

REPORT TO THE ARCHIVIST OF THE UNITED STATES

Freedom of Information Act Federal Advisory Committee



NATIONAL
ARCHIVES

Final Report and Recommendations

Committee Term 2014-2016

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Chair

April 19, 2016

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
FREEDOM OF INFORMATION ACT (FOIA) ADVISORY COMMITTEE
FINAL REPORT AND RECOMMENDATIONS

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COMMITTEE MEMBERS

Current Members

Dr. James V.M.L. Holzer, Committee Chair, Office of Government Information Services (OGIS), National Archives and Records Administration (NARA)

Dave Bahr, Bahr Law Offices, P.C.

Andrew Becker, The Center for Investigative Reporting

Brentin V. Evitt, Co-Chair, Subcommittee on Proactive Disclosure Defense Intelligence Agency (DIA)

Karen Finnegan Meyers, Department of Defense (DOD)

Eric Gillespie, Co-Chair, Subcommittee on Proactive Disclosure, Govini

Larry Gottesman, Environmental Protection Agency (EPA)

James Hogan, Co-Chair, Subcommittee on Fees, U.S. Department of Defense (DOD)

Clay Johnson, The Department of Better Technology

Nate Jones, Co-Chair, Subcommittee on Fees, National Security Archive

Martin Michalosky, Co-Chair, Subcommittee on Oversight and Accountability, Consumer Financial Protection Bureau (CFPB)

Sean Moulton, Project On Government Oversight (POGO)

Maggie Mulvihill, Boston University

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

Melanie Pustay, Office of Information Policy, Department of Justice (DOJ)

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

Anne Weismann, Campaign for Accountability

Lee White, National Coalition for History (NCH)

Mark S. Zaid, Co-Chair, Subcommittee on Oversight and Accountability, Law Office of Mark S. Zaid, P.C.,

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Past Members

Delores Barber, formerly Department of Homeland Security

Nikki Gramian, Former Acting Chair, Office of Government Information Services, National Archives and Records Administration (NARA)

Michele Meeks, Central Intelligence Agency (CIA)

Ginger McCall, Co-Chair, Subcommittee on Fees, formerly Electronic Privacy Information Center

Miriam Nisbet, Former Chair, formerly Office of Government Information Services (OGIS), National Archives and Records Administration (NARA)

David S. Reed, Federal Communications Commission (FCC)

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INTRODUCTION

BACKGROUND

Authority: The FOIA Advisory Committee was established in accordance with the second United States Open Government National Action Plan¹ released on December 5, 2013, and the directive in the Freedom of Information Act, 5 U.S.C. § 552(h)(2)(C), that the Office of Government Information Services within the National Archives and Records Administration (NARA) “recommend policy changes ... to improve” the Freedom of Information Act (FOIA) administration. This Committee is governed by the provisions of the Federal Advisory Committee Act, as amended, P.L. 92-463, 86 Stat. 770 (1972); 5 U.S.C. App.

Objectives and Scope of Activities: As part of the Open Government Partnership, the United States issued its second Open Government National Action Plan on December 5, 2013, that sets forth several specific initiatives the Administration would undertake for the following (or Next) two years. One flagship initiative includes various efforts to modernize FOIA, including creation of a FOIA Federal Advisory Committee to be “comprised of government and non-governmental members of the FOIA community, to foster dialog between the Administration and the requester community, solicit public comments, and develop consensus recommendations for improving FOIA administration and proactive disclosures.” The Advisory Committee serves as a deliberative body to advise the Archivist on improvements to the administration of FOIA. The Committee studies the current FOIA landscape across the Executive Branch and may recommend legislative action, policy changes or executive action, among other matters.

FISCAL YEAR 2014 SUMMARY

June 24, 2014

The FOIA Advisory Committee met once during FY 2014. The [first meeting](#) of the Advisory Committee was held on June 24, 2014. [During the meeting](#) members held a brainstorming session to explore each members’ top legislative, policy, and process suggestions for improving the FOIA process. The top three priorities of the study the committee were expanding oversight of the FOIA process, increasing proactive disclosure, and reforming or perhaps eliminating fees. These topics formed the basis for the three subcommittees of the larger committee.

¹ “The Open Government Partnership: Second Open Government National Action Plan for the United States of America (December 5, 2013), https://www.whitehouse.gov/sites/default/files/docs/us_national_action_plan_6p.pdf

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FISCAL YEAR 2015 SUMMARY

October 21, 2014

The FOIA Advisory Committee met four times during FY 2015. The [first meeting of the fiscal year](#) was on October 21, 2014. [During this meeting](#) the Committee discussed the bylaws to give clear operating procedures and specify the relationship among the Advisory Committee members, the Designated Federal Officer (DFO) and agency staff. The Subcommittees reported on the status of their work.

January 27, 2015

The Committee held its [second meeting](#) on January 27, 2015. [During this meeting](#) the Proactive Disclosure Subcommittee reported two specific issues the Subcommittee was exploring: (1) analyzing FOIA requests to determine what information is of high value to the public; and (2) looking into the relationship between proactive disclosure and the accessibility requirements of Section 508 of the Rehabilitation Act, which requires Federal agencies to make website content accessible to people with disabilities. The Subcommittee developed a methodology for analyzing what information is of high value to the public. The Fees Subcommittee reported its research and its decision to develop a survey for FOIA professionals to examine how great of an issue the current fee structure is and how burdensome requests are handled. The Oversight and Accountability Subcommittee reported that the Subcommittee had begun compiling oversight reports from the last several decades. The Subcommittee planned to review the reports to identify themes, including successes and failures, use this analysis to identify gaps and areas for additional oversight, and assess the role of agency FOIA Public Liaisons to help determine what works at certain agencies and how the role differs between agencies.

April 21, 2015

On April 21, 2014, the Committee held its [third meeting](#). [During the meeting](#) the Oversight and Accountability Subcommittee reported it crafted a poll that it intended to send to agency FOIA Public Liaisons. The Committee discussed how to disseminate the poll. The Fees Subcommittee reported that the Subcommittee's discussions had largely centered on the contentiousness of fees in the FOIA community. The Subcommittee wanted to gather more information regarding the issues surrounding FOIA fees. One option the Subcommittee suggested for gathering information was to add questions to the Oversight and Accountability Subcommittee's survey of FOIA Public Liaisons. The Proactive Disclosure Subcommittee selected a new co-chair.

July 21, 2015

The Committee held its [fourth meeting](#) on July 21, 2015. [During the meeting](#) the Oversight and Accountability Subcommittee reported reviewing existing reports from Inspectors General and the Government Accountability Office on FOIA to identify themes and trends; the

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Subcommittee welcomed public input on this project. The Subcommittee also reported working with OGIS and NARA to disseminate a survey for agency FOIA Public Liaisons; the survey consisted of 15 questions, all of which were posted on the Committee's website. The Fees Subcommittee reported that the Subcommittee was considering various objectives, including a possible legislative proposal, or a suggestion that the Office of Management and Budget update its fees guidance. The Subcommittee also reported it had an open survey of agency FOIA professionals that closed on July 22, 2015. At the time of the meeting, the survey had 400 respondents. The Proactive Disclosure Subcommittee reported on its review of factors, including: the role of the statute, regulations and policy; how agencies use technology; and how FOIA programs should prioritize their responsibilities to process FOIA requests and appeals, reduce their backlogs, and to proactively disclose records. The Subcommittee planned to review the process at different agencies, beginning with the Defense Intelligence Agency (DIA), to test assumptions.

FISCAL YEAR 2016 SUMMARY

October 20, 2015

The Committee held its [first meeting](#) of the fiscal year on October 20, 2015. [During the meeting](#) the Oversight and Accountability Subcommittee presented an overview of the FOIA Public Liaison (FPL) poll that the Committee sent to Federal FPLs. The poll's intent was to assess the FPL role and determine opportunities for improvement. Poll questions addressed aspects of the FPL role including the titles of individuals holding the FPL position, their position series, how frequently they communicate with requesters, topics of discussion between FPLs and requesters, and the methods FPLs use to communicate with requesters. The Fees Subcommittee gave an overview of the Fees Poll sent to Federal FOIA processors. The poll had 407 respondents. The Fees Subcommittees would like the OMB to update its 1987 FOIA Fees guidance to reflect changes—especially with regard to technology—that have occurred since OMB issued its guidance. The Proactive Disclosure Subcommittee reported examining the role of FOIA, regulations and procedures encouraging proactive releases, and analyzing how technology affects proactive disclosures.

January 19, 2016

The Committee held its [second meeting](#) on January 19, 2016. [During the meeting](#) the Oversight and Accountability Subcommittee provided an update on two tasks on which the Subcommittee focused its efforts during the last 18 months: (1) the assessment of the role of FOIA Public Liaisons (FPL); and (2) the Subcommittee's work to identify opportunities for improvement. The Subcommittee announced its plan to draft a white paper, similar to the white paper the Subcommittee drafted after reviewing and analyzing the data from its FPL poll.

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The Fees Subcommittee stated that fee assessments, fee waivers, and fee requester categories create confusion for requesters and agencies, particularly since these fee determinations are often subjective. The Subcommittee explained that if the OMB revised its 1987 FOIA fees guidance, it could clarify fee issues. The Subcommittee proposed a memo from the Committee Chair to the Archivist of the United States recommending that the Director of OMB review and revise the fees guidance. The Subcommittee presented the draft memo to the Committee for comment and a decision as to whether and how the Committee wished to move forward. The draft memo presented three options for the Archivist, (1): The Archivist asks OMB to revise its 1987 guidance; (2): The Archivist makes a legislative proposal to Congress to amend the fee provisions of the FOIA by revising the various fee standards, thereby enabling agencies standardize fee determinations; (3): Keep the status quo and not make any changes to the fee provisions. After discussion, the Committee unanimously voted to adopt Option 1 as the recommendation going forward, and the Fees Subcommittee would update its draft memo to provide more specific recommendations as to what aspects of OMB's fee guidance require revision. The Proactive Disclosure Subcommittee discussed the Office of Information Policy's "release to one, release to all" program.

April 19, 2016

The Committee held its [third meeting](#) on April 19, 2016, the date of the issuance of this report. This meeting marked the closure of the Committee's 2014-2016 term. At the meeting the subcommittees will present their findings and recommendations. The Committee will vote on the recommendations and thereafter present them to the Archivist of the United States.

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SUBCOMMITTEE ON FEES

The FOIA Federal Advisory Committee established the FOIA Fees Subcommittee on June 24, 2014, to examine the administration of FOIA fees, its impact on requesters and agencies, and current fees guidance.

BACKGROUND: The FOIA (5 U.S.C. § 552) established the basic statutory requirements for agencies to assess fees when processing FOIA requests. The Freedom of Information Reform Act of 1986 (Pub. L. 99-570, 100 Stat. 3207 (1986)), required the Office of Management and Budget (OMB) to promulgate guidelines containing a uniform schedule of FOIA fees applicable to all agencies that are subject to the FOIA, and OMB published these guidelines on March 27, 1987. Congress subsequently amended the statute's fee provisions in the OPEN Government Act of 2007, Pub. L. No. 110-81, 121 Stat. 735 (2007).

The Fees Subcommittee believes fees are a major source of contention between FOIA requesters and agencies and that fee categories and waivers are so subjective that there is little consistency in agency fee determinations. Additionally, the Fees Subcommittee believes that this subjectivity adds to the time it takes agencies to process FOIA requests.

The Subcommittee polled 407 government FOIA professionals, and asked 10 questions concerning agency application of the statutory requirements and OMB FOIA fee guidelines. An analysis of the responses concludes that, in “general, it appears that most employees surveyed think that the current fee structure is unfair and time consuming, and prefer a flat fee structure, graduated based on volume of the records responsive to a request and category of the requester.”

In light of the survey findings, and the Subcommittee's strong belief that FOIA fee guidelines as currently written contribute to confusion and animosity between FOIA professionals and FOIA requesters, the Subcommittee presented several options for consideration of the full Committee. At the January 19, 2016, meeting the full Advisory Committee proposed that the Archivist recommend that OMB revise its 1987 guidance.

Because much of the confusion surrounding fee issues is a result of the technological changes in the public's ability to disseminate information, the Subcommittee believes that OMB should revise its guidance to reflect these changes. Updated guidance would incorporate congressional intent, nearly 30 years of case law on the issue, and advances in technology to eliminate some of the subjectivity that agencies must exercise to make fee issue determinations. Additionally, the Subcommittee believes that a revision would clarify fee issues for requesters and agencies, provide a less subjective and more transparent fee assessment process and reduce the amount of time it takes agencies to assess fees. Set out below are some of the recommendations the Subcommittee believes should be considered for inclusion in the new guidance. These items were discussed by the full Committee at its April 19, 2016 meeting.

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The FOIA Advisory Committee's Fees Subcommittee recommends that the updated Office of Management and Budget fee guidance should:

- 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 President's and Attorney General's guidance on 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(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.
- Explain that 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.
- 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.

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SUBCOMMITTEE ON OVERSIGHT AND ACCOUNTABILITY

The FOIA Federal Advisory Committee established the Oversight and Accountability Subcommittee on June 24, 2014. The subcommittee agreed to focus its efforts on identifying current authorities for oversight and past actions (program reviews, audits, reports, inspections, etc.) that have been completed by open government groups and others over the past 10 years; determining opportunities for additional oversight; assessing the implementation of the FOIA Public Liaison role and determining opportunities for improvement; evaluating past litigation review efforts; and determining opportunities for further oversight. During this term, the Subcommittee compiled oversight reports from the last several decades to identify gaps and areas for additional oversight. The Subcommittee also polled departments and agencies regarding the role of the FOIA Public Liaison.

Oversight Reports

BACKGROUND: As part of the Federal Freedom of Information Act Advisory Committee’s charter “to foster dialog between the Administration and the requester community, solicit public comments, and develop consensus recommendations for improving FOIA administration and proactive disclosures,”² the FOIA Oversight and Accountability Subcommittee³ collected previously released reports on agencies’ compliance with the FOIA. The focus of this review was to learn from past successes and challenges to forge a more effective collaboration between Federal agencies and the FOIA requester community.

The FOIA Oversight and Accountability Subcommittee compiled more than 80 previously released Inspector General, Government Accountability Office, and other reports on agencies’ compliance with the FOIA. Collectively, there were positive findings in the reports, but the reports show there are persistent challenges in implementing FOIA across the Federal government. Additionally, the reports indicate that these challenges have not been effectively addressed in a systematic fashion, but rather with a “one agency at a time” approach. While challenges of resources, jurisdiction, and management make it difficult to propose specific solutions to address the issues documented in these reports, the Subcommittee believes it is clear that improvements are necessary regarding the oversight and accountability of FOIA administration.

² “Freedom of Information Act (FOIA) Advisory Committee,” last modified December 11, 2015, <https://ogis.archives.gov/foia-advisory-committee.htm>

³ “FOIA Advisory Committee, Oversight and Accountability Subcommittee,” last modified April 12, 2016, <https://ogis.archives.gov/foia-advisory-committee/Subcommittees-and-Working-Groups/oversight-and-accountability.htm>

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Set out below are the contents of a white paper prepared by the Subcommittee on Oversight and Accountability based on its review of the reports. The white paper was discussed by the full Committee at its April 19, 2016 meeting.

After introductory language, the white paper begins with the following:

“The positives gleaned from the reports including the following:

Good Communication with Requesters

In its review of the National Archives and Record Administration’s (NARA) FOIA program, the Office of Government Information Services (OGIS)⁴ found that NARA provided good customer service regarding FOIA matters. Namely, “Special Access and FOIA employees generally provide great customer service. Each day a Special Access and FOIA employee is on-call at the Archives facility in College Park, MD, to assist researchers who visit the facility. The on-call employee is available to provide on-demand screening allowing in many, but not all, cases records that were flagged as possibly restricted when they were accessioned by NARA to be released without a FOIA request. The on-call employee also is available to help requesters with filling out standard FOIA request forms and to answer other FOIA-related questions.” In addition to this finding, NARA consistently provides contact information to FOIA requesters in all of its written communications that include both a phone number and an email.

Using Technology to Improve the FOIA Process

A March 9, 2016, Office of Government Information Services (OGIS) compliance report⁵ found that Customs and Border Protection (CBP) adopted *FOIAonline* to help manage its FOIA requests. OGIS recommends, however, that CBP must “regularly post released records into *FOIAonline*’s records repository,” going on to note that “CBP’s website does not help requesters understand the FOIA process or how to use *FOIAonline*.”

⁴ “Agency Compliance Reports: National Archives and Records Administration’s FOIA Program Phase II: Archival Records,” <https://ogis.archives.gov/foia-advisory-committee/Subcommittees-and-Working-Groups/oversight-and-accountability.htm>

⁵ “Agency Compliance Reports: Customs and Border Protection’s FOIA Program, Department of Homeland Security, ‘Good Management Practices in Place; Clear Communication and Increased Technology Use Needed’,” <https://ogis.archives.gov/Assets/CBP+FOIA+Compliance+Report.pdf?method=1>

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Improved Management Practices

The March 9, 2016, OGIS report found that CBP corrected errors in its FOIA program and improved management practices. The improvement steps taken by CBP included hiring additional FOIA staff and shifting resources to address critical issues when needed for “triage.” Additionally, the majority of CBP’s FOIA-related litigation between FY 2009 and 2015 cited “CBP’s lack of response and/or delay as a reason for suing,” costing the agency \$1.2 million. To help address this issue, CBP FOIA managers requested 20 new positions for the FOIA branch; a good step. However, FOIA managers learned in January 2016 that funding was not approved for those positions. This decision will likely hamper CBP’s efforts to improve processing times and reduce costly litigation.

Taking Advice from OGIS

In September 2015, OGIS posted its FOIA compliance assessment of the Coast Guard’s FOIA program⁶. OGIS found that, among other things, the Coast Guard needed to improve its communication with requesters and harness the power of technology. The Coast Guard responded to the OGIS assessment⁷ by updating its FOIA Manual to improve processing, researching FOIA software systems “that could help [the Coast Guard] become more efficient and streamline [its] FOIA process,” and overhauled its FOIA webpage to improve the user experience.

While there were positives found in the reports that were reviewed by the Subcommittee, there were challenges identified too. A sampling of the challenges that were identified in the reports includes the following:

Not Posting Enough Documents Online in Accordance with the 1996 E-FOIA Amendments

A March 23, 2015 Office of Personnel Management (OPM) Inspector General (IG) report⁸ identified that OPM needs to improve its compliance with the E-FOIA

⁶ “Agency Compliance Reports: United States Coast Guard’s FOIA Program, Department of Homeland Security, ‘Effective Management of Decentralized Program, Better Use of Technology, and Improved Communication with Requester Needed,’”

<https://ogis.archives.gov/Assets/Coast+Guard+FOIA+Compliance+Report+FINAL+September+2015.pdf?method=1>

⁷ “Agency Compliance Reports Coast Guard Response to 120-day Follow-Up,”

<https://ogis.archives.gov/Assets/Coast+Guard+Response+to+120-day+Follow-up.pdf?method=1>

⁸ “National Security Archive News: Final Report on the Review of the U.S. Office of Personnel Management’s Compliance with the FOIA (2015),” <http://nsarchive.gwu.edu/news/20150205/docs/2015-Mar-23-Inspector-General-Memorandum-Final-Report-on-the-Review-of-the-U.S.-Office-of-Personnel-Management's-Compliance-with-the-Freedom-of-Information-Act.pdf>

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amendments of 1996. This amendment mandates that agencies post key sets of records online, provide citizens with detailed guidance on making FOIA requests, and utilize new information technology to proactively post records online that would become of significant public interest, including those already processed in response to FOIA requests and “likely to become the subject of subsequent requests.” According to OPM’s IG report, as of 2015, OPM does not have a formal policy addressing “the requirement to post FOIA information online that has been requested multiple times (three or more requests). Additionally, OPM’s request tracking system does not identify the type of information requested. Consequently, OPM’s FOIA Office cannot identify multiple requests that should be posted.”

OPM fails to populate its FOIA reading room, which the E-FOIA requires agencies to maintain with, among other things, frequently requested records or records likely to be the subject of FOIA requests.

In 2015, the Department of Justice Office of Information Policy (OIP) issued guidance⁹ encouraging Federal agencies to proactively post information. Additionally, OIP distributed a checklist¹⁰ to help agencies determine when records should be proactively posted. While the guidance is beneficial, there is no evidence that agencies are following it and the [small increase in proactive posting government-wide](#) indicates that more oversight may be necessary.

Not Making Discretionary Releases in Accordance with 2009 Presidential Memorandum

A March 30, 2011, Department of Homeland Security (DHS) Inspector General (IG) report¹¹ identified multiple instances in which the DHS’s Office of the Secretary staff did not have sufficient knowledge of the FOIA, to the extent that it compromised the agency’s ability to make discretionary releases.

The report indicates that in one instance, the staff “implied that the potential embarrassment of DHS should be considered when making proactive disclosure decisions” despite clear guidance to the contrary. Furthermore, the report documents instances of other senior DHS officials cautioning against making discretionary

⁹ “Proactive Disclosure of Non-Exempt Agency Information: Making Information Available Without the Need to File a FOIA Request,” last modified October 5, 2015, <https://www.justice.gov/oip/oip-guidance-5>

¹⁰ “Implementation Checklist for OIP Guidance on Proactive Disclosures of Non-Exempt Agency Information,” last modified March 19, 2015, <https://www.justice.gov/oip/oip-guidance-6>

¹¹ “National Security Archive News: The DHS Privacy Office Implementation of the Freedom of Information Act (2011)”, <http://nsarchive.gwu.edu/news/20150205/docs/2011-Mar-Inspector-General-Report-The-DHS-Privacy-Office-Implementation-of-the-Freedom-of-Information-Act.pdf>

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releases and instructing staff to send only public information in response to a records requests.

Backlogs and Inadequate Searches

A Treasury Inspector General (IG) for Tax Administration report¹² dated September 17, 2014, determined that the Internal Revenue Service (IRS) needed to continue to reduce its backlog of FOIA requests. The report also found that the IRS failed to adequately search for and provide information in 15 percent of its FOIA responses.

A previous IG report¹³ dated September 20, 2013, identifies a challenge of not adequately searching for information in response to records requests to be one that is declining. This report determined that the IRS failed to adequately search for and provide information in 5.6 percent of its responses.

Not Reporting FOIA Abuses

The State Department Inspector General (IG) recently published highlights¹⁴ showing that systemic FOIA issues are compounded when people don't speak out when they know FOIA procedures are not being properly followed. The IG noted that State's FOIA office gave an "inaccurate and incomplete" no documents response to a FOIA request concerning Hillary Clinton's email usage even though employees within the Department of State knew both of Clinton's personal email account and the FOIA request. Additionally, the report determined that the secretary's office lacked written procedures for handling FOIA requests and that some requests lingered in a queue for more than 500 days without a reply. These findings speak to the importance of an oversight mechanism to address these FOIA failures before they compound into the current crisis facing State's FOIA Office.

¹² "National Security Archive News: Fiscal Year 2014 Statutory Review of Compliance With the Freedom of Information Act (2014)." <http://nsarchive.gwu.edu/news/20150205/docs/2014-Sep-17-TIGTA-Report-Fiscal-Year-2014-Statutory-Review-of-Compliance-With-the-Freedom-of-Information-Act.pdf>

¹³ "National Security Archive News: Fiscal Year 2013 Statutory Review of Compliance With the Freedom of Information Act (2013)." <http://nsarchive.gwu.edu/news/20150205/docs/2012-Sep-20-TIGTA-Report-Fiscal-Year-2013-Statutory-Review-of-Compliance-With-the-Freedom-of-Information-Act.pdf>

¹⁴ "Evaluation of the Department of State's FOIA Processes for Requests Involving the Office of the Secretary (2016)." Department of State, Office of Inspector General, <https://oig.state.gov/system/files/esp-16-01.pdf>

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Unclear Fee Waiver Requirements

An Environmental Protection Agency (EPA) Inspector General (IG) report¹⁵ determined that the agency should clarify fee waiver requirements and standardize processing time to reduce concerns of differential treatment among requesters. The IG report urges the agency to “clarify what requesters must demonstrate under the six review factors and when to obtain additional justification from requesters to lessen any perception of potential differential treatment when evaluating fee waiver requests.”

Not Using Technology to Improve FOIA Training Process

A Nuclear Regulatory Commission (NRC) Inspector General (IG) report¹⁶ dated June 14, 2014, determined that NRC management has not utilized effective internal controls to take advantage of FOIA training and available technology. “As a result, the NRC’s FOIA processing costs are high and the timeliness requirements are not consistently met.”

Not Properly Reviewing FOIA Releases for Segregability

A Securities and Exchange Commission (SEC) Inspector General (IG) report¹⁷ dated September 25, 2009, found that the manner that the Commission’s Chief FOIA Officer functioned was not in compliance with the requirements of Executive Order 13392 or the OPEN Government Act of 2007.

This report identifies a number of areas where the SEC’s FOIA process needed improvement, not least of which is when the agency conducts review for segregability. The IG specifies: “There is not a well-documented process for reviewing documents to segregate potentially responsive documents that can be disclosed and, thus, the search may not be sufficient” despite the FOIA’s instruction that “[a]ny reasonably segregable portion of a record shall be provided to any person

¹⁵ National Security Archive News: No Indications of Bias Found in a Sample of Freedom of Information Act Fee Waiver Decisions (2014).” <http://nsarchive.gwu.edu/news/20150205/docs/2014-Jul-16-Inspector-General-Report-No-Indications-of-Bias-Found-in-a-Sample-of-Freedom-of-Information-Act-Fee-Waiver-Decisions-But-the-EPA-Could-Improve-Its-Process.pdf>

¹⁶ “National Security Archive News: Audit of NRC’s Freedom of Information Act Processes (2014).” <http://nsarchive.gwu.edu/news/20150205/docs/2014-Jun-16-Inspector-General-Report-Audit-of-NRC's-Freedom-of-Information-Act-Process.pdf>

¹⁷ National Security Archive News: Review of the SEC’s Compliance with the Freedom of Information Act (2009).” <http://nsarchive.gwu.edu/news/20150205/docs/2009%20Sep%2025%20-%20Inspector%20General%20Report%20-%20Review%20of%20the%20Security%20and%20Exchange%20Commissions%20Compliance%20with%20the%20Freedom%20of%20Information%20Act.pdf>

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requesting such record after deletion of the portions which are exempt under this subsection.” Indeed, the IG indicates that in many instances no effort was made to segregate records.

The House Oversight and Government Reform Committee [released a report](#) on January 11, 2016, that re-identified many of these challenges. The Committee identified a myriad of FOIA failures across the government including:

- The improper application of FOIA exemptions at the Federal Communications Commission, which redacted the Chairman’s name and initials in official, work-related emails;
- Roadblocks and poor communication with requesters at Customs and Border Protection, which only responded to a requester in one instance after Congress inquired about the status of the request;
- Refusal to provide all responsive records at the General Services Administration, which failed to provide a requester with responsive records, despite the requester’s conveyed desire for the documents, by erroneously stating it did not want to charge the requester for non-responsive records; and
- Excessive fees “that appear to be designed to deter requesters from pursuing requests and create barriers to accessing records” including at the Drug Enforcement Agency (DEA). The DEA charged a FOIA requester nearly \$1.5 million for one request for records on “El Chapo” Guzman.

While the congressional committee proposes legislative resolutions to these ongoing challenges, this Subcommittee believes that without more effective oversight or compliance mechanisms, the FOIA challenges may continue to occur, even if forbidden by statute.

The Office of Government Information Services (OGIS) has begun issuing assessments of Federal agency FOIA programs. To date, OGIS has published [assessments](#) of Customs and Border Protection, the Transportation Security Administration, the U.S. Coast Guard, the Federal Emergency Management Agency, and the National Archives and Records Administration. These assessments are a positive step, but agency participation is voluntary and it may take decades for OGIS to review each agency subject to FOIA.

The previously released Inspector General and Government Accountability Office reports and the dozens of others compiled by the Subcommittee demonstrate that the current oversight

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approaches are insufficient and not improving the FOIA programs throughout the Federal government. The first step to improving FOIA oversight and compliance is acknowledging that the current oversight methods are not sufficient. After this acknowledgement, we can begin to endeavor to create a regime that efficiently and comprehensively ensures oversight of the Freedom of Information Act is being correctly administered with a “presumption of disclosure” as instructed by President Obama and Attorney General Holder and holds accountable those who fail to do this.”

[End of Subcommittee’s white paper]

The Subcommittee also put together a report based on surveys it conducted on the FOIA Public Liaison role. The Subcommittee’s report on FOIA Public Liaisons is set out below:

FOIA Public Liaison Role

BACKGROUND: On December 14, 2005, the Bush administration issued Executive Order 13392,¹⁸ titled “Improving Agency Disclosure of Information,” which ordered all departments and agencies subject to the Freedom of Information Act (FOIA) to make a number of institutional improvements to strengthen the implementation and administration of the FOIA, particularly as it relates to customer service. In fact, Section 2, Part C, of Executive Order 13392 establishes the roles of Assistant Secretary-level Chief FOIA Officers for all departments and agencies, FOIA Requester Service Centers (FRSCs), and supervisory FOIA Public Liaisons to serve in the FRSCs. The role of the FOIA Public Liaison was codified in the FOIA by the OPEN Government Act of 2007, Pub. L. No. 110-175, 121 Stat. 2524 (2007).

FOIA Public Liaisons shall serve as supervisory officials to whom a FOIA requester can raise concerns about the service the FOIA requester has received from the Center, following an initial response from the Center staff. FOIA Public Liaisons shall seek to ensure a service-oriented response to FOIA requests and FOIA-related inquiries. For example, the FOIA Public Liaison shall assist, as appropriate, in reducing delays, increasing transparency and understanding of the status of requests, and resolving disputes. FOIA Public Liaisons shall report to the agency Chief FOIA Officer on their activities and shall perform their duties consistent with applicable law and agency regulations;¹⁹

¹⁸ “Executive Order 13392 of December 14, 2005: Improving Agency Disclosure of Information.” Federal Register 70, No. 242 (December 19, 2005): 75373. <https://www.gpo.gov/fdsys/pkg/FR-2005-12-19/pdf/05-24255.pdf>

¹⁹ Ibid.

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The FOIA Advisory Committee’s Subcommittee on Oversight and Accountability sought to find out how departments and agencies have operationalized the role of the FOIA Public Liaison since its inception. We wanted to learn if the role fulfilled the requirements set forth in Executive Order 13392. We polled all 100 departments and agencies subject to FOIA to determine if the role of the FOIA Public Liaison was working for them. Ninety people responded to our poll.²⁰

Complete poll results can be found here: <https://ogis.archives.gov/foia-advisorycommittee/subcommittees-and-working-groups/oversight-and-accountability.htm>. Please select “FOIA Public Liaisons Survey Results (Excel Spreadsheet) - July 21, 2015” (found under Subcommittee Documents).

Summary of Poll Questions and Responses

1. Please enter your current position, title, series, grade, organization, or department.

The prevalent General Schedule (GS) series for those serving in the role of FOIA Public Liaison are GS-301 and GS-306 as reported by the respondents in the poll. According to the Office of Personnel Management’s website, the GS-301 series “. . .is, to cover two-grade interval work which is not elsewhere classifiable. The essential criteria for classifying positions in this series are: 1. that the primary work of the position is of an administrative, two-grade interval nature; and 2. that the primary work of the position is not classifiable in any other series. Positions classified in the Miscellaneous Administration and Program Series, GS-0301,²¹ involve specialized work for which no appropriate occupational series has been established. Typically, positions in this series are too few of a kind to have been recognized as separate lines of work. Some positions involve new or emerging work or, more rarely, mixtures of work that cannot be identified with an established series. The work requires analytical ability, judgment, discretion, and knowledge of a substantial body of administrative or program principles, concepts, policies, and objectives.” Conversely, the GS-306²² series established the specific position description of Government Information

²⁰ “Oversight and Accountability Subcommittee: Draft FOIA Public Liaison Survey sent to NARA Chief Operating Officer for Approval,” last modified April 12, 2016, <https://ogis.archives.gov/Assets/FPL-Survey-COO-2015-05-15.pdf?method=1>

²¹ “Position Classification Flysheet for Miscellaneous Administration and Program Series GS-0301,” January 1979, <https://www.opm.gov/policy-data-oversight/classification-qualifications/classifying-general-schedule-positions/standards/0300/g0301.pdf>

²² “Position Classification Flysheet for Government Information Series, 0306,” March 2012, <https://www.opm.gov/policy-data-oversight/classification-qualifications/classifying-general-schedule-positions/standards/0300/g0306.pdf>

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Specialist to professionalize information management occupations throughout the Federal government. Specifically the GS-306, Government Information Specialist classification “... includes positions responsible for administering, analyzing, supervising, or performing work involved in establishing, disseminating or managing government information. Government Information Specialists formulate policy, advise agency management, and ensure compliance with Federal laws governing the flow of information. The work also involves the safeguarding of government information while supporting accountability and transparency.” Most of the reported grade levels are GS-13-15. The lowest grade level reported is GS-7.

2. How long have you been a FOIA Public Liaison?

Most people serving in the role of FOIA Public Liaison have five or more years of experience at 40 percent. Twenty percent have one year to less than three years of experience, and the rest have less than one year or three to five years.

3. What is the position title of the person to whom you directly report?

The position titles varied and appeared to be high level supervisory and management roles. The titles included terms such as *Director*, *Supervisory*, *Deputy*, and *Chief*.

4. Since assuming a FOIA Public Liaison role, have you attended the following FOIA, customer service, or Alternate Dispute Resolution (ADR) training: Agency FOIA Training; Department of Justice (DOJ); Office of Government Information Services (OGIS); American Society of Access Professionals (ASAP); Other; or I have not had any training since assuming a FOIA Public Liaison role.

Agency FOIA Training	57.8%
Department of Justice (DOJ)	57.8%
Office of Government Information Services (OGIS)	28.9%
American Society of Access Professionals (ASAP)	36.7%
Other (please explain)	20.0%
I have not had any training since assuming a FOIA Public Liaison role.	16.7%

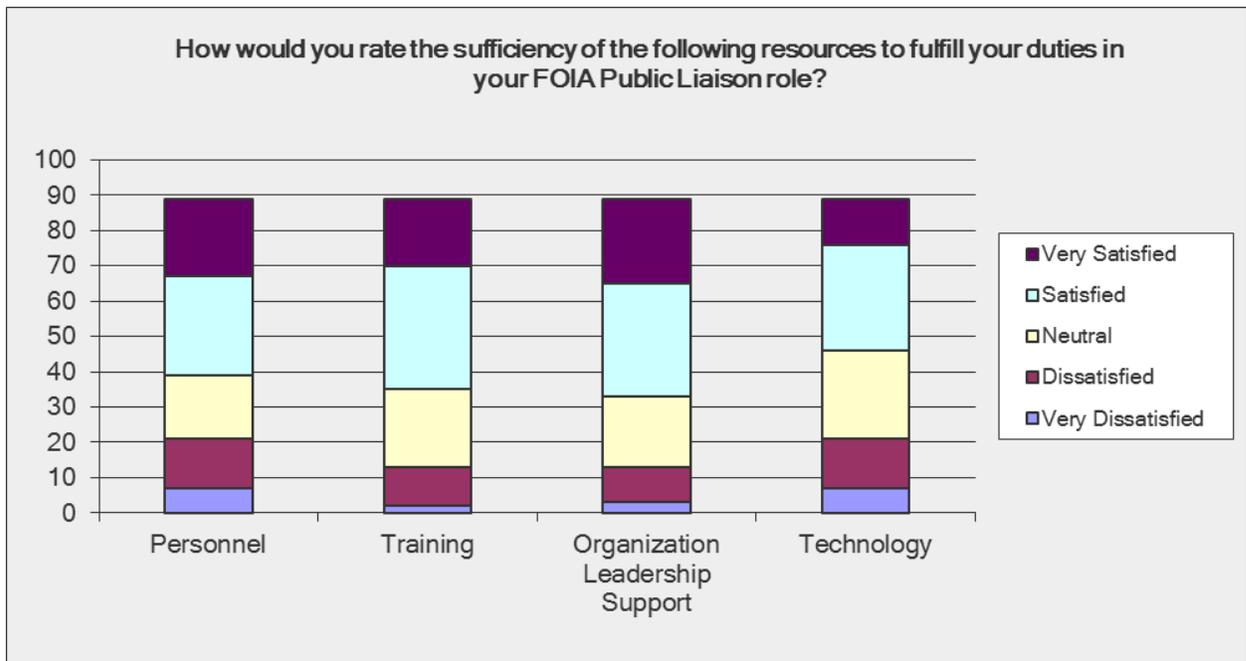
Other training respondents reported taking included FOIAXpress, *FOIAonline*, International Association of Privacy Professionals, and records management training.

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5. Are you planning to attend FOIA, customer service, or Alternate Dispute Resolution (ADR) training in the next 12 months?

Answer Options	Response Percent
Yes	66.7%
No	33.3%

6. How would you rate the sufficiency of the following resources to fulfill your duties in your FOIA Public Liaison role?



7. Does your organization inform requesters about the role of FOIA Public Liaisons in the FOIA process?

Answer Options	Response Percent
Yes	72.2%
No	17.8%
I don't know	10.0%

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8. How does your organization inform requesters about the role of FOIA Public Liaisons in the FOIA process?

Answer Options	Response Percent
Agency website provides the name, phone number, and email address for the FOIA Public Liaison	85.6%
Agency FOIA regulations	35.6%
Agency FOIA handbook, internal policies and procedures	31.1%
Agency FOIA Service Center or Hotline	32.2%
Agency acknowledgement letters	27.8%
Agency response letters	37.8%
Agency appeal acknowledgement letters	13.3%
Agency appeal response letters	16.7%
Agency social media	2.2%

9. On average, how often do FOIA requesters contact you?

Answer Options	Response Percent
Less than once a month	38.9%
Monthly	16.7%
Weekly	10.0%
Once a week	2.2%
Twice a week	5.6%
Three times a week	6.7%
Four times a week	1.1%
More than four times a week	18.9%

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10. On average, how often do FOIA requesters contact you by the methods listed below?

Answer Options	Frequently	Sometimes	Rarely	Never
Email	48	21	15	6
Mail	20	23	26	15
Phone	23	31	19	13
Fax	4	11	35	32
In person	1	1	18	62

11. On average, how often do you contact FOIA requesters by the methods listed below?

Answer Options	Frequently	Sometimes	Rarely	Never
Email	60	17	7	5
Mail	33	19	17	14
Phone	33	35	11	8
Fax	1	6	22	54
In person	1	2	13	65

12. In the last 12 months, how often have FOIA requesters contacted you about the following FOIA issues?

Answer Options	Often	Sometimes	Never
Agency FOIA regulations	3	28	48
Appeals	9	45	28
Category	2	22	51
Customer Service	15	32	33
Delays	27	30	26
Dispute Resolution	4	19	55
Expedited	7	33	39
Fee assessment	5	44	32
Fee waiver	3	41	33
Fees requester	3	31	39
Litigation	3	29	46
Other	4	22	38
Processing	22	38	21
Request status	27	39	16
Responses	15	54	14

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13. Do you know the attorney/attorneys responsible for handling FOIA matters at your organization?

Most respondents reported interacting with FOIA attorneys on a daily basis.

14. What suggestions do you have for how FOIA administration can be improved throughout the executive branch?

Suggestions on improving FOIA administration throughout the executive branch ranged from developing standard FOIA regulations for the entire Federal government, developing a standard FOIA training program for all Federal agencies, developing a standard FOIA database for all Federal agencies to use, properly staffing FOIA offices across the Federal government, and developing and procuring FOIA standard FOIA redaction software for the Federal government.

15. Are there any other FOIA issues or topics that you would like us to address in future surveys?

Future surveys could focus on a broad variety of issues as it relates to FOIA improvement. Poll respondents suggested the debate over the use and alleged overuse of FOIA Exemption 5, copyright laws and the release of copyright information, FOIA training, FOIA office staffing, and FOIA program budgets.

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SUBCOMMITTEE ON PROACTIVE DISCLOSURE

The FOIA Federal Advisory Committee established the Proactive Disclosure Subcommittee on June 24, 2014, to examine how agencies could increase proactive disclosure. Specifically, the Subcommittee explored ways to analyze FOIA requests to determine what information is of high value to the public, and looking into the relationship between accessibility requirements of Section 508 of the Rehabilitation Act and proactive disclosures.

Set out below are the status reports the Proactive Disclosure Subcommittee presented at the October 20, 2014 and January 27, 2015 full Committee meeting.

BACKGROUND: On January 21, 2009, President Obama issued two important memoranda to the heads of Executive Departments and Agencies concerning government transparency. In one memorandum, the President committed his administration to an “unprecedented level of openness in government,” and in the other he stressed the importance of the Freedom of Information Act (FOIA), stating that it is “the most prominent expression of a profound national commitment to ensuring an open government.”

Critical to ensuring agencies successfully meet the President’s standards is compliance with the transparency requirements outlined by 5 U.S.C. § 552(a)(2) of the FOIA. Under subsection (a)(2), Federal agencies must make four distinct categories of records affirmatively available for “public inspection and copying.” Agencies must satisfy this provision of the FOIA by promptly making the records available, either by proactively publishing records electronically to the Department’s website or in a combination of electronic and conventional “paper” reading rooms.

FOIA requires agencies to proactively disclose certain information.

1. Publication in Federal Register per sec. (a)(1)
 - Description of agency’s organization
 - Requirements to which public is subject (e.g., regulations, forms)
 - Agencies meet requirement through U.S. Gov’t Manual, publication in the Federal Register (FR), incorporation by reference in FR notices, etc.

2. (Electronic) Reading Room or publish and sell, sec. (a)(2)
 - Opinions and orders adjudicating cases
 - Statements of policy adopted but not published in FR
 - Administrative staff manuals and instructions to staff that affect a member of the public

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- Records already released under FOIA which are likely to be subject of subsequent requests
- Index to all of the above

Guidance encourages more proactive disclosure.

- “...agencies should take affirmative steps to make information public. They should not wait for specific requests from the public.”²³
 - President’s memorandum of January 21, 2009
- “...agencies should readily and systematically post information online in advance of any public request.”²⁴ – Attorney General’s memorandum of March 19, 2009

DATA Act

- Builds on USASpending.gov disclosures about grants, contract awards and loans
- Adds data about budget, commitments & expenditures, reprogramming, and fund balances
- Requires:
 - Bulk download, machine readability
 - Development and use of common terms, formats & definitions for key financial data elements
 - GAO and IG audits of info posted

Benefits of Standardizing Proactive Disclosures

- Better governance
- Savings to agency from reduction in “reactive” FOIAs
- Business use of information: Increased productivity and employment
- Focused government employee time on nonstandard, non-repeatable requests

²³ Presidential Memorandum for Heads of Executive Departments and Agencies Concerning the Freedom of Information Act, 74 Fed. Reg. 4683 (Jan. 21, 2009), <https://www.gpo.gov/fdsys/pkg/FR-2009-01-26/pdf/E9-1777.pdf>.

²⁴ Memorandum for Heads of Executive Departments and Agencies Concerning the Freedom of Information Act (March 19, 2009), <https://www.justice.gov/sites/default/files/ag/legacy/2009/06/24/foia-memo-march2009.pdf>

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Reactive “whack-a-mole” FOIA burdens agencies.

Agency	Requests Received in FY 2012	Percent of Requests Labeled Simple	Reported FOIA Staff (FTEs)	Case Load (Requests per reported staff)
Department of Homeland Security	190,589	38%	398	479
Department of Justice	69,456	75%	529	131
Department of Health and Human Services	68,467	83%	291	235
Department of Defense	66,078	63%	719	92
Social Security Administration	31,329	99%	77	407
Department of Veterans Affairs	24,423	47%	227	108
Department of Agriculture	22,175	92%	260	85
Equal Employment Opportunity Commission	18,726	92%	37	505
Department of Labor	18,560	48%	162	115
Department of State	18,521	38%	155	120
Department of the Treasury	16,610	15%	119	139
National Archives and Records Administration	13,345	88%	36	371
Securities and Exchange Commission	11,292	100%	37	307
Department of Transportation	10,946	75%	109	100
Environmental Protection Agency	9,689	46%	128	76

Proactive Disclosure Subcommittee Theory

- Within each agency there are types of records that comprise a large share of FOIAs
- Across agencies there are types of requesters (i.e., personas) that generate a large share of FOIAs
- If the records can be clustered into primary categories for each agency, proactively disclosing that type of record has high potential for cost savings and benefits
- If the key personas can be identified across agencies, the needs of those requesters can be defined and met proactively

Proactive Disclosure Subcommittee Challenges

- Despite significant effort, we have not found a breakdown of any Federal agency’s FOIAs by type of record, type of request, or type of requester
- Can we obtain FOIA logs with sufficient description to identify type of record for each request?

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- Can we obtain actual requests to analyze? (We can from NRC, but it's not representative.)
- Would we need analysts to determine type of record for each request, or can we automate that?
- Are there pilot agencies represented on the FOIA Committee who would be willing to pilot this with us?

Reinvent Albany Study

- Analysis of FOIL logs from NY State Dept. of Environmental Conservation
- Fifty-five percent of requests were for a few types of reports about particular addresses:
 - Spill incident reports
 - Petroleum storage reports
 - Soil and water remediation and inspection records
 - Air quality reports
 - Landfill reports
- Frequent requesters said they would be very happy to get the data from web instead of requesting.

Example: Single Audit Act

- Entity that receives \$500,000 in Federal grants must send financial statement, management discussion, auditor's opinion, and details of grants.
- At least one company wants to use this information for rating municipal bonds.
- In a test, all four reports FOIA'd were released unredacted, but required multiple follow-ups and 2 ½ months delay.
- New OMB rules call for reports after 2014 to be posted on single Federal website.
- Submitters responsible for keeping PII out of reports.
- Exemption for information restricted by Federal statute or regulation, but FOIA exemptions are not applied.

Follow-up on Reinvent Albany Study

- We interviewed Reinvent Albany by phone to ask about their methodology.
- They used FOIA logs to identify most frequent requesters, then contacted requesters to ask what type of records they usually requested.

Similar Study by General Services Administration

- To gather information for OMB data call about external use of government data
- GSA FOIA office identified "regular requesters or repetitive requesters"
- GSA surveyed the identified requesters.
- Citation: Myehsha Boone, "Who's Using Your Agency's Data?" Dec. 19, 2014 on DigitalGov.gov

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Finding Information on Content of FOIA Requests

- FOIA logs:
 - Several agencies on FOIAonline.gov
 - Some other agencies on agency websites
 - Some agencies do not post logs, but might be obtainable through FOIA
 - Agencies vary in whether most log entries have meaningful description of information requested
- At least one agency has copies of FOIA requests available on its website.

EPA Pilot Study

EPA: Source Material

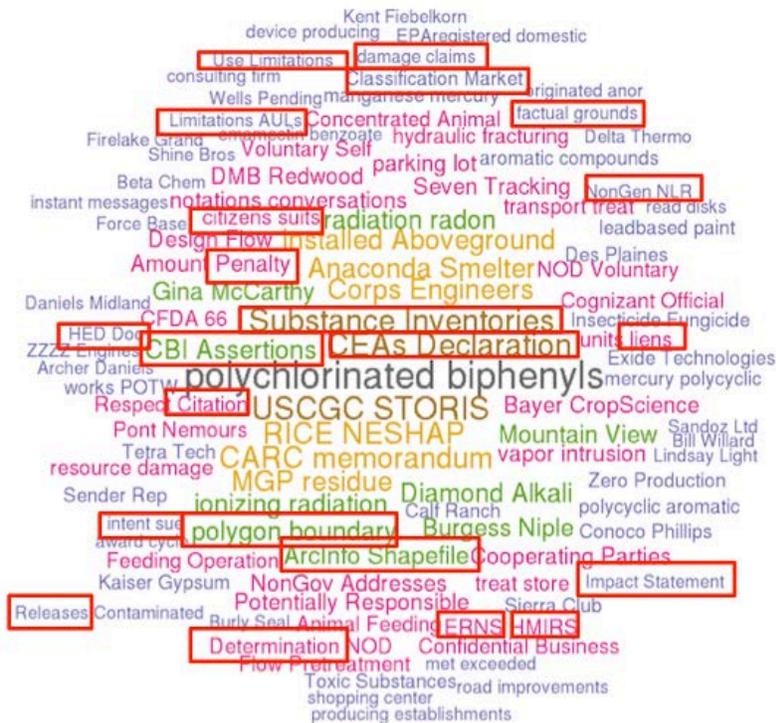
- Source: <https://foiaonline.regulations.gov>
- Example of the Good:
<https://foiaonline.regulations.gov/foia/action/public/view/request?objectId=090004d2801654eb>
- Example of the Bad:
<https://foiaonline.regulations.gov/foia/action/public/view/request?objectId=090004d280014d04>
“The description of this request is under Agency review.”
- (Request closed in 2012.)
- There were 4,654 available requests submitted between January 1, 2008 and December 1, 2014
- Of those 4,654 submitted requests, 3,864 had a publicly available body text (an average of 1.5 requests per day)

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EPA: Word Cloud



EPA: Primary Categories: Substance Inventories, CFAs, Citations, Claims, Determinations, HED Documents, Impact Statements.



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EPA: Primary Categories: Anaconda Smelter, Archer Daniels Midland, Diamond Alkali, Burgess Niple, Delta Thermo, Dupont Nemours, Kaiser Gypsum, Shine Bros



EPA: Primary Entities: Polychlorinated biphenyls, Mercury Polycyclic, Ionizing Radiation, Radon, Manganese Mercury, Emamectin Benzoate



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EPA: Word Density and Proximity

- Environmental property storage hazardous tanks information permits violations block spills underground lot regarding avenue releases pertaining requesting waste new files
- Site superfund id located river county cerclis assessment groundwater remediation corporation texas san investigation phase Illinois creek contamination jacinto nj
- Water quality management air supply waste solid community records program manifests ust tank cleanup health pa owner clean underground storage
- Documents including reports related correspondence records relating limited asbestos present concerning notes investigation requesting agency inspection orders new January remediation

Requested Support from Committee Member(s)

- The Proactive Disclosure Subcommittee would like to take this base case and extend it with a much larger dataset.
- We believe we can identify key categories of documents, requests and requesters in order to make concrete recommendations about where to optimally begin with Proactive Disclosure in order to have the largest impact with the least effort.
- Will a member(s) step up and volunteer to shepherd us through within their agency, to explore a more robust dataset?

Reconciling proactive disclosure with accessibility under Section 508.

BACKGROUND: In 1998, Congress amended the Rehabilitation Act to require Federal agencies to make their electronic and information technology accessible to people with disabilities. Inaccessible technology interferes with an individual's ability to obtain and use information quickly and easily. Section 508 was enacted to eliminate barriers in information technology, to make available new opportunities for people with disabilities, and to encourage development of technologies that will help achieve these goals. The law applies to all Federal agencies when they develop, procure, maintain, or use electronic and information technology. Under Section 508, as amended (29 U.S.C. § 794d), agencies must give disabled employees and members of the public access to information that is comparable to the access available to others.

Many agencies' FOIA processes render document content inaccessible to 508-required assistive technology because the document is converted into a print image when documents are redacted. In order to be considered 508 accessible, a document must contain actual text content layer, be properly tagged and have a logical reading order; images must be accompanied with alternative text; and the document must have a specified language.

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Some Requirement of Section 508

- Federal information technology must ensure “individuals with disabilities...have access to and use of information and data that is comparable to... [persons without disabilities].”
- If making technology accessible would be undue burden on agency, then agency must provide “alternative means of access that allows the individual to use the information and data.”
- United States Access Board standards define technical and functional performance criteria for satisfying Section 508.

Most records should already be in accessible formats.

- Section 508 also requires comparable access for Federal employees who have disabilities.
- So records should already be in accessible format, even if agency hasn’t been making the records public. (For example, word processing documents that software can read out loud.)

But some records present problems:

- Records from paper-based workflows.
- Graphics that have not been tagged with alternative text.
- Usual methods of redacting accessible documents make them inaccessible.
- Records can be remediated to make them accessible, but takes some work.
 - e.g., Dept. of Homeland Security memo on “Creating 508-Compliant PDF Documents,” June 14, 2010.

Straw Man Proposal: What are real cases where this doesn’t work?

- Apply the same standards to proactively disclosed records as to any other publicly-available information:
 - Post records in accessible form, unless agency determines “undue burden.”
 - If “undue burden,” then provide “alternative means of access,” for example, selected records converted to accessible form on request.
- Do not delay proactive disclosure while records are made accessible. Disclose while proceeding to remediate accessibility.

[End of report of the Proactive Disclosures Subcommittee]

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The staff from the following National Archives and Records Administration offices:

Information Security Oversight Office (ISOO)

Office of Government Information Services (OGIS)

Special Events and Scheduling Office

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CHARTER

National Archives and Records Administration

Freedom of Information Act Advisory Committee

Charter

1. Committee's Official Designation: The name of this advisory committee shall be the Freedom of Information Act Advisory Committee.

2. Authority: The Committee is being established in accordance with the second United States Open Government National Action Plan released on December 5, 2013, and the directive in the Freedom of Information Act, 5 U.S.C. § 552(h)(1)(C), that the Office of Government Information Services within the National Archives and Records Administration (NARA) "recommend policy changes ... to improve" the Freedom of Information Act (FOIA) administration. This Committee is governed by the provisions of the Federal Advisory Committee Act, as amended, 5 U.S.C. App.

3. Objectives and Scope of Activities: As part of the Open Government Partnership, the United States issued its second Open Government National Action Plan on December 5, 2013, that sets forth several specific initiatives the Administration would undertake in the coming two years. One flagship initiative includes various efforts to modernize FOIA, including creation of a FOIA Federal Advisory Committee to be "comprised of government and non-governmental members of the FOIA community, to foster dialog between the Administration and the requester community, solicit public comments, and develop consensus recommendations for improving FOIA administration and proactive disclosures." This advisory committee shall serve as a deliberative body to advise on improvements to the administration of FOIA. The Committee will study the current FOIA landscape across the Executive Branch and may recommend legislative action, policy changes or executive action, among other matters.

4. Description of Duties: This committee will be advisory only.

5. Official(s) to Whom the Committee Reports: The committee shall report to the Archivist of the United States, and provide advice that is relevant to the administration of FOIA across the executive branch.

6. Support: The NARA Office of Government Information Services will provide funding and administrative support for the Committee to the extent permitted by law and within existing appropriations.

7. Estimated Annual Operating Costs and Staff Years: The annual operating cost for the Committee is estimated to be \$90,000 and one full staff year.

8. Designated Federal Officer (DFO): The DFO is a full-time salaried employee of NARA and will perform the duties set forth in § 102-3.120 of the FACA Final Rule. The Archivist of the United States shall designate a DFO who shall manage the Committee and provide such clerical, administrative, and logistical support as necessary for the Committee to effectively conduct its business. The DFO shall ensure the Committee complies with the requirements of the Open

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Government National Action Plan, this Charter, relevant Federal regulations, and NARA's policies on committee management. Specifically, the DFO will:

- Develop agenda items in close consultation with the Chairperson;
- Assist in developing plans for the activities of the Committee and Subcommittees;
- Call the Committee meetings and notify members of the meetings;
- Notify NARA's ethics officer of the appointment of new Federal employee members and ensure that financial disclosure requirements have been satisfied by new members prior to their first participation in Committee meetings; and
- Maintain records of Committee activities.

9. Estimated Number and Frequency of Meetings: In consultation with the Archivist of the United States, the DFO shall hold meetings up to four times per year and may call additional meetings as may be necessary.

10. Duration: The need for this Committee is continuing.

11. Termination: The Charter shall be eligible for renewal every two years.

12. Membership and Designation: The Committee will consist of no more than 20 individuals. To ensure balanced representation, NARA will strive to appoint equal numbers of government and non-governmental members. Government members of the Committee should include, at a minimum, three FOIA professionals from Cabinet-level Departments; four FOIA professionals from non-Cabinet agencies; one representative from the Department of Justice, Office of Information Policy; and one representative from NARA. Non-governmental members of the advisory committee will include, at a minimum, three individuals representing the interests of non-governmental organizations that advocate on FOIA matters; two individuals representing the interests of FOIA requesters who qualify for the "all other" FOIA requester fee category; one individual representing the interests of requesters who qualify for the "news media" FOIA requester fee category; one individual representing the interests of requesters who qualify for the "commercial" FOIA requester fee category; one individual representing the interests of historians and history-related organizations; and one individual representing the interests of academia. The Designated Agency Ethics Official for NARA has determined that all non-Federal members of the Committee are "representatives" for purposes of federal ethics laws and regulations, and, thus, do not need to file financial disclosure annually. Any Federal employees who are appointed to the Committee must file a confidential financial disclosure report on or before the date of their first participation in a Committee meeting.

All members will be appointed by the Archivist of the United States.

There will be no compensation for members of the Committee. Travel and/or per diem costs will not be provided by NARA.

The Archivist of the United States shall appoint a Chairperson. If necessary, a Vice Chairperson may be designated annually by members of the Committee, in consultation with the Archivist of the United States. The Chairperson is the presiding officer of the Committee who guides its efforts to the effective completion of its assigned tasks. The Chairperson shall provide leadership and adhere to the Charter and such other rules of order and operating procedures as the Committee may adopt, maintain order, and conduct each meeting in accordance with FACA and

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the prescribed rules and procedures. The Chairperson is responsible for certifying the accuracy of Committee meeting minutes. The Vice Chairperson shall assume and perform the duties of the Chairperson in the event the Chairperson is absent or unavailable.

13. Subcommittees: The Chairperson may, with NARA's approval, create subcommittees as necessary to support the committee's work. NARA may designate members from either the Committee or the public to serve on subcommittees. The subcommittee Chairperson shall be a Committee member.

14. Recordkeeping: The records of the committee and any subcommittee(s) shall be handled in accordance with General Records Schedule 26, Item 2 and any approved agency records disposition schedule. These records shall be available for public inspection and copying, subject to the Freedom of Information Act, 5 U.S.C. § 552.

15. Filing Date: MAY 20 2014

Approved:



David S. Ferriero
Archivist of the United States

MAY 20 2014

Date