another NARA office assisted us with closing many cases and suggested several process improvements that helped us respond to simple submissions and misdirects more efficiently. Thanks to this effort by the entire OGIS team, we closed 4,200 cases in FY 2017, more than twice as many cases as in the previous year when we closed 1,743 cases.

While OGIS’s staff worked hard to keep up with the increased demand—and changed how we assign and process assistance requests—our case backlog grew dramatically in FY 2017. While we started the fiscal year with three cases pending for more than 90 days, we ended FY 2017 with 149 cases in our backlog. We continue to explore ways to meet the demand of a growing caseload and to evolve in response to the changing nature of the submissions we receive.

Before the FOIA Improvement Act, OGIS rarely received correspondence intended for an agency, be it an administrative appeal or a question addressed to agency staff. Once Congress directed agencies to provide OGIS’s contact information earlier in the process, we saw a dramatic increase in submissions in which a requester clearly intended to contact the agency rather than our office. OGIS responded to each of these submitters to explain our role and helped them contact the agency directly.

OGIS Cases Opened & Closed



Many OGIS customers also expressed confusion about the interplay of OGIS's mediation services and the agency's administrative appeal process. This trend concerned us because we knew that, for most agencies, once the appeal deadline passed, requesters would lose their administrative appeal rights. The OGIS Mediation Team developed a process to identify those OGIS cases in which an appeal was pending and affirmatively reminded requesters of the importance of participating in the appeal process so that they would not lose their appeal rights.

FOIA Public Liaisons

The FOIA statute requires agency [FOIA Public Liaisons](#) (FPLs) to help resolve FOIA disputes and, as of 2016, requires OGIS to report on the frequency of requesters' use of FPL services. In 2017, agencies that processed more than 50 requests annually estimated how often requesters sought assistance from that agency's FPL in their Chief FOIA Officer Reports. Some agencies reported a numerical estimate while others provided a more qualitative description of how often requesters contact the FPL (i.e., several times each week). All agency responses to that particular question are on our [website](#).

OGIS analyzed these responses to assess approximately how many times requesters contacted each agency's FPL for agencies that processed more than 50 requests annually. Our analysis showed a large range in the numbers reported by each agency. Generally, agencies that processed fewer requests each year reported fewer contacts with the agencies' FPLs. We also noted that as many as 40 percent of the agencies that responded to the question reported that the FPL, on average, is contacted less than once a month.

Training

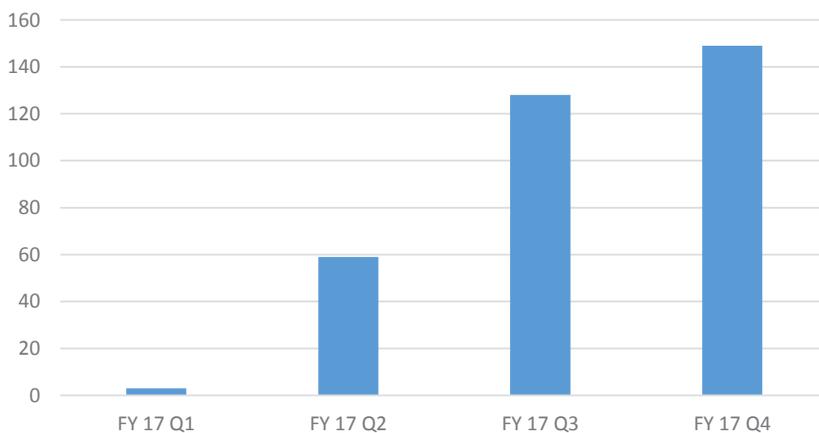
High demand for OGIS's [Dispute Resolution Skills for FOIA Professionals](#) training program continued in FY 2017, demonstrating that agency FOIA professionals understand and appreciate that improved relationships and effective communication with requesters can make the process work better

for both parties. As in previous years, we presented our cross-agency training program twice in FY 2017. The October 2016 and April 2017 sessions filled up within 24 hours of their announcement and received high marks and positive feedback from the attendees.

Cross-agency training sessions allow agencies to share their experiences with others, but agency-specific training sessions also have their advantages. In particular, providing training for a single agency allows OGIS to discuss the challenges faced by that agency in greater detail and provide agency-specific feedback and suggestions for improving FOIA processes. In FY 2017, OGIS conducted dispute resolution training sessions for three agencies—NARA, the U.S. Department of State, and U.S. Citizenship and Immigration Services.

In recognition that more requesters are seeking assistance, including dispute resolution services from agency FPLs and from OGIS during the FOIA process, we redesigned the training session to explain this expanded role. The session specifically addresses how agencies can prevent or resolve disputes that arise when customers are notified that an agency requires 10 additional days to process a request and when an agency makes an adverse determination in its initial response. This discussion also gave us the opportunity to learn how agencies are reacting to the increased use of dispute resolution services.

OGIS Backlog (cases pending > 90 days)



The collective feedback we received from training participants was extremely positive in FY 2017, including:

- “I will bring this back to my agency and use the skills to work effectively with requesters and internal staff.”
- “I will have more confidence when dealing with contentious situations.”
- “So happy to be able to get this information. I learned communication is key—keep the lines open.”
- “I will use this information to aid in responding to difficult requesters.”

Several responded that the training should be conducted over multiple days and should include more than one role-playing exercise.

Frequency of OGIS Cases in FY 2017



See Appendix B for a full listing of the number of cases OGIS had with each agency in FY 2017.

CASE STUDY

In FY 2017, OGIS was contacted by an immigration attorney representing an individual receiving full-time medical care. The individual no longer had access to his immigration documents or identification, all of which were needed to apply for a change in immigration status. The attorney filed a FOIA request with the U.S. Citizenship and Immigration Services (USCIS) for his client's Alien File, or A-File, the official Government record that contains information regarding non-citizens as they pass through the U.S. immigration and inspection process. USCIS responded by releasing only a few documents; the attorney contacted OGIS for assistance.

OGIS contacted USCIS to learn more about the A-File request. USCIS FOIA staff explained that the agency was unable to locate an A-File for the individual because the agency did not have an "A" number, a unique personal identifier; the individual had entered the U.S. on a non-immigrant visa and therefore had not been issued an "A" number. USCIS confirmed that it had located and released all responsive records and that it had conducted an adequate search for responsive records.

USCIS was able to provide some additional information to OGIS that would assist the attorney. Specifically, the agency provided the name of the law firm that had assisted the same individual in a previous immigration matter. OGIS passed this information on to the individual's attorney so he could contact the previous immigration attorney to obtain copies of additional documents in their files.

OGIS AT WORK: IMPROVING THE FOIA PROCESS

As the FOIA Ombudsman, OGIS regularly interacts with a broad range of Federal agencies and requesters, placing it in a unique position to identify and address issues related to the administration of FOIA. The FOIA Improvement Act of 2016 enhanced OGIS's position to spot FOIA trends across the government by ensuring that requesters are aware of OGIS's dispute resolution services early in the process and increasing the number of interactions between agencies and requesters that we observe. This has allowed us to better identify and understand potential problems at all stages of the FOIA process.

As we reported in our FY 2016 Annual Report, our caseload substantially increased immediately after passage of the FOIA Improvement Act. A review of submissions to our office showed that requesters were sending materials to OGIS that should have been sent to the agency, including FOIA requests, appeals, and identity certifications. We also identified general confusion among requesters about the next steps in the FOIA process. We attributed these issues in part to agency letters to requesters that were imprecise and/or not clear, and we undertook efforts to address the cause of these issues in several ways. We reviewed letters from several agencies and identified language to share with other agencies that clearly and concisely explained the FOIA administrative process. We also identified correspondence from particular agencies that contributed to misdirected materials and requester confusion, and contacted those agencies through informal calls and emails to agency FOIA professionals and formal letters to FOIA officers recommending specific language the agencies could use to reword their template letters.

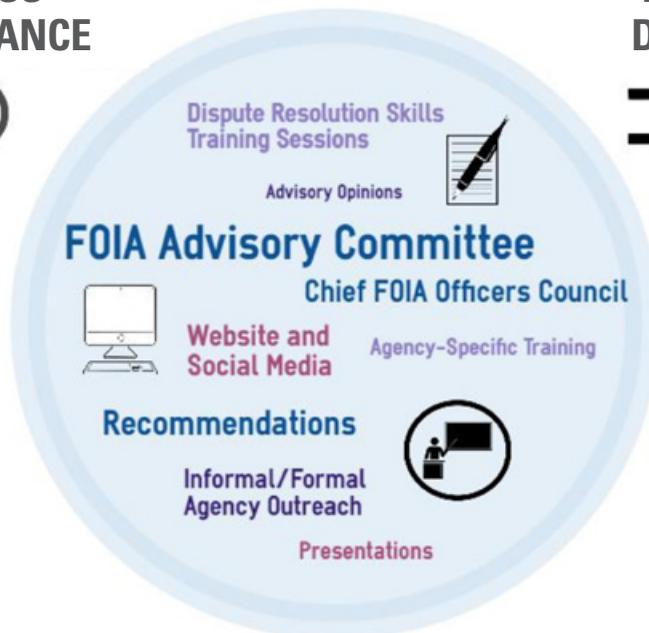
Helping requesters navigate the FOIA process, including explaining the process and the reason an agency's response has been delayed, sets realistic expectations for response times and results in less confusion. One requester

told OGIS: “Thank you for your response and the information explaining the delay in fulfillment of my FOIA request. Simply explaining the number of backlogged requests and average response time was elucidating.” Another requester said she was sympathetic to an agency that faced a backlog and would “amplify my own patience in the hope that within a year I will receive the information I require for my research.” Agencies also find our assistance helpful. “[We] enjoyed working with your office. It was helpful having to review our work product for discussion,” an agency FOIA professional told us.

ASSESS COMPLIANCE



RESOLVE DISPUTES



EDUCATE



OGIS also worked with agencies through the [Chief FOIA Officers Council](#). The [FOIA Improvement Act of 2016](#) created the Council to improve the administration of FOIA across the government, and designated the Directors of OGIS and the U.S. Department of Justice [Office of Information Policy \(OIP\)](#) as co-chairs. The two offices collaborated to update model language provided to agencies to ensure that it more clearly lays out the requester's options and includes sufficient and clear contact information. OGIS and OIP sought feedback on the language from Council members at a July 2017 meeting held at the National Archives and highlighted best practices for engaging requesters in the dispute resolution process. Following that meeting, both [OGIS](#) and [OIP](#) posted updated model language for agency response letters on their respective websites.

OGIS also integrated into our dispute resolution skills training the statute's new requirements to notify requesters of dispute resolution services from [FOIA Public Liaisons](#) and OGIS, building on the existing curriculum and stressing the importance of clear communication.

In addition to working with agencies and revamping our training, OGIS created a new handout to help our stakeholders better understand the relationship between OGIS and FPLs and the kinds of assistance that each is best suited to provide. (See Appendix A) We posted the [flyer](#) on our website, handed it out at public events, and shared it on both our [blog \(https://foia.blogs.archives.gov/\)](https://foia.blogs.archives.gov/) and our Twitter account ([@FOIA_Ombuds](#)).

Due to our efforts, OGIS has noticed that agency correspondence with requesters is more clear and precise, and has resulted in OGIS receiving fewer misdirected materials. The improvements in agency correspondence and our outreach efforts likely contributed to the slight reduction in requests for our assistance in the final quarter of FY 2017, from 1,219 cases to 1,160 cases.

While we continue to work to improve agency communication with requesters and understanding of the FOIA process, we will monitor other types of issues that recur in requests for our dispute resolution services and use the various tools at our disposal to improve the FOIA communication process between requesters and agencies.



Compliance PROGRAM

FOIA mandates that OGIS “shall...review policies and procedures of administrative agencies...review compliance...by administrative agencies; and identify procedures and methods for improving [FOIA] compliance.” 5 U.S.C. § 552(h)(2).

To meet this mandate in FY 2017 OGIS:

- Completed and published [three agency compliance assessments](#);
- Launched two agency compliance assessments;
- Participated for the first time in NARA’s [Records Management Self-Assessment \(RMSA\)](#);
- Reviewed updated FOIA regulations published in the [Federal Register](#) by 50 departments and agencies (since the [FOIA Improvement Act of 2016](#) became law on June 30, 2016); and
- Worked with 10 agencies on compliance issues observed by OGIS in the course of providing dispute resolution.

While our compliance assessment process recognizes that there is no one-size-fits-all approach to administering FOIA—each agency’s records are unique and as such, management of the FOIA process differs—we have observed that successful FOIA programs share three general characteristics: they manage their resources appropriately; they use technology effectively; and they communicate well with requesters. To that end, our compliance assessment program, the first of its kind in the administration of FOIA, reviews and issues findings regarding FOIA program management, technology and communication.

An OGIS assessment is a collaborative process in which we review an agency's compliance with the FOIA statute and FOIA guidance, document findings, and issue recommendations for improvement. Since launching the program in late FY 2014 by assessing two NARA FOIA programs, OGIS has published assessments of FOIA programs at six Department of Homeland Security (DHS) agencies and at the Consumer Financial Protection Bureau (CFPB).

In FY 2017, our third full year of agency compliance assessments, we conducted a [new type of assessment](#) to look specifically at whether the Chief FOIA Officer at DHS met several specific statutory responsibilities for that position by ensuring implementation of the FOIA statute, oversight and customer service, 5 U.S.C. § 552(j). We found that the DHS Chief Privacy Officer, who serves as the Department's Chief FOIA Officer, met his statutory obligation to support implementation of the FOIA by providing targeted services to component agencies, including implementing a department-wide FOIA processing and tracking system; assisting with processing requests from component agency backlogs; and providing guidance on FOIA policy issues.

During our assessments of six DHS component agencies, we noted that some components were not aware of and/or not compliant with DHS FOIA policies. To improve DHS components' compliance with FOIA and adherence to DHS FOIA policy, we recommended that the Chief FOIA Officer adopt a set of standard procedures and methods for issuing guidance, similar to how OIP issues government-wide FOIA guidance to Federal agencies. We also recommended that the DHS Chief FOIA Officer, when warranted, raise issues of non-compliance to higher levels, including to the Secretary's office. Finally, we recommended that the DHS Privacy Officer issue additional recommendations or corrective actions as necessary to bring components into compliance with the law and DHS policy.

Based on our assessments of the FOIA programs at [Immigration and Customs Enforcement](#) (ICE) and [CFPB](#), we issued the following findings and recommendations in FY 2017.

Management

While each agency manages the FOIA process differently, a common practice among effective, efficient, and successful FOIA programs is strong management that ensures staff have a clear understanding of their roles and responsibilities, and the office leadership has sufficient support. In FY 2017, we observed the importance of working with agency leaders to build support for the FOIA program.

At ICE, we noted that leadership support, including increased funding for the FOIA program, was critical to the agency’s effort to effectively eliminate the backlog. The overall cost of the ICE FOIA program grew by almost 200 percent between FY 2009 and FY 2015—from about \$4.2 million to \$12.4 million. ICE’s FOIA Deputy Director explained that the program’s success in obtaining additional resources relied in part on reducing the agency’s exposure to litigation. In FY 2015, litigation-related expenses accounted for 2 percent of the program’s reported expenses. In previous fiscal years, litigation-

Status of OGIS Compliance Recommendations

	Management	Technology	Customer Service	Supports Efficient FOIA Implementation*
Response Received FY 2017				
United States Secret Service	✓✓✓✓ ✓	✓✓	✓✓✓✓ ✓	
Immigration and Customs Enforcement	✓	✓	✓✓	
DHS Chief Privacy Officer, Privacy Office				✓
Response Due FY 2018				
Consumer Financial Protection Bureau	✓✓	✓	✓	

*Assessment of specific Chief FOIA Officer responsibilities for ensuring implementation of the statute, oversight, and customer service. 5 U.S.C. § 552(j)

related expenses had accounted for as much as 36 percent of the total program costs. In addition to successfully obtaining increased funding, we observed that ICE FOIA implemented management techniques, including the use of performance measures, to monitor and increase staff productivity. We also noted that the ICE FOIA program kept leadership apprised of the program's status through regular reporting.

At CFPB, we also observed strong leadership support for the FOIA program. At the time of our assessment, we found that CFPB received a relatively small number of FOIA requests each year and was able to manage its backlog: the agency responds to most of its requests in an average of about 10 working days, half the time allowed under the law. While the size of CFPB's staff has been constant, the number of requests the agency receives has consistently increased and complex requests have constituted a larger portion of the caseload. We recommended that the FOIA program continue to work with leadership to ensure that the agency continues to respond to FOIA requests in a timely manner.

Technology

Our FY 2017 assessments continued to show the value of investments in technology and a FOIA program's success. In particular, we noted that ICE invested in technologies and leveraged the expertise of contractors hired to reduce the agency's backlog to improve and streamline the FOIA process. Similarly, we observed that CFPB provided the FOIA program with access to technologies that improved reporting, and e-discovery tools that made it easier for the FOIA staff to locate responsive records and discuss the scope of the request. We also noted that CFPB provided the FOIA program with sufficient IT support.

In addition to looking at how an agency FOIA program uses technology, we also measured against guidance from OIP, which encourages agencies to use a FOIA metadata tag with all posted records released under FOIA. As a result, we

recommended to ICE that it comply with that guidance. We also recommended to CFPB that it establish a process to ensure a FOIA metadata tag is included for all records released under FOIA and added to the CFPB reading room.

Communication

Good communication helps ensure a smooth FOIA process—and helps to prevent disputes that may otherwise lead to litigation. In past assessments we had noted that communication with requesters is especially important when the agency delays responding to a request due to its backlog. At the time of our review, both ICE and CFPB were able to respond to most requests within the statute’s 20 working-day time frame. We recommended that ICE could further improve its communication with requesters by providing additional information in response letters explaining why certain information was withheld, and that the agency ensure it is following [DOJ guidance](#) on the use of “still interested” letters. At CFPB, we noted that FOIA processors were not always aware of appeal decisions. We recommended that CFPB create a formal feedback loop to ensure that requests are properly processed at the initial request stage, reducing the number of appeals on issues previously sent back for additional processing.

Other Agency-Specific Compliance Issues

When OGIS facilitators observe potential compliance issues while working mediation cases, they inform the [OGIS Compliance Team](#), which in turn works with agencies to address and resolve compliance issues. In FY 2017, these issues generally included:

- Incorrect appeal times either in agency response letters and/or on agency FOIA websites;
- Confusing language about the FOIA process;
- Misdirected FOIA appeals sent to OGIS instead of to the agency; and
- Insufficient time to respond to “still interested” letters.

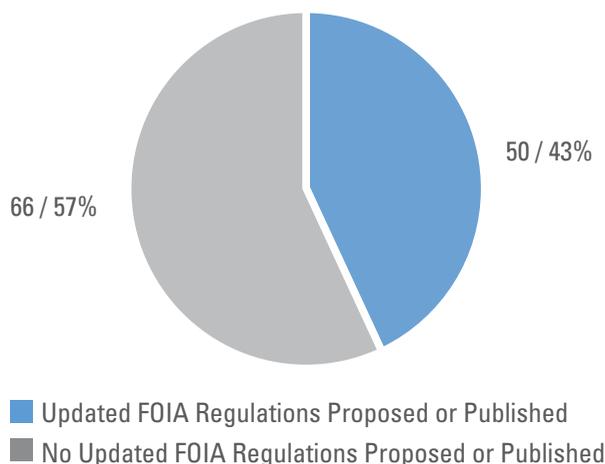
We worked with 10 agencies on these issues; our work ranged from more informal telephone calls or emails to more formal letters signed by OGIS's Director and posted on our website.

FOIA Regulations

Agency regulations are an important part of the FOIA process and detail the specifics of how each agency will implement the FOIA statute. Since FY 2011, OGIS has worked to strengthen FOIA regulations government-wide by assessing, reviewing, and commenting on them.

Since passage of the FOIA Improvement Act, OGIS has reviewed updated regulations published in the [Federal Register](#) by 50 departments and agencies. When we observe that the regulations do not include information about OGIS and the FOIA Public Liaison, do not articulate the services they offer, or are inconsistent with the [Template for Agency FOIA Regulations](#) published on OIP's website, OGIS comments through the inter-agency and/or public comment process. OGIS also comments on agency FOIA regulations that do not acknowledge our statutory role as a non-exclusive alternative to litigation, as suggested in the regulations template and in OIP guidance.

FOIA Regulations Proposed or Published Since Enactment of the FOIA Improvement Act





Outreach & Collaboration with **STAKEHOLDERS**

Stakeholder Engagement

As the FOIA Ombudsman, one of our critical functions is to promote understanding of the various viewpoints among our broad range of stakeholders inside and outside of government, including requesters, representatives of civil society organizations, agency FOIA professionals, and Congress. Our work with all of these constituencies helps us improve our understanding of the issues, expand our visibility in the FOIA community, and identify recommendations to improve the FOIA process.

Agencies, civil society organizations, and individuals interested in open government regularly invite OGIS to participate in events related to FOIA and open government. During FY 2017, OGIS shared our observations at programs organized by the [Berkman Klein Center for Internet & Society](#) at Harvard University, the [Office of the Chief Records Officer](#) at the National Archives, the [Digital Library Federation](#) and others. We also presented about OGIS and FOIA at conferences organized by several Federal agencies, and taught at training sessions at the annual FOIAXpress User Conference and Technology Summit, and the [American Society of Access Professionals \(ASAP\)](#) National Training Conference. Additionally, we regularly met with representatives of civil society organizations to hear their experiences and views on FOIA issues.

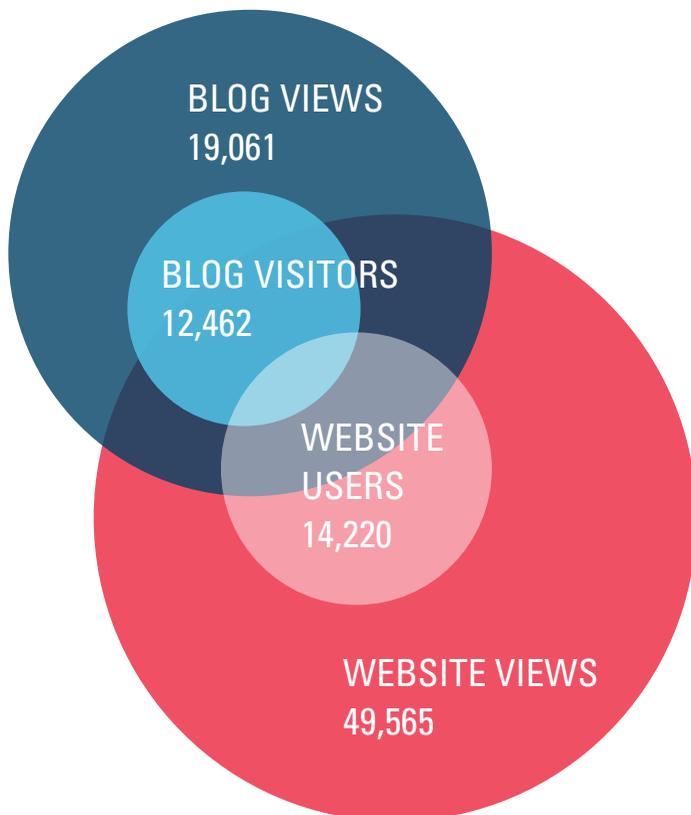
In FY 2017, OGIS Director Alina M. Semo joined information commissioners from 38 jurisdictions around the world at the [10th International Conference of Information Commissioners](#) in Manchester, England. This conference, which explored a wide range of issues affecting access to information through freedom of information laws worldwide as well as open government, presented a valuable opportunity for OGIS to connect with our international colleagues and learn from their experiences.

Website and Social Media

During FY 2017, the OGIS website received a fresh look and feel, and an extensive behind-the-scenes upgrade. OGIS's content was moved into an open-source content management system, which allows viewing on mobile devices and eases the process for website updates. During and since the transition to the new content management system, OGIS blogged and tweeted to announce the changes and asked for suggestions to make the website even more informative and user-friendly.

OGIS has continued to monitor traffic on our website and blog. In FY 2017, our blog, which is updated weekly, was viewed more than 19,000 times by more than 12,000 viewers. Our website was viewed close to 50,000 times by more than 14,000 viewers. The number of followers of our Twitter handle, @FOIA_Ombuds, also nearly doubled: in FY 2017 our number of followers grew from about 800 to almost 1,600.

Stakeholder Reach, FY 2017



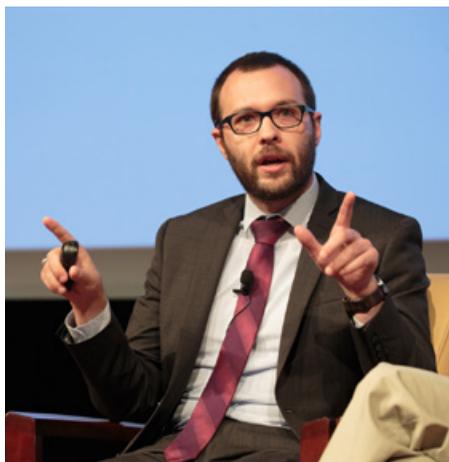
Sunshine Week at the National Archives 2017



Librarian of Congress Carla Hayden and Archivist of the United States David S. Ferriero discuss expanding access to our nation's treasures. (Photo by Jeff Reed of NARA)

OGIS hosted the National Archives' [second annual celebration of Sunshine Week](#) on March 13, 2017, attracting a collective audience of about 400 in person and on NARA's [YouTube channel](#). Sunshine Week is a nationwide initiative launched more than a decade ago by the [American Society of News Editors](#) to bring attention to the importance of access to government information. OGIS has participated in Sunshine Week celebrations since our first full year of operations in 2010. OGIS launched Sunshine Week at the [National Archives](#) in 2016 to recognize the 50th anniversary of the passage of FOIA and the National Archives' leading role in making government information accessible to the public.

Sunshine Week 2017 kicked off with a conversation between Archivist of the United States David S. Ferriero and Librarian of Congress Carla Hayden about improved access to our nation's treasures through digitization and the role of cultural institutions like the National Archives and the [Library of Congress](#) in open government.



Left: Adam A. Marshall, Knight Litigation Attorney at the Reporters Committee for Freedom of The Press, discusses digital engagement. (Photo by Jeff Reed of NARA)



Right: Thomas M. Susman, director of Governmental Affairs for the American Bar Association, and Lucy Dalglish, dean of the Philip Merrill College of Journalism, University of Maryland, discuss FOIA's first 50 years and its future. (Photo by Jeff Reed of NARA)

The program also included a panel of non-government experts and advocates who played a critical role in the original passage of the law and who discussed FOIA's next 50 years. The audience also heard pre-recorded remarks from [House Oversight and Government Reform Committee](#) then-Chairman Jason Chaffetz and Ranking Minority Member Elijah Cummings—who led the effort in the House of Representatives to work across party lines and with the Senate to pass the [FOIA Improvement Act of 2016](#). The celebration ended with a panel discussion about the use of technology to enable members of the public to better understand the government's actions, and meaningfully participate in government.

We are grateful to all of the individuals we depended on to produce a successful Sunshine Week celebration. OGIS wishes to extend a special thanks to NARA's leadership for their support and to our colleagues and friends who helped us arrange many of the event logistics.

OGIS Annual Open Meeting

OGIS held its first [Annual Open Meeting](#) on April 20, 2017. As required by the [FOIA Improvement Act of 2016](#), OGIS's Director provided a summary of our annual report and its findings and opened the floor for written and oral comments from the public. Materials from the meeting, including a video and transcript of the program and written statements submitted by the public, can be found on our website.

Chief FOIA Officers Council

OGIS and OIP staffs worked collaboratively to organize a July 27, 2017, meeting of the [Chief FOIA Officers Council](#) at the National Archives. OGIS used the [Chief FOIA Officers Council](#) to address confusion we had observed in the requester community about the most appropriate next steps in the FOIA process and who might be able to assist with a particular issue. We are heartened by the improvements to the clarity and quality of agency communications with requesters that we have observed since this meeting, and we look forward to continuing to work with OIP to identify how best to use the [Chief FOIA Officers Council](#) to improve the administration of FOIA.



FOIA Public Liaisons and requesters discuss improving customer service and coordination at the July 2017 Chief FOIA Officers Council meeting. From left: Michael Bell, Department of Health and Human Services; requester Michael Ravnitzky; Linda Frye, Social Security Administration; Michael Morisy, MuckRock.com; and Carrie McGuire, OGIS. OIP Director Melanie A. Pustay, not pictured, moderated the panel. (Photo by Jeff Reed of NARA)

Legislative & Regulatory **RECOMMENDATIONS**

In our Annual Report, OGIS may submit “[l]egislative and regulatory recommendations, if any, to improve the administration of FOIA” to Congress and the President. 5 U.S.C. § 552(h)(4)(A)(iii). In addition to relying on our observations of agency policies and procedures through our dispute resolution and compliance functions, OGIS has looked to the expertise of the [FOIA Advisory Committee](#) to identify and develop recommendations to improve the administration of FOIA.

FOIA Advisory Committee

In our FY 2016 report, we fully supported the Archivist’s recommendation to the Office of Management and Budget (OMB) that it update FOIA fee guidance, which the [FOIA Advisory Committee](#) had recommended to the Archivist in 2016; this [recommendation](#) remains open.

As we reported in our FY 2016 Annual Report, the Archivist of the United States authorized a second two-year term of the [FOIA Advisory Committee](#) in July 2016. The Committee brings together FOIA requesters and agency FOIA professionals to collaboratively identify the greatest challenges to the administration of FOIA and develop recommendations for the Archivist.

Raynell Lazier, FOIA manager for the Consumer Financial Protection Bureau, is one of 10 Federal government members on the FOIA Advisory Committee. NARA established the Committee to develop recommendations for improving FOIA administration and proactive disclosures. (Photo by Brogan Jackson of NARA)





Left: Sean Moulton, Open Government program manager for the non-profit Project on Government Oversight (POGO) and a member of the FOIA Advisory Committee, participates in discussion about important FOIA issues. (Photo by Brogan Jackson of NARA)



Right: Ginger McCall, attorney advisor at the Department of Labor, joins James Valvo, counsel and senior policy advisor at the non-profit Cause of Action Institute, at a FOIA Advisory Committee meeting. Valvo is one of 10 non-government members on the committee, which meets quarterly and fosters dialogue between Federal agencies and FOIA requesters. (Photo by Brogan Jackson)

The [FOIA Advisory Committee](#) met four times in FY 2017. During the October 25, 2016, meeting, the Committee established three subcommittees, each of which is co-chaired by a government and non-government member: Proactive Disclosure, Searches, and Efficiency and Resources. The subcommittees were very active during this term of the Committee. During its public meetings, the Committee heard updates from the subcommittees, and presentations from speakers with particular expertise relevant to its work. The presentations covered a wide range of relevant topics, including updates to Federal record-keeping practices and the use of advanced technologies to make the FOIA process more efficient. Information about the Committee's members, and materials for its meetings—including videos of the sessions and meeting minutes—are on the OGIS website (www.archives.gov/ogis/foia-advisory-committee/2016-2018-term/meetings).

At the end of FY 2017, each of the three subcommittees was developing recommendations to improve the administration of FOIA. As the committee ends its two-year term in FY 2018, we expect it will further discuss, refine, and vote on these recommendations. We will include recommendations made by the current term of the [FOIA Advisory Committee](#) to the Archivist in our FY 2018 Annual Report.

Status of OGIS Recommendations

We closed two OGIS recommendations in FY 2017:

(1) OGIS recommended in FY 2013 that the office work with agencies to streamline the process of requesting immigration-related records because of the increased number of requests related to these records. Since that time, OGIS has completed FOIA compliance assessments of CBP and ICE, and launched a FOIA compliance assessment of USCIS. These three DHS components are responsible for processing the vast majority of requests for immigration-related records. Our recommendations to each of these three agencies, including to USCIS, which will be published in FY 2018, address the FOIA process for obtaining immigration records. We now consider this recommendation closed.

(2) OGIS recommended in FY 2012 that we collaborate with the Chief Information Officers Council to develop methods for agencies regarding requesters seeking their own records under the Privacy Act. Many agencies use similar processes to handle FOIA and Privacy Act requests and first-party requests are generally processed under both statutes to ensure maximum access to records; upon review, OGIS determined that this recommendation is beyond the scope of the FOIA Ombudsman. We now consider this recommendation closed.

Appendix A



OFFICE OF GOVERNMENT INFORMATION SERVICES



WHO WE ARE

As a neutral party, we help resolve disputes between FOIA requesters and agencies and also review and identify strategies to improve agency FOIA compliance. We act as the Federal Freedom of Information Act (FOIA) Ombudsman.

WHAT WE DO

EDUCATE

We work directly with FOIA requesters and Federal agencies, listen to concerns, and facilitate better understanding of all points of view. Our training and communication promote understanding of the FOIA process.

RESOLVE DISPUTES

We assist FOIA requesters and Federal agencies by offering dispute resolution services. Requests for our assistance range from simple inquiries to complex disputes.

ASSESS COMPLIANCE

We review agency FOIA compliance to identify trends and strategies to improve performance. Our reports and recommendations are published on our website.

OGIS CONTACT INFORMATION

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Web: archives.gov/ogis • **The FOIA Ombudsman Blog:** foia.blogs.archives.gov • **Twitter:** @FOIA_Ombuds



OFFICE OF GOVERNMENT INFORMATION SERVICES



Who Can Help You Through the Freedom of Information Act (FOIA) Process?



AGENCY FOIA PUBLIC LIAISON



OFFICE OF GOVERNMENT INFORMATION SERVICES

BEFORE YOU FILE A FOIA REQUEST

- Explains agency records
- Suggests offices that might have responsive records
- Explains the agency's FOIA process

- Explains the FOIA process
- Suggests appropriate agencies to contact

DURING THE FOIA PROCESS

- Provides an estimated date of completion
- Discusses how to reformulate requests to address fees and processing time

- Establishes communication between the requester and the agency
- Acts as a liaison

AFTER THE APPEAL PROCESS

- Explains agency actions
- Resolves disputes and narrow issues



Appendix B

Departments and agencies that engaged in dispute resolution with OGIS and the number of OGIS cases in FY 2017:

Department of Justice (DOJ)	1222
Department of Homeland Security (DHS)	692
Social Security Administration (SSA)	374
Department of Health and Human Services (HHS)	254
Department of Defense (DoD)	221
Equal Employment Opportunity Commission (EEOC)	148
Department of Veterans Affairs (VA)	143
Department of Labor (DOL)	106
Department of the Treasury (TREAS)	81
Department of the Interior (DOI)	71
Central Intelligence Agency (CIA)	62
U.S. Postal Service (USPS)	60
National Archives and Records Administration (NARA)	56
Department of State (STATE)	55
Department of Transportation (DOT)	47
Department of Agriculture (USDA)	40
Department of Housing and Urban Development (HUD)	38
Department of Education (DoEd)	37
Environmental Protection Agency (EPA)	34
Department of Energy (DOE)	27
Pension Benefit Guaranty Corporation (PBGC)	26
Office of Personnel Management (OPM)	21
Department of Commerce (DOC)	15
U.S. Securities and Exchange Commission (SEC)	15

Federal Trade Commission (FTC)	10
Consumer Financial Protection Bureau (CFPB)	9
Federal Communications Commission (FCC)	7
National Transportation Safety Board (NTSB)	6
Office of the Director of National Intelligence (ODNI)	6
U.S. Agency for International Development (USAID)	6
U.S. Nuclear Regulatory Commission (NRC)	6
Federal Deposit Insurance Corporation (FDIC)	5
National Labor Relations Board (NLRB)	4
Office of Special Counsel (OSC)	3
Board of Governors of the Federal Reserve System	2
U.S. Copyright Office	2
Merit Systems Protection Board (MSPB)	2
National Endowment for the Humanities (NEH)	2
National Indian Gaming Commission (NIGC)	2
Office of Government Ethics (OGE)	2
Office of Management and Budget (OMB)	2
Peace Corps	2
U.S. General Services Administration (GSA)	2
Broadcasting Board of Governors (BBG)	1
Consumer Product Safety Commission (CPSC)	1
Federal Energy Regulatory Commission (FERC)	1
Federal Mediation and Conciliation Service (FMCS)	1
Office of Science and Technology Policy (OSTP)	1
Privacy and Civil Liberties Oversight Board (PCLOB)	1



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