



**National Archives and Records Administration (NARA)  
Freedom of Information Act (FOIA) Advisory Committee**



**Meeting Minutes – June 6, 2019**

The FOIA Advisory Committee convened at 10 a.m. on June 6, 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](https://archives.gov/ogis/foia-advisory-committee/2018-2020-term)

**Committee members present in the McGowan Theater:**

- Alina M. Semo, Director, 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)
- Kevin Goldberg, American Society of News Editors
- Lizzette Katilius, Securities and Exchange Commission
- Chris Knox, Deloitte (Co-Chairperson of the Vision Subcommittee)
- Sarah Kotler, Food and Drug Administration
- Ryan Law, U.S. Department of the Treasury (Co-Chairperson of the Records Management Subcommittee)
- Abioye "Abi" Mosheim, Consumer Product Safety Commission
- Melanie Ann Pustay, U.S. Department of Justice
- 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:**

- James R. Jacobs, Stanford University Libraries
- Joan Kaminer, U.S. Environmental Protection Agency (Co-Chairperson of the Vision Subcommittee)
- Ginger P. McCall, State of Oregon
- Michael Morisy, MuckRock\_

- Suzanne J. Piotrowski, Rutgers University

**Committee members absent from the meeting:**

- Emily Creighton, American Immigration Council (Co-Chairperson of the Time/Volume Subcommittee)

**Others present at or participating in the meeting:**

- David S. Ferriero, Archivist of the United States, NARA
- Margaret B. Kwoka, Associate Professor, University of Denver Sturm College of Law
- Kirsten B. Mitchell, Designated Federal Officer, NARA
- Martha W. Murphy, Deputy Director, OGIS, NARA

**Introductions and Announcements**

Archivist of the United States David S. Ferriero welcomed the FOIA Advisory Committee to the fourth meeting of the 2018-2020 Term. He recognized the work being carried out by the three subcommittees: Time/Volume, Vision, and Records Management. He then welcomed the meeting's guest speaker, Law Professor Margaret Kwoka. Professor Kwoka served on the 2016-2018 term of the FOIA Advisory Committee, and Mr. Ferriero briefly discussed the report and recommendations produced by the 2016-2018 term of the Committee.

Mr. Ferriero mentioned the National Archives exhibit "Rightfully Hers" currently on display in Washington, DC. The exhibit honors the 100<sup>th</sup> anniversary of the passage of the 19<sup>th</sup> Amendment, and Mr. Ferriero noted that women's suffrage and FOIA both play important roles in our democracy.

Alina M. Semo, Chair of the FOIA Advisory Committee, welcomed participants and the audience to the meeting and recognized the hard work undertaken by the Committee.

Ms. Semo introduced the five Committee members participating by phone and noted Emily Creighton was absent from the meeting. The Committee members present at the meeting then introduced themselves. Ms. Semo outlined the meeting's agenda and reviewed several housekeeping items.

The Committee voted to adopt the March 20, 2019, Committee meeting minutes.

Ms. Semo discussed the recently disseminated schedule for producing the Committee's final report, due June 2020. She requested volunteers to sit on a small working group to compile the report. Ms. Semo encouraged the subcommittees to make recommendations on a rolling basis if they are able.

Ms. Semo introduced Associate Professor Margaret Kwoka. Professor Kwoka teaches administrative law, civil procedure, Federal courts, and national security law at the University of Denver Sturm College of Law. She presented her latest research on "First Person FOIA," how

individuals seeking records about themselves dominate the FOIA programs of some agencies. It was published in June 2018 in the Yale Law Journal. It is available on the FOIA Advisory Committee website.

### **Presentation: “First-Person FOIA”**

Professor Kwoka presented her research on FOIA requests filed by individuals requesting records about themselves. Ms. Kwoka’s research projects have been guided by three observations: (1) journalists find that FOIA is not helpful enough in reporting the news, (2) despite FOIA’s failings, the Federal government receives over 800,000 requests annually, and (3) the law has been criticized for not meeting its basic goals due to the costs associated with FOIA and the relative scarcity of news media requests.

Professor Kwoka has used data to identify who is making FOIA requests and the types of information they are attempting to access. She noted that the typical requester is no longer a member of the news media, but individuals seeking information about themselves to assist in their legal or benefit claims. She cited an example involving an individual called before immigration court who sought records to assist in his case against deportation.

She noted that in immigration proceedings, like in other agency proceedings, defendants do not have access to the prosecution’s records through discovery. Therefore, they use FOIA to obtain the records needed to mount a defense.

Professor Kwoka stated that FOIA was intended for journalists to obtain information, not for individuals seeking information about themselves. She discussed the history of the media’s involvement in drafting FOIA. FOIA’s vision was to provide news media with information that would then be used to inform the electorate. Today, only a small fraction of FOIA requests are filed by news media and watchdog groups. Professor Kwoka’s research found that FOIA today is dominated by commercial requesters and individuals seeking information about themselves.

Professor Kwoka conducted case studies at the Department of Homeland Security (U.S. Citizenship and Immigration Services, Immigration and Customs Enforcement, and Customs and Border Protection), Department of Veterans Affairs (Veterans Health Administration), the Social Security Administration, and the Equal Employment Opportunity Commission to better understand the dynamics of first-party requesters. Each of these agencies receive large volumes of first party requests. Professor Kwoka also conducted interviews with attorneys who make first party requests on behalf of their clients to identify the role FOIA plays at each of the agencies.

She stated that the three DHS components she studied comprise the majority of the requests received by the agency. She noted that nearly all of these requests are made by non-citizens requesting their immigration records. Professor Kwoka reviewed some of the varied reasons individuals make requests to the DHS components for records about themselves. Professor Kwoka then discussed some of the reasons individuals request records about themselves from the other agencies in her case study.

Professor Kwoka reasoned that first-party requests serve private interests and do not intend to inform the public, as news media requests would. She identified a mismatch between the needs of first-person requests for their own records and how FOIA is able to meet that need. She elaborated upon three primary problems with using FOIA for large volumes of first-party requests. First, it undermines the due process interests of requesters. Individuals often request their own records to arm themselves when subject to a government enforcement action or when applying for government benefits. Accessing this information promotes fairness in the proceedings, accuracy in outcomes of government decision making, and a due process benefit. However, FOIA serves this interest poorly because of slow response times, a lack of resources to litigate FOIA issues, and incomplete information received.

Second, it introduces agency inefficiencies. FOIA is inefficient for the agency. She described how first-party requests can duplicate the work carried out by an agency and delay proceedings.

Third, it undermines FOIA as an effective transparency tool. First-person uses of FOIA undermine transparency due to the large volume of requests made. First-person requests are designed to serve a personal interest and not the public interest in government oversight. While there are public benefits to first-person requests, they do not serve the intended purpose of FOIA to inform the public of government activities.

Professor Kwoka then discussed potential solutions. She suggested that reducing the need to resort to FOIA for accessing these types of records would improve the process by incentivizing or requiring agencies to meet the information needs directly, for example, enabling legal discovery in agency proceedings.

Another solution would be to eliminate the need for “request and return” cases where individuals are required to submit documents to an agency which the agency already holds. The applicant would be able to designate that they are relying on a document already held by the agency. An additional solution related to affirmative disclosure. For example, she suggested online access to medical records would greatly reduce the number of FOIA requests received by the Department of Veterans Affairs. The final solution she discussed concerned specialized procedures for requesting records often needed by individuals. She noted that the IRS has a system separate from the FOIA for requesting one’s own tax returns.

Mr. Susman recalled that agencies use the large volume of first-party requests to undermine the transparency purposes of FOIA, lobby for more resources, and show compliance. He noted that by reporting Privacy Act information as FOIA, the statistics are muddled. He then said that applying the Brady doctrine to legal proceedings like immigration cases could streamline the process by introducing automatic disclosure to the process. He then asked why agencies and the executive branch have been resistant to these proactive measures that could be taken to improve access.

Professor Kwoka responded that she could not speak to intentional muddying of the waters but noted that Europe has two separate laws governing FOIA-related requests and requests for an individual’s own information. She reasoned that there is a way to separate these things out and that it would be beneficial to do so.

She then noted that with regard to the Brady Act, the Supreme Court has never held that in civil proceedings there is a due process right to discovery. A Brady type rule does not currently exist despite strong recommendations for administrative discovery. She said that while she cannot speak on others' behalves, she believes that agencies are considering these types of measures. She briefly discussed budgetary and administrative hurdles to reaching this solution.

Ms. Pustay addressed the point of counting first-party requests separate from FOIA requests, stating that since 2007, her department has clearly delineated between FOIA and Privacy Act in the annual FOIA reporting. She then noted that the Privacy Act in the United States is very narrow and has large exceptions, and so what could be Privacy Act requests also get grouped under the FOIA. Professor Kwoka noted that while agencies can take measures to improve these processes, additional legislation passed by Congress may be needed to solve some of these problems.

Mr. White, who noted that he spoke on his own behalf and not on behalf of DHS, stated that there is an issue around information that is exempted from disclosure under FOIA and the Privacy Act, and asked if there is a mechanism under discovery for protecting these categories of information. He stressed that immigration records contain some information that must be protected that extends beyond the individual's own records. Professor Kwoka discussed some of the rules currently in place that protect certain categories of information under discovery. Mr. White specified that he is concerned about law enforcement information that would not be covered by a FOIA (b)(5) attorney-client privilege exemption. Professor Kwoka suggested that it would be possible to put in place new rules protecting sensitive information.

Mr. Goldberg asked why she limited her case studies to three agencies and what steps the Committee could take should it pursue the first-party issue. Professor Kwoka discussed her methodology in determining which agencies to study. She stated that there are other agencies, like the Department of State, that also experience large volumes of first party requests.

Ms. Semo commented that OGIS receives a large number of first-party requests for dispute resolution services. OGIS had been in contact with USCIS's FOIA officer who had suggested OGIS host an immigration forum. OGIS hosted the immigration forum last fall and has published a FOIA Ombudsman Observer on immigration records. She then noted that a big difference between civil and FOIA litigation is that civil litigation has the tool of a protective order and FOIA litigation does not.

Mr. Baron read footnote 74 in Professor Kwoka's most recently published paper, in which she had described the results of FOIA requests she had filed with DHS. He asked if she had ever heard from these agencies, if she used OGIS's mediation services, and why she did not file a lawsuit against an unresponsive agency. Professor Kwoka responded that she never heard from the unresponsive agencies. She noted that she has a lot of FOIA requests for FOIA logs and that the time restraints prohibit her from suing agencies. She did not contact OGIS but did use personal contacts with agencies to no avail. She explained that she files a lot of administrative appeals, but time does not permit her to litigate her requests.

She then noted that data is not maintained in a consistent, uniform manner across agencies, and agencies cannot produce the data in the same way. She noted that there is a technology barrier in producing the data she's requesting. She said that while serving on the Committee, she pushed for a recommendation that was later adopted that agencies keep and publish a uniform version of their FOIA logs.

Ms. Pustay responded to Mr. Baron's comment about DHS's unresponsiveness by noting that FOIA requests are processed on a first-in, first-out basis, and that filing a lawsuit could result in a requester "jumping the line," ahead of the thousands of other requesters. She agreed that the delay is an unfortunate aspect of FOIA, but the solution should not be cutting in line.

Ms. Semo opened the floor to members on the phone. Mr. Morisy stated that some agencies have been proactively releasing frequently requested commercial records to the public. He asked if this alternative to the FOIA model could be applied to first-party requests without reducing requester rights should they be unsatisfied with the results. Professor Kwoka stressed that any alternative route would not eliminate the ability to file a FOIA. She also noted that individuals are not filing FOIA requests because they prefer FOIA, but because there is no alternative. She emphasized that the goal would be to provide a better alternative, not preclude access to FOIA.

Mr. Law added that several years ago, IRS instituted a process outside of FOIA to provide access to tax records. He noted that while there were challenges to implementing it, there has been a reduction in the number of FOIA requests the agency receives. He then encouraged Professor Kwoka to consider who is processing the requests she is studying. For example, IRS processes the requests at the field office that has custody of the records. He noted that any change made to the process must be balanced by resources. He also noted that the Privacy Act applies only to citizens so there is currently no alternative to FOIA for non-citizens requesting their own information. He suggested this would be an area for congressional legislation.

Mr. Susman suggested that a large part of FOIA's intended purpose extended to protecting business interests. He noted that Congress knew that businesses would use and benefit from the FOIA and offered her some feedback for how she addressed this issue in a previous article relating to commercial requesters. Professor Kwoka agreed that the legislative history does include business interests and that some businesses use FOIA for government oversight, but affirmed that her research shows that businesses are largely using FOIA to discover information about their competition. She suggested that while businesses are largely not using FOIA for its intended purpose, there are potential benefits for businesses having access to these records, but they are largely using the information for private benefit and not public benefit. She suggested that this use of FOIA might not be the most effective use of the law.

Mr. Susman replied that at the beginning of the FOIA, businesses largely used the law for oversight functions but now that information is largely proactively disclosed they no longer have need to exercise that function. Professor Kwoka affirmed that as a success story.

The committee took a 15-minute break.

## **Subcommittee Reports**

The Committee devoted the next portion of the meeting to status reports from the three subcommittees.

### **Vision Subcommittee**

Vision Subcommittee Co-Chairpersons Ms. Kaminer and Mr. Knox presented a status update on the Vision Subcommittee's activities. The Subcommittee meets biweekly. They have broken their Subcommittee into five components reflecting the five elements of their mission statement, each being led by a Subcommittee team member. Mr. Knox noted that two of the components were combined, leaving the Subcommittee with four components. These components include:

- Raising the priority of FOIA within the executive branch and increasing accountability for FOIA and transparency, led by Ms. Kaminer
- Reconsidering the model of OGIS within the FOIA community, led by Ms. Weth
- Managing expectations between agencies and the agencies, led by Mr. Goldberg
- Stressing the need for increased and continued financial support for agency FOIA programs, led by Mr. Morisy

Ms. Kaminer reported on her subgroup, noting that they are working with the Time/Volume Subcommittee on surveys of FOIA professionals and requesters which will be conducted including at the American Society of Access Professionals (ASAP) conference in July. They have developed subject areas on which they are collecting information, including the FOIA report, training and qualifications, requester status, FOIA Public Liaisons, and records management. Lastly, they will develop specific questions, keeping in mind the questions already developed by other subcommittees to reduce redundancy.

Ms. Weth presented on reconsidering the OGIS model. They began by reviewing the OGIS Annual Report and Sunshine Week celebrating OGIS's 10-year anniversary. They also met with OGIS. Mr. Susman introduced them to Toby Mendel, the Executive Director of the Law and Democracy Center, who provided guidance to international models to examine. They are examining international FOIA ombudsman models, state FOIA ombudsman models, and Federal FOIA ombudsman models.

Mr. Goldberg noted that his component is connecting with ASAP as well. His group will write questions to be included in the survey distributed at ASAP to help determine current FOIA expectations.

Mr. Morisy was not present for this portion of the meeting, and Ms. Kaminer gave an update on his component's work on his behalf. This group is scheduling ongoing meetings, Mr. Morisy is collecting pre-existing information and drafting a consolidated document that will form the basis of their work. This group works closely with the Time/Volume Subcommittee on recommendations for increased resources.

Mr. Goldberg clarified that the ASAP discussions refer to the ASAP Training Conference that will be held July 22 – 24 in DC. He explained that the Time/Volume Subcommittee intended to

collect information from FOIA stakeholders, and in particular agency officers, at the ASAP meeting. Mr. Goldberg discussed a tweaked methodology for the surveys which will rely on open-ended questions. He also discussed limitations of the Paperwork Reduction Act on surveying by Federal agencies. He clarified that this is not an ASAP survey, but that they are partnering with ASAP to gain access to as many people as possible.

Ms. Katilius followed up saying that Mr. Morisy's component met to discuss issues of increased financial support for FOIA programs. They will schedule the next meeting soon. She noted that there is a lot of overlap with the Time/Volume Subcommittee.

Ms. McCall remarked that as a result of opening her office in Oregon, she has a number of contacts with individuals running FOIA ombudsman offices around the country. She offered to share those contacts with Ms. Weth's team. She then asked what the Committee's presence will look like at the ASAP conference. Mr. Goldberg described having a table at the conference. He emphasized the need to limit the number of questions being incorporated into this survey. Ms. McCall recommended the Committee connect with panelists so they raise awareness of the table and encourage participation.

### **Records Management Subcommittee**

Records Management Subcommittee Co-Chairpersons Mr. Baron and Mr. Law presented a status update on the Subcommittee's activities. Mr. Law said the Subcommittee has met twice since the last FOIA Advisory Committee Meeting in March and that the Subcommittee will meet again in the coming week. Mr. Baron and Mr. Law met with the Federal Records Officers Network (FRON) to update it on the Committee's work and to begin a Records Management and FOIA conversation with that group. The FRON disseminated Subcommittee questions to the member base and they hope to receive that information shortly. They will meet with them again soon.

The questions posed to the FRON expanded on the Records Management Self-Assessment (RMSA). The questions related to how agencies could provide better information on where records are located, if FOIA professionals know how email is preserved at their agency, what improvements to search capabilities could be made, and if records management people and/or NARA had a role in educating FOIA professionals.

Mr. Baron discussed some observations made from surveying agency responses to the question in the Chief FOIA Officer Reports on agencies' use of technology to facilitate efficient searches. He noted a number of agencies are attempting to leverage eDiscovery software to conduct their searches. He also observed that the government still has a long way to go to prepare itself for rising volume of electronic records, particularly with regard to the Capstone email approach. Mr. Baron clarified that Capstone applies to guidance issued by the National Archives for capturing and retaining permanent emails.

Mr. Law said their Subcommittee conducted a review of agency training resources for records management and FOIA staff. Mr. Baron noted the information was derived from the Chief FOIA Officers Reports. Mr. Baron then observed that there is a lot of training available, but he personally believes that FOIA officers would benefit from a records management course designed for FOIA professionals to assist them with search.

Ms. McCall asked if they looked at ASAP training offerings. Ms. Mitchell noted that ASAP offers records management training tracts at the annual training conference. Ms. Pustay asked if NARA offers this type of training. Mr. Baron affirmed that NARA does, but noted that NARA's records management training does not offer training geared toward FOIA professionals.

Mr. Law and Mr. Baron discussed the Subcommittee's eight draft recommendations and requested input from the Committee. The draft recommendations are as follows:

- Agencies should publish enhanced documentation of their internal records management policies and practices in fulfillment of 5 USC 552 (g)
- Records management training for FOIA professionals should be made available
- NARA, OGIS, and DOJ issue best practice guidance on what constitutes an adequate search of email, including Capstone
- NARA, OGIS, and DOJ issue best practice guidance on compliance with record keeping access requirements for electronic records in the form of electronic messaging
- More complete integration of FOIA access issues into records management initiatives
- The Archivist make a request to the Council of Inspectors General on Government Integrity and Efficiency (CIGIE) to consider making an examination of access a cross-cutting project
- To ensure the Chief Data Officers (CDOs) created by the Foundations of Records Based Policy Act are aware of existing laws and regulations on FOIA and records management
- The Archivist lead a government-wide initiative to use artificial intelligence to search through government records repositories and to segregate sensitive information, including information stipulated in the FOIA exemptions

Mr. Law had mentioned that their recommendation concerning 5 USC § 552(g) may include asking DOJ to issue supplemental guidance or even a legislative fix. Ms. Semo asked what kind of legislative fix the Subcommittee envisioned. Mr. Law replied that based on his research of the legislative history, this section was added early on and had not been updated in the recent amendments. He believes that additional language clarifying what is required of agencies would standardize what is made available to researchers. Mr. Baron added that the law could be made more robust.

Ms. Pustay suggested that the Subcommittee factor in the user experience and the usability of the information into its recommendation.

Mr. Baron emphasized they would like to work with the Vision Subcommittee on the final two recommendations he mentioned. Mr. Knox recommended that they work with the Vision Subcommittee's component focusing on raising the priority of FOIA within the executive branch. Ms. Kaminer offered to invite the Records Management Subcommittee to their next meeting.

### **Time/Volume Subcommittee**

Mr. White, the Time/Volume Subcommittee Co-Chairperson, presented an update on the Subcommittee's activities. Co-Chairperson Ms. Creighton was not present at the meeting.

Mr. White reminded the Committee that they began their work with seven action items, four of which have been consolidated. Each action item is being addressed by an action team, and he stated that the leaders of these teams would present on their progress.

The first action item is to track progress on past recommendations that will continue to be addressed through OGIS's presentations at the Committee meetings. The second action item relates to analyzing complex requests. The committee received support from NARA in collecting information relating to complex request data. He noted that the data suggest that less than half of Federal agencies have seen an increase in the number of complex requests received, but of those agencies that have experienced an increase in complex requests, the number of complex requests have increased by approximately 251%. The third group is examining international models relating to high-volume case management.

Mr. Goldberg gave a brief summary of his Action Team's proposed surveys of requesters and agency officers. He restated that the survey questions have been narrowed down and they intend to collect as many responses as possible during the ASAP Conference in July. Ms. Kotler primarily wrote the questions intended for requesters and Mr. Goldberg primarily wrote the questions posed to agencies. Ms. Kotler indicated that some questions relate to the level of research an individual conducts prior to filing a FOIA request, the steps taken when there is a pending FOIA request, and what would drive a requester to a lawsuit. Mr. Goldberg described the agency questions as relating to agency points of frustration, impediments faced, and desired solutions to these problems.

Mr. Stocker asked if the survey would require people to identify themselves. Mr. Goldberg said that identifying themselves would be optional but recognized the need to have some characteristics of the agency for which the individual works. Mr. Stocker asked if they would need the survey participants to sign a release. Ms. Mitchell said she would ensure that the Executive Director of ASAP is aware of this potential need. Ms. Pustay emphasized that participants should know it is a voluntary survey and be made aware of the purpose of the survey.

Ms. Mosheim reported on the work undertaken by the International Models Action Team. She and Ms. Weth have met with Mr. Susman and Toby Mendel with the Center for Law and Democracy to identify countries with similar laws to examine. At this point, they will examine Mexico, Canada, India, Chile, Afghanistan, Argentina, and Sri Lanka. They are developing a methodology to studying these countries, with Mr. Stocker drafting a list of specific areas to examine. Mr. Stocker asked if other Subcommittees are conducting work that would benefit from and international perspective that they contact him.

Ms. Katilius spoke more on the work the Complex Request Action Team is undertaking. She is working with Ms. Weth to identify recommendations for agencies with a high volume of complex requests.

### **Past FOIA Advisory Committee Recommendations Update**

Ms. Murphy presented on the progress being made on past Committee recommendations.

Ms. Murphy stated that the Chief FOIA Officer's Technology Subcommittee has been established in response to the FOIA Advisory Committee's first recommendation. The CFO Technology Subcommittee is assessing the FOIA IT landscape to identify best practices. The Subcommittee's recommendations will be based on an agency's IT capabilities. OGIS is arranging for the Subcommittee to present before the CIO Council in July. Ms. Semo has invited the Technology Subcommittee to present at a future Committee meeting.

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 included 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." OGIS is compiling information on the responses to this question and will issue a report.

The third recommendation is to suggest the Federal Acquisition Regulation (FAR) require all agencies, when acquiring records-related information technology, to consider features that will 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. OGIS is on schedule to meet this goal by spring 2019.

The sixth recommendation was completed when OGIS published the recommendation 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 in the 2019 OGIS Annual Report for FY 2018.

There has been no progress on the fourth, fifth, and seventh recommendations. OGIS hopes to address the fifth recommendation, that OGIS conduct an assessment of the methods undertaken by agencies to prepare documents for posting on agency FOIA reading rooms, by the fourth quarter of fiscal year 2019. Regarding recommendation seven, OGIS intends to launch its effort to examine the use of appropriate performance standards in federal employee appraisal records and work plans to ensure compliance with the FOIA in fiscal year 2020.

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 forwarded a proposed red-lined version to OMB and they are awaiting OMB's reply or action.

### **Committee Comments**

Ms. Pustay provided the Committee with some updates from OIP. The summary of the annual FOIA reports for fiscal year 2018 have now been published. She provided a brief overview of some of the report's findings. This information is currently available on FOIA.gov

### **Public Comments**

There were no public comments.

## **Closing Remarks and Adjournment**

Ms. Semo announced that the next meeting will be held in the McGowan Theater on Thursday, September 5, 2019, at 10:00 am. Mr. Baron asked if there were plans for future speakers and presenters. Ms. Semo mentioned the Chief FOIA Officer's Technology Subcommittee and stressed the importance of leaving time to work at the final two meetings, but welcomed suggestions. Mr. Baron requested to hear from lawyer advocates from the public interest community discuss challenges they experience when filing lawsuits against the government.

Ms. Semo adjourned the meeting.

I certify that, to the best of my knowledge, the foregoing minutes are accurate and complete on September 5, 2019.

*S /Kirsten B. Mitchell/* \_\_\_\_\_

Kirsten B. Mitchell

Designated Federal Officer, 2018-2020 Term

*S /Alina M. Semo/* \_\_\_\_\_

Alina M. Semo

Chairperson, 2018-2020 Term

The Committee will formally consider these minutes at its September 5, 2019 meeting, and incorporate any corrections or notations in the minutes of that meeting.