



**National Archives and Records Administration (NARA)
Freedom of Information Act (FOIA) Advisory Committee
Meeting Minutes – March 20, 2019**



The FOIA Advisory Committee convened at 10 a.m. on March 20, 2019, in the McGowan Theater of the National Archives Building at 700 Pennsylvania Avenue, NW, Washington, DC 20408-0001.

In accordance with the provisions of the Federal Advisory Committee Act, Public Law 92-463, 5 U.S.C. App. §§ 1-16, the meeting was open to the public from 10 a.m. to 1 p.m.

Meeting materials are available on the Committee's website at [https:// archives.gov/ogis/foia-advisory-committee/2018-2020-term/meetings](https://archives.gov/ogis/foia-advisory-committee/2018-2020-term/meetings).

Committee members present in the McGowan Theater:

- Alina M. Semo, Office of Government Information Services (OGIS), National Archives and Records Administration (NARA) (Committee Chairperson)
- Jason R. Baron, Drinker Biddle & Reath (Co-Chairperson of the Records Management Subcommittee)
- Emily Creighton, American Immigration Council (Co-Chairperson of the Time/Volume Subcommittee)
- Kevin Goldberg, American Society of News Editors
- James R. Jacobs, Stanford University Libraries
- Joan Kaminer, U.S. Environmental Protection Agency (Co-Chairperson of the Vision Subcommittee)
- Ryan Law, U.S. Department of the Treasury (Co-Chairperson of the Records Management Subcommittee)
- Michael Morisy, MuckRock_
- Suzanne J. Piotrowski, Rutgers University
- Lee Steven, Cause of Action Institute
- James R. Stocker, Trinity Washington University
- Thomas Susman, American Bar Association
- Patricia Weth, National Labor Relations Board
- Bradley White, Department of Homeland Security, Office for Civil Rights and Civil Liberties (Co-Chairperson of the Time/Volume Subcommittee)

Committee members on the phone:

- Sarah Kotler, Food and Drug Administration
- Abioye "Abi" Mosheim, Consumer Product Safety Commission

Committee members absent from the meeting:

- Lizzette Katilius, Securities and Exchange Commission

- Chris Knox, Deloitte (Co-Chairperson of the Vision Subcommittee)
- Ginger P. McCall, State of Oregon
- Melanie Ann Pustay, U.S. Department of Justice

Others present at or participating in the meeting:

- David S. Ferriero, Archivist of the United States, NARA
- Khaldoun AbouAssi, American University
- Tina Nabatchi, Syracuse University
- Kirsten B. Mitchell, Designated Federal Officer, NARA
- Martha W. Murphy, OGIS, NARA
- Sheela Portonovo, OGIS, NARA

Introductions and Announcements

Archivist of the United States David S. Ferriero welcomed the Committee members and attendees to the National Archives for the FOIA Advisory Committee meeting. Mr. Ferriero reminded the audience of the three subcommittees established by the third term of the FOIA Advisory Committee: Records Management Subcommittee, Time/Volume Subcommittee, and Vision Subcommittee.

Mr. Ferriero welcomed guest speakers Professors Khaldoun AbouAssi of American University and Tina Nabatchi of Syracuse University to present their recent research, “A Snapshot of FOIA Administration: Examining Recent Trends to Inform Future Research.” Mr. Ferriero also welcomed Professor James R. Stocker of Trinity Washington University, whom he recently appointed to the Committee to replace the seat vacated by Andrew Johns.

Mr. Ferriero reflected on his recent conversation with Chief Judge Beryl Howell of the District Court for the District of Columbia during Sunshine Week and thanked the Committee for their efforts to improve the FOIA.

Committee Chairperson Alina Semo welcomed everyone to the third meeting of the 2018-2020 term of the FOIA Advisory Committee. She thanked the Committee for returning to work quickly after the five-week government shutdown in December and January and acknowledged its effect on many Committee members. Ms. Semo introduced Mr. Stocker and noted that the Committee met quorum requirements for the meeting despite several absences. She then outlined the meeting’s agenda and reviewed several housekeeping items.

The Committee voted to adopt the November 29, 2018, Committee meeting minutes.

Ms. Semo welcomed Professor Khaldoun AbouAssi and Professor Tina Nabatchi, who recently published a paper in *The American Review of Public Administration* on trends in FOIA. Ms. Semo introduced the speakers and provided brief biographies.

Presentation: A Snapshot of FOIA Administration: Examining Recent Trends to Inform Future Research

Ms. Nabatchi presented empirical research about the administration of FOIA within Federal agencies. She described the FOIA, its impact on democratic governance, and the motivation for the research. The research mission was to explore what is known about FOIA administration and management of FOIA in the Federal Government and to identify areas for further investigation.

She summarized the methodology she and Mr. AbouAssi used to analyze aggregate trends. They collected data available on FOIA.gov and divided it into “caseload data” (*e.g.*, requests, exemptions, denials, appeals, backlogs) and “management capacity” (*e.g.*, staff, financial costs, processing times).

They found a steady increase in the number of FOIA requests received and the number of requests in agency backlogs from 2008 to 2016. Most of the 10 agencies receiving the most requests each year work with individual Federal benefits or claims or are agencies concerned with law enforcement and national security. The data suggest that the nature of the request and the work done by the agency are important variables to examine. Their research also found that the percentage of fully denied requests has remained fairly consistent over time but the percentage of partially granted/partially denied requests fluctuated. They did not have access to data that could explain this difference. She noted that caseload is not distributed equally across agencies, and that a minority of agencies receive a majority of requests and appeals, and comprise the majority of the backlog government-wide.

The professors’ analyses of management capacity data explored the staff-to-FOIA-case ratio, cost of administrating FOIA, the costs in terms of fees, and average processing time. They found there is approximately one employee to every 188 FOIA requests, with 65 percent of FOIA staff located in six departments: Veterans Affairs; Health and Human Services; Homeland Security; Justice; Agriculture; and Defense). Other findings include that there are very high costs for administrating FOIA; the fees collected constitute less than 1 percent of the costs for administrating FOIA; the average time taken to process simple requests has remained fairly consistent over time while the complex request processing times vary greatly. Professor Nabatchi also noted that the capacity to manage FOIA is not equally distributed across agencies; the connection between staff time and FOIA cases is not straightforward; increased FOIA costs are unrelated to numbers of agency requests, appeals, and staff; and there is a variation in process efficiency overtime between types of requests.

She noted their research does not account for external influences like politics, economics, and historical events. She described FOIA as not central to agency missions nor reflected in performance measures and budgets. She noted a need for more research and for continued data collection and more historical data on FOIA.gov.

Mr. AbouAssi discussed their future research plans related to FOIA. They will examine FOIA as an administrative obligation and financial burden, FOIA as a tool for information, engagement, and advocacy, recommendations for greater efficiency, and the process and organizational characteristics of FOIA.

They divided the factors affecting FOIA administration into organizational characteristics (*e.g.* field or nature of work of each agency, staffing numbers, and structure of the agency) and process characteristics (type of requester, purpose of request, clarity and complexity of request, and means of requester). They have completed a preliminary examination of these elements and have come up with some simple correlations: the number of requests received is highly correlated with the number of full time FOIA staff and gross budget and expenditures. Large agencies and large numbers of full time FOIA staff are correlated with large backlogs. He concluded with a request for the Committee's input.

Ms. Semo opened the floor to discussion. Mr. Susman requested more analysis and judgment on the data they have collected and to contextualize it. Ms. Nabatchi explained they made no normative judgments about the way things should be because of the limitations of their data. Mr. Susman noted that according to their research, benefits and claims, national security, and law enforcement issues constitute the majority of FOIA requests and that proactive release could reduce the costs of administrating the FOIA. He observed that proactive release cannot be used for information about individuals, such as those that constitute the majority of requests. He suggested that agencies with high levels of requests for information about individuals require a different solution. Ms. Nabatchi affirmed that this area requires further examination.

Mr. White shared that DHS tracks the number of pages administered by each of their components and asked if the professors have considered exploring whether other agency components are tracking page-level information. Mr. AbouAssi stated they did not have access to that level of data. Mr. White asked if the professors have looked into the variance in staff-to-caseload ratios throughout the Government. Mr. AbouAssi affirmed that they intend to examine the ratio in further research.

Ms. Weth observed that under cost and capacity issues, the professors noted that FOIA is not central to agency missions and is not reflected in performance measures. She affirmed the value in getting agency leadership buy-in to address this tension. She then asked that they elaborate on their statement that FOIA is not reflected in agency performance measures. Ms. Nabatchi stated that agencies are not being measured against their success at administrating FOIA. Without performance incentives, FOIA does not become central to their mission. Mr. AbouAssi affirmed the need to get leadership buy-in, and that they will explore this in future research. He added that employee satisfaction will be another factor in their research agenda.

Ms. Weth stated that both the taxpayers and the government carry the financial burden of administrating FOIA. Ms. Creighton suggested they speak with agencies about how they maintain records to get to more granular data and that if they could create a sample size to get at the individual data. She then noted the costs of managing FOIA litigation include both financial costs and the cost to staff resources. Mr. AbouAssi affirmed their desire to do a case study of an individual agency, but that they had wanted to begin their work at the aggregate level. Ms. Creighton also recommended contacting the requester community to better understand the demand for FOIA. Ms. Nabatchi responded that at the start of their research, they debated between looking at the agencies as a whole or at the component level. She explained that exploring aggregate data informs their sampling strategies for future research. Mr. AbouAssi

addressed Ms. Creighton's litigation question by discussing some resources for data on this topic which they intend to explore.

Mr. Baron observed that their analysis of the number of granted and denied requests references procedural grants and denials but does not reflect the number of records made available. He asked if the professors looked at the rates at which agencies grant access to - or withhold - records. The professors stated that data is not available on FOIA.gov. Mr. Baron asked if DOJ could collect that information in their FOIA reports and suggested the Committee may explore this further.

Mr. Steven reiterated the need to look at individual cases in addition to aggregate data, noting that the time taken to process requests will differ greatly from agency to agency. He asked how they assess costs, and in particular litigation costs. He suggested that if Department of Justice (DOJ) attorneys handle the litigation instead of agency attorneys, the litigation costs in the agency's data may be low. Ms. Nabatchi elaborated on Mr. Steven's observation that the processing times vary greatly within the Federal Government, and said more research is needed to understand the causes. She affirmed his point on litigation costs and reiterated that they only reported on the data available on FOIA.gov. She asked for further suggestions on how to better collect data.

Mr. Stocker noted that as an individual requester, he is thankful that the fees associated with FOIA do not cover the cost of administrating FOIA. He then suggested the agencies' administration of simple requests may be fairly similar whereas their administration of complex requests may have more variance. Mr. AbouAssi stated that the difficulty will be in obtaining data on the nature of the request.

Mr. Law suggested that the FOIA logs that many agencies post online may provide additional data points for their research.

Ms. Piotrowski recommended that future research consider commercial requesters since their impact could be significant. She noted that FOIA.gov data began when OGIS opened and that OGIS may be influencing the FOIA over this time period. She pointed out that FOIA reports are self-reported by agencies and that there is a lot of variation in how these figures are calculated. She suggested there may be substantial validity and reliability issues as to how this data is reported.

Mr. Morisy affirmed that some requests are more intensive than other requests, and the volume of requests and pages reviewed do not accurately reflect the level of work undertaken by agencies. He also suggested that the professors explore how FOIA offices are impacted by the rest of the agencies' operations. For example, the quality of an agency's records management program greatly affects the FOIA offices through searchability. He affirmed Mr. Law's suggestion to explore the FOIA logs. Mr. Morisy also suggested using natural experiments to compare different agencies; for example, if two agencies use a similar data system.

Ms. Kaminer reiterated that the number of requests received by an agency does not account for requests that include a large number of documents processed. She also stated that full time employees (FTEs) are allocating and increasing amount of time to appeals and litigation.

The professors affirmed the benefit of more nuanced data. Mr. Susman asked them to write a recommendation of the types of data that would be beneficial for agencies to collect. Ms. Piotrowski followed up by emphasizing the need to standardize how the data is collected to ensure consistency.

Ms. Semo announced a 15-minute break.

Presentation: Snapshot of OGIS: The FOIA Ombudsman at Work

OGIS Deputy Director Martha Murphy presented a “Snapshot of OGIS: The FOIA Ombudsman at Work,” which grew out of a request from the Vision Subcommittee.

Ms. Murphy provided background information on OGIS’s creation and mission, its dispute resolution program, and compliance function. Congress mandated that OGIS provide mediation services to resolve FOIA disputes; review agencies’ FOIA policies, procedures, and compliance; and identify procedures and methods for improving FOIA compliance. OGIS also works to educate the public; train FOIA professionals to resolve disputes; and help agencies improve their processes. Ms. Murphy explained that OGIS’s dispute resolution services are neutral, no solution is dictated to the involved parties, and are dependent on both parties’ involvement. It is a non-exclusive alternative to litigation. OGIS’s simple cases are often addressed by OGIS’s educator role while complex cases benefit from OGIS’s neutrality and subject matter expertise to identify issues and reach solutions.

When requesters or agencies request OGIS’s mediation services, OGIS first contacts both parties involved in the dispute. Mediation services are confidential. OGIS collects the facts about the case and then works with both parties to identify issues and solutions. Closing correspondence is sent to both parties when a complex case is closed.

The FOIA Improvement Act of 2016 increased OGIS’s role in the FOIA administrative process by requiring agencies to notify requesters that OGIS services are available to them at any point during the FOIA process. As a result of this change, the number of requests for assistance received by OGIS drastically increased. OGIS’s earlier involvement in the FOIA process and the increased demand for their services has provided their staff more data they can use to identify areas for improvement in the FOIA.

OGIS assesses and identifies procedures to improve FOIA compliance. There is some overlap between OGIS and DOJ’s Office of Information Policy (OIP) as OIP encourages agency compliance with the law. OGIS is located within the National Archives and Records Administration, which enables OGIS to mediate FOIA disputes objectively and neutrally. Congress also recognized the importance of OGIS having the ability to communicate its recommendations for effective FOIA implementation directly to Congress and the President.

OGIS's formal compliance program launched in 2015 with a voluntary agency compliance assessment program.

While there is no one-size fits all solution for effective FOIA management, OGIS has identified three things successful FOIA programs generally do well: (1) they manage their resources effectively, (2) they make smart investments in technology, and (3) they communicate effectively with requesters. To date, reviewed FOIA programs have addressed over 97 percent of OGIS's recommendations.

OGIS issues assessments of government wide FOIA issues. Currently, OGIS has completed two assessments about "still interested" letters and agency notification about dispute resolution services to requesters.

Beginning in 2016, OGIS incorporated FOIA-related questions in the annual Records Management Self-Assessment (RMSA) to help identify government-wide FOIA issues. The RMSA FOIA questions have expanded OGIS's review of agency FOIA policies and procedures, helped OGIS identify compliance issues, and contributed to setting OGIS's goals and priorities. The questions have also encouraged communication between agency records managers and agency FOIA officers.

Since 2010, OGIS has reviewed proposed amendments to agencies FOIA regulations. In the previous two fiscal years, OGIS reviewed proposed FOIA regulation changes for 64 Departments and agencies.

OGIS provides education and outreach opportunities for agency FOIA professionals and requesters; offers agency-specific dispute resolution training to FOIA professionals; and develops educational materials to help requesters better understand the FOIA process and the resources available to them. OGIS publishes the *FOIA Ombuds Observer* and advisory opinions to advocate for the FOIA process, as well as an annual report to Congress and the president

OGIS hosts events such as the National Archives' annual Sunshine Week event and OGIS annual meeting and in 2018, a forum on immigration records. OGIS manages an active blog and Twitter feed, and provides leadership to the FOIA Advisory Committee and the Chief FOIA Officers' Council. Ms. Murphy opened the floor to questions. Mr. Steven asked if OGIS collects data on the results of their dispute resolution services. He described a personal experience in which he used the OGIS mediation process with an agency, and the agreed-upon resolution was not upheld by the agency. He asked what means there are to collect data on the final outcomes of the dispute resolution process. Ms. Semo asked Mr. Steven if he informed OGIS that the agency did not comply. Mr. Steven said they did not and that his group sued the agency. Ms. Murphy stated that currently, OGIS does not collect data on what happens once OGIS is no longer involved, but they do collect data on the category of the incoming requests. Mr. Steven suggested that OGIS follow up with the requesters after the resolution was reached.

Mr. Susman discussed the history of OIP and its creation and evolution as it relates to the overlap between OGIS and OIP. Prior to OIP's creation, DOJ had an office providing FOIA advice to

agencies, separate from DOJ's FOIA office and litigation. OIP's creation merged these functions.

Mr. Susman asked OGIS to describe its legislative recommendation and to provide recommendations to help OGIS improve its processes. Ms. Semo discussed OGIS's recommendation to Congress for a legislative fix to the difficulty faced by agencies to ensure compliance with Section 508 of the Rehabilitation Act while meeting FOIA's requirement to post records online that have been requested three or more times. She said that she would have to think more about additional wishes.

Ms. Creighton asked if OGIS collects data on the number of requests it receives from researchers that are prompted by researchers not receiving any agency response. Ms. Semo and Ms. Murphy affirmed that OGIS is collecting that information.

Ms. Kaminer asked the extent to which OGIS staff are trained or have expertise in search syntax development or negotiation on developing search parameters. Through her observations, litigation could be prevented by focusing on the search itself and having mediation around search parameters. Ms. Murphy stated the capability for an agency to effectively search is dependent on the technology that is available to them. She said OGIS relies heavily on communication with the FOIA Public Liaisons as the people with the most expertise in this area. However, there is no standard for search, and OGIS working on a recommendation to change requirements for technology acquisition that would make FOIA capability required component of newly acquired technology.

Ms. Piotrowski requested more information on the advisory opinion OGIS issued. Ms. Semo stated that OGIS observed that agencies were not always clearly communicating who a requester could contact at various points in the FOIA process. She said that agencies began dropping their own contact information, only including contact information for OGIS. As a result, requesters were confused and OGIS experienced a large spike in requests for dispute resolution services. This issue has seen some improvement since OGIS issued its advisory opinion.

Ms. Piotrowski asked if OGIS planned to issue additional advisory opinions. Ms. Portonovo answered that OGIS is reviewing its caseload and identifying topics that would be best suited for future advisory opinions. OGIS plans to begin issuing them in the summer. Ms. Murphy added that when advisory opinions are issued, there would be a requester education component as well. Ms. Semo added that the first *FOIA Ombuds Observer* OGIS issued was tied to the Immigration Forum and identified which agencies had custody of the most requested types of records.

Ms. Creighton commented that the Immigration Forum was highly valuable and added that compiling information on how agencies administer FOIA, conduct search, and maintain records would be very valuable to researchers.

Mr. Goldberg asked OGIS to consider how to make future advisory opinions accessible and searchable. He suggested they make plans to address findability at this beginning stage.

Subcommittee Reports

The Committee devoted the remainder of the meeting to status reports from the three subcommittees. Ms. Semo congratulated Mr. White for receiving the DHS FOIA Officer of the Year award during Sunshine Week.

Time/Volume Subcommittee

The Time/Volume Subcommittee Co-Chairpersons Ms. Creighton and Mr. White presented an update on the subcommittee's activities.

Mr. White reminded the Committee that the Time/Volume Subcommittee initially developed seven action items that formed the organizational structure of their subcommittee but have consolidated four of those action items that will be addressed by the subcommittee as a whole. The first action item pertains to the subcommittee's efforts to track the progress on past recommendations, particularly relating to FOIA resources. Ms. Weth is tasked with this action item and will give a brief presentation at the end of the meeting.

The second action item relates to analyzing complex requests by reviewing annual FOIA reports issued by the Federal agencies. OGIS offered assistance from Carrie Smith, who is on detail with OGIS from the Johnson Presidential Library, to collect and analyze complex request data from FOIA.gov. They expect to look more closely at the issue, but the initial impression is that it is difficult to spot consistent trends in the data. Ms. Semo mentioned that not all agencies have finalized their FOIA reports for FY 2018, and OGIS is monitoring the progress.

The third action item looks to international examples to examine other countries' models for managing the Time/Volume issue. Ms. Weth, Ms. Mosheim, and Ms. McCall are tasked with this action item and are discussing effective methods for conducting this research and identifying outside individuals with expertise in this area.

Ms. Creighton noted that some action items will evolve and that some roles of the subcommittee members will change as action items are completed. In the coming weeks, the subcommittee will finalize the two surveys they have developed. There is one survey for the requester community and another for Federal agencies. The subcommittee intends to distribute the surveys to the Committee for comment. The agency survey will focus on agencies with large backlogs and those that have been able to achieve reductions in backlogs. She thanked OGIS for its assistance in collecting the backlog data that they will use to make their selection. They are working on developing methodology to ensure they receive the best possible data.

They are also developing a list of requesters to whom to administer a survey based on the frequency they submit complex requests, how frequently they prevail in litigation, and those requesting large amounts of data. The requester survey will address their level of understanding of the existing resources, best practices for drafting a requests, use of search terms, the agency's processes, how to search a variety of record formats, and the best practice for information dissemination.

The subcommittee is also exploring the requirements of the Paperwork Reduction Act, which affects surveying by Government agencies. The subcommittee believes it can work with the American Society of Access Professionals (ASAP) to distribute the survey. Ms. Creighton invited input on this strategy.

Ms. Semo noted that if the Time/Volume Subcommittee distributes the surveys to the entire Committee for comment, they will have to be posted online.

Mr. Morisy asked if the subcommittee would administer the survey or would they provide the questions to a third party and receive aggregate data. Ms. Creighton responded that they are currently exploring their options and she welcomes input. She also stated that the subcommittee is still determining how many surveys will be distributed and to whom. Mr. Morisy suggested that providing questions to a survey partner, like ASAP, would give more flexibility to protect participants' anonymity. Mr. Morisy is a member of ASAP's board and he emphasized that he does not speak on behalf of the organization.

Ms. Creighton expressed concern that the survey results reflect a robust sample from the requester community and that may be difficult because the majority of the members of ASAP are Federal employees. Mr. Morisy offered to help notify the requester community.

Vision Subcommittee

Vision Subcommittee Co-Chairperson Ms. Kaminer presented a status update on the Vision Subcommittee's activities, and noted that the subcommittee was only recently able to regroup. It had another meeting scheduled for the next day that will finalize many of the items she will report on. She confirmed that they are looking at a 10-year timeframe for the recommendations they will be making.

They are in the process of confirming which subcommittee members will be tasked with providing recommendations for the different sections of the mission statement. The subcommittee meeting will finalize the responsibilities and make plans for next steps.

Records Management Subcommittee

Records Management Subcommittee Co-Chairperson Mr. Baron presented a status update on the subcommittee's activities.

Mr. Baron shared that the subcommittee has identified three areas of interest. First, the subcommittee will explore how well the FOIA statute's provision at 5 USC § 552(g), concerning heads of agencies making reference materials publicly available, has acted as a guide for researchers to identify records management materials. The subcommittee is reviewing agency FOIA websites and the material agencies have posted online. While agencies have provided thorough information on how to file a FOIA request, the subcommittee's preliminary finding is that the online materials are not optimal for identifying relevant records. He noted that records schedules and the types of records of greatest public interest are difficult to find on agency websites.

Second, the subcommittee is reviewing different reports issued by the National Archives or supplied to the National Archives. Specifically, the subcommittee is exploring the extent to which the National Archives considers access considerations, including FOIA access, when assessing agencies' records management programs. These reports include but are not limited to the Records Management Self-Assessment Reports (RMSA), Senior Agency Officials for Records Management Reports (SAORM), and Federal Email Management Reports. Mr. Baron noted that the Records Management Subcommittee believes it can make recommendations for additional questions the National Archives may use in order to make explicit the need to factor access concerns into records management programs.

Third, NARA has provided a liaison from the Office of the Chief Records Officer to the subcommittee. Kyle Douglas has met via phone with the subcommittee and has discussed the subcommittee's questions as they specifically relate to Capstone email management policies.

Mr. Baron concluded by stating that he believes there are many other fruitful areas for the subcommittee to explore and he will make recommendations to the subcommittee accordingly. He is specifically interested in records management training for FOIA officers. He would like to follow up on remarks made at the November 29, 2018, meeting with respect to the inspectors general representatives' suggestion that FOIA issues be put on Council of the Inspectors General on Integrity and Efficiency's (CIGIE) agenda. He lastly stated that he looks forward to the presentation on recommendations and best practices suggestions that were set in the 2016-2018 FOIA Advisory Committee Report and Recommendations as they specifically relate to records management.

Mr. Baron concluded by announcing that Mr. Law and he plan to attend the Federal Records Officer Network (FRON) on April 9, 2019, to discuss their thoughts on integrating FOIA concerns in records management.

Mr. Law had no additional comments.

Ms. Semo thanked the Committee members for their work. She also stated that OGIS is putting together a schedule for the Committee's final report and recommendations. Ms. Semo then asked Ms. Murphy to present on the progress OGIS has made on prior FOIA Advisory Committee recommendations.

Update on OGIS's Progress on Prior Committee Recommendations

Ms. Murphy stated that the first recommendation was to establish a technology subcommittee of the Chief FOIA Officers (CFO) Council to study the use and deployment of FOIA technology across the Federal Government and to identify best practices and recommendations. The CFO Technology Subcommittee has been established and is exploring methods for gathering information on technology use, including the use of a possible survey.

The second recommendation that OIP collect detailed information in each agency's CFO report on the methods and technologies agencies use to search electronic records has been completed. The 2019 CFO Reports will include the answer to the following question: "Is your agency leveraging technology to facilitate efficiency in conducting searches, including searches for

email? If so, please describe the type of technology used. If not, please explain why and please describe the typical search process used instead.”

The third recommendation was to suggest a modification to the Federal Acquisition Regulation (FAR) to require all agencies, when acquiring electronic records management software, electronic mail software, and other records-related information technology, to consider features that will help facilitate the agencies’ responsibilities under FOIA. OGIS is working with NARA’s FAR Council Representative and NARA’s General Counsel Staff to draft a business case to submit to the FAR Council.

There has been no progress on the fourth recommendation to launch an interagency effort to develop standard requirements for FOIA processing tools to ensure 508 compliance. The efforts made on previous recommendations will cover some of these goals and OGIS will revisit it at a later date.

There has been no progress on recommendations five and seven regarding OGIS assessments on methods undertaken by agencies to prepare documents for posting on agency reading rooms, and the use of performance standards to ensure FOIA compliance. These recommendations will be addressed by OGIS’s Compliance Team once it has staff available.

The sixth recommendation is complete and was published in the 2019 OGIS Annual Report for FY 2018: “OGIS recommends that Congress pass legislation to provide agencies with sufficient resources to comply with the requirements of both FOIA and Section 508 of the Rehabilitation Act of 1973, as amended, especially as they relate to proactive posting of large numbers of records.”

Finally, Ms. Murphy followed up on a recommendation made by the 2014-2016 FOIA Advisory Committee. That recommendation was completed in 2016 when the Archivist sent a letter to OMB recommending it update FOIA fee guidance. Since that time, OGIS has followed up with OMB to determine the best way forward.

The Committee members had no questions for Ms. Murphy.

Ms. Semo went over several housekeeping items and then opened the floor for public comment.

Public Comments

There were no public comments.

Closing Remarks

Ms. Semo announced that the next meeting will be held in the McGowan Theater on Thursday, June 6, 2019, at 10:00 a.m. She thanked the Committee Members and asked that they stay briefly after the meeting to address some administrative concerns.

I certify that, to the best of my knowledge, the foregoing minutes are accurate and complete on
June 6, 2019.



Kirsten Mitchell
Designated Federal Officer, 2018-2020 Term



Alina M. Semo
Chairperson, 2018-2020 Term

The Committee reviewed these minutes by email, and any corrections or notations are incorporated herein.