

Freedom of Information Act Advisory Committee

David S. Ferriero
Archivist of the United States
National Archives and Records Administration
700 Pennsylvania Avenue, NW
Washington, DC 20408-0001

Dear Mr. Ferriero:

We are pleased to submit the final report and recommendations of the Freedom of Information Act (FOIA) Advisory Committee regarding FOIA Fees, Proactive Disclosure, and Oversight and Accountability.

The Committee was established in accordance with the second United States Open Government National Action Plan, and the directive in the FOIA, 5 U.S.C. § 552(h)(2)(C), that the Office of Government Information Services (OGIS) within the National Archives and Records Administration (NARA) “recommend policy changes ... to improve” FOIA administration. This Committee is governed by the provisions of the Federal Advisory Committee Act, as amended, 5 U.S.C. App.

The Committee held its first meeting in June 2014. The Committee’s objective was to study the current FOIA landscape across the Executive Branch, to provide advice on improving FOIA administration, and to make recommendations to the Archivist of the United States. The Committee formed three subcommittees: the subcommittee on Fees, the subcommittee on Proactive Disclosure, and the subcommittee on Oversight and Accountability. In light of the subcommittee’s findings, the Committee respectfully submits the following recommendations for your consideration:

- The Office of Management and Budget (OMB) revise its fee guidance to reflect technological changes in the public’s ability to disseminate information. Revision would clarify fee issues for requesters and agencies, providing less subjective and more transparent fee assessment process and reduce the amount of time it takes agencies to assess fees.
 - Provide clarity by clearly differentiating between two separate yet related issues: fee waivers and requester fee category status. Agencies need unambiguous, uniform guidelines on the criteria that must be met for each fee category. These guidelines should reflect the FOIA and relevant case law, including embracing members of the media who publish primarily through electronic means.
 - Provide agencies with additional guidance on what constitutes a "representative of the news media" that takes into account the changes in the journalism profession over the past 30 years due to technological advancements. These guidelines should be fair, balanced, and better enable agencies to make accurate fee category

determinations. They should also clarify that fee categories are determined by the identity of the requester, not the particular request.

- Incorporate statutory changes to the FOIA relating to when FOIA fees can be charged. This includes 5 U.S.C. § 552(a)(4)(A)(viii), which states that certain fees cannot be charged when an agency fails to comply with any time limit, if no unusual or exceptional circumstances apply to the request. Clarification is also needed as to which fees may be charged if the 20 working-day statutory time limit is not met, because “unusual or exceptional circumstances” exist.
- Provide guidance on fees associated with reproduction costs, including providing electronic copies via email, CD or DVD. The guidance should also clarify the costs that may be charged for reproducing documents that are transferred from classified to unclassified systems so that they may be released electronically.
- Address how agencies may use their administrative discretion (rather than a formal fee waiver) to decide not to charge FOIA fees when the interest of the United States Government would be served and is clearly articulated.
- Recognize that FOIA fees cover a very small percentage of FOIA costs (in FY 2014 agencies processed 647,142 FOIA requests at a cost of \$462 million dollars and recouped just \$4.2 million dollars from FOIA fees, less than 1 percent of the reported cost). Moreover, these fees are paid to the General Fund of the Treasury, not to the agencies' FOIA offices. The current OMB guidelines appear to be missing a word in Section 8 which adds ambiguity to this expectation.

The report reflects the Committee’s thoughtful and thorough work on this important topic.

Mr. Ferriero, on behalf of my FOIA Advisory Committee members, thank you for the opportunity to serve our country through participation in this Committee.

Sincerely,



Dr. James V.M.L. Holzer
Chair
Director, Office of Government Information Services

Attachment: Final Report and Recommendations - FOIA Federal Advisory Committee
April 19, 2016

APPROVAL

James V.M.L. Holzer, National Archives and Records Administration

APPROVED: James VML Holzer, I DATE: April 19, 2016

DISAPPROVED: _____ DATE: _____

For **Dave Bahr, Bahr Law Offices, P.C.**

APPROVED: James VML Holzer, I *For* DATE: April 19, 2016

DISAPPROVED: _____ DATE: _____

Andrew Becker, The Center for Investigative Reporting

APPROVED: _____ DATE: _____

DISAPPROVED: _____ DATE: _____

Brentin V. Evitt, Defense Intelligence Agency (DIA)

APPROVED: Brent V. Evitt DATE: 19 APR 2016

DISAPPROVED: _____ DATE: _____

For **Karen Finnegan Meyers, U.S. Department of Defense (DOD)**

APPROVED: James VML Holzer, I DATE: April 19, 2016

DISAPPROVED: _____ DATE: _____

Eric Gillespie, Govini

APPROVED: _____ DATE: _____

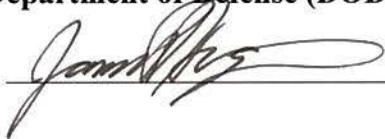
DISAPPROVED: _____ DATE: _____

Larry Gottesman, Environmental Protection Agency (EPA)

APPROVED: Larry Gottesman DATE: 4/19/16

DISAPPROVED: _____ DATE: _____


James Hogan, U.S. Department of Defense (DOD)

APPROVED: 
DISAPPROVED: _____

DATE: Apr 19, 2016

DATE: _____

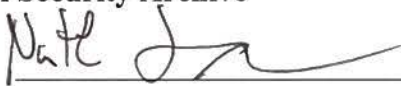
Clay Johnson, Department of Better Technology

APPROVED: 
DISAPPROVED: _____

DATE: Apr 19 2016

DATE: _____

Nate Jones, National Security Archive

APPROVED: 
DISAPPROVED: _____

DATE: 19 April 2016

DATE: _____

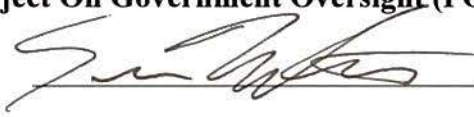
Martin Michalosky, Consumer Financial Protection Bureau (CFPB)

APPROVED: 
DISAPPROVED: _____

DATE: April 19, 2016

DATE: _____

Sean Moulton, Project On Government Oversight (POGO)

APPROVED: 
DISAPPROVED: _____

DATE: April 19, 2016

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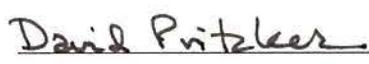
Maggie Mulvihill, Boston University

APPROVED: _____
DISAPPROVED: _____

DATE: _____

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David Pritzker, Administrative Conference of the United States (ACUS)

APPROVED: 
DISAPPROVED: _____

DATE: April 19, 2016

DATE: _____

Melanie Pustay, Department of Justice (DOJ)

APPROVED: Melanie Ann Pustay

DATE: 19 April 2016

DISAPPROVED: _____

DATE: _____

Ramona Branch Oliver, U.S. Department of Labor (DOL)

APPROVED: _____

DATE: _____

DISAPPROVED: _____

DATE: _____

For

Anne Weissman, Campaign for Accountability

APPROVED: James V. McHobey, I

DATE: April 19, 2016

DISAPPROVED: _____

DATE: _____

Lee White, National Coalition for History (NCH)

APPROVED: Lee White

DATE: 4/19/16

DISAPPROVED: _____

DATE: _____

Mark S. Zaid, Law Office of Mark S. Zaid, P.C.

APPROVED: Mark S. Zaid

DATE: 19 April 2016

DISAPPROVED: _____

DATE: _____