



OFFICE of GOVERNMENT INFORMATION SERVICES

March 10, 2014

President Barack Obama
White House
1600 Pennsylvania Avenue NW
Washington DC 20500

Dear Mr. President,

Congratulations on the release of the Second Open Government National Action Plan (NAP), an important part of the Obama administration's commitment to Open Government. As the Freedom of Information Act (FOIA) Ombudsman, the Office of Government Information Services (OGIS) is particularly pleased with NAP's five commitments to FOIA Modernization.

OGIS, which opened in September 2009, also is an important symbol of the Obama administration's commitment to transparency in government. We are extremely proud of all that OGIS has accomplished in our four years of operation. We have put into action Congress's novel idea—applying Alternative Dispute Resolution (ADR) techniques to an often highly adversarial process. We have assisted thousands of FOIA requesters from across the country and around the globe, along with all 15 cabinet-level departments and dozens of agencies, in resolving disputes, some of which otherwise would have led to costly litigation. We also have begun carrying out our mandate to review agency FOIA policies, procedures and compliance.

FOIA also directs OGIS to recommend policy changes to Congress and the President to improve the administration of a law that serves as a cornerstone to our democracy, 5 U.S.C. § 552(h)(2)(C). At this time, the Office has no legislative recommendation to Congress for improving FOIA. However, as we approach Sunshine Week, a national initiative to promote a dialogue about the importance of open government and freedom of information, we do recommend and respectfully ask that the White House issue a Memorandum to Agency General Counsels and Chief FOIA Officers that focuses on exemplary customer service for a better FOIA process with particular attention to the importance of embedding ADR into the FOIA process across the government.

The Openness Promotes Effectiveness in our National (OPEN) Government Act of 2007 introduced ADR to the FOIA process and directed that FOIA Public Liaisons assist in resolving disputes between FOIA requesters and Federal agencies, 5 U.S.C. §§ 552(a)(6)(B)(ii) and 552(l). All agencies should provide requesters with the name and contact information for their FOIA Public Liaisons so that requesters can contact the liaisons for assistance in resolving disputes as mandated in FOIA. Agency FOIA and ADR professionals also should work with one another in a spirit of cooperation to embed dispute resolution into the FOIA process.

NATIONAL
ARCHIVES
and RECORDS
ADMINISTRATION

8601 ADELPHI ROAD
OGIS
COLLEGE PARK, MD
20740-6001

web: www.ogis.archives.gov

e-mail: ogis@nara.gov

phone: 202-741-5770

toll-free: 1-877-684-6448

fax: 202-741-5769




As you may know, one of OGIS's 2013 recommendations was to marry FOIA and ADR across agencies. While we have seen some unions of the two, we believe a White House Memorandum would further the goal of using ADR to prevent and resolve disputes—and in some cases, costly and preventable litigation. Such a memorandum also could remind agencies that the entire Federal workforce—from the IT professional who manages databases to any Federal employee who sends or receives email—is responsible for FOIA.

We also recommend and respectfully ask that the White House Counsel work with our parent agency, the National Archives and Records Administration (NARA), the Office of Management and Budget (OMB), and the Department of Justice (DOJ) on a program to ensure that FOIA requirements are incorporated into the information technology (IT) procurement process. For example, we suggest that when procuring new technology, upgrading existing technology, or even creating a new large agency database, agencies consult with their records managers and FOIA professionals to best determine how the records will be managed, how the agency might efficiently and effectively search for records in response to FOIA requests for the information contained in those records, and, ideally, how the agency might proactively disclose the information or data. Collaboration between the White House, OMB, DOJ and NARA can launch such a program.

These steps are simple, straightforward and low-cost, and would go a long way toward making the FOIA process work more effectively and efficiently for all—FOIA requesters and Federal agencies. Both a Memorandum to General Counsels and Chief FOIA Officers that highlights dispute resolution and FOIA, and a commitment to including FOIA requirements in the IT procurement process would illuminate the Administration's priority of making government more open and accountable, as so clearly outlined in the NAP.

I am pleased to answer any questions you may have and stand ready to assist in any way I can.

Sincerely,

A handwritten signature in black ink, appearing to read "Miriam Nisbet". The signature is fluid and cursive, with a large initial "M" and a long, sweeping tail.

Miriam Nisbet, Director
Office of Government Information Services (OGIS)