



**National Archives and Records Administration (NARA)
Freedom of Information Act (FOIA) Advisory Committee
Meeting Minutes – March 5, 2020**



The FOIA Advisory Committee convened at 10 a.m. on March 5, 2020, 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 1:35 p.m.

Meeting materials are available on the Committee's website at <https://www.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, Faegre Drinker Biddle & Reath (Co-Chairperson of the Records Management Subcommittee)
- Emily Creighton, American Immigration Council (Co-Chairperson of the Time/Volume Subcommittee)
- 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)
- Abioye "Abi" Mosheim, U.S. Consumer Product Safety Commission
- Sean Moulton, Project on Government Oversight (POGO)
- Lee Steven, Cause of Action Institute
- James R. Stocker, Trinity Washington University
- Bobak "Bobby" Talebian, U.S. Department of Justice, Office of Information Policy
- Patricia Weth, U.S. National Labor Relations Board
- Bradley White, U.S. Department of Homeland Security, (Co-Chairperson of the Time/Volume Subcommittee)

Committee members on the phone:

- Kevin M. Goldberg, Digital Media Association
- Lizzette Katilius, U.S. Securities and Exchange Commission
- Chris Knox, Deloitte (Co-Chairperson of the Vision Subcommittee)
- Sarah Kotler, U.S. Department of Health and Human Services, Food and Drug Administration
- Michael Morisy, MuckRock
- Suzanne J. Piotrowski, Rutgers University School of Public Affairs and Administration

Committee members absent from the meeting:

- Thomas Susman, American Bar Association

Others present at or participating in the meeting:

- David S. Ferriero, Archivist of the United States, NARA
- Kirsten B. Mitchell, Committee's Designated Federal Officer, NARA
- Martha W. Murphy, Deputy Director, OGIS, NARA
- Jessie Kratz, National Archives Historian, OGIS Detailee, NARA

Welcome and Announcements

Archivist of the United States David S. Ferriero opened the seventh meeting of the 2018-2020 FOIA Advisory Committee by welcoming the Committee. He noted that the three subcommittees, Time/Volume, Vision, and Records Management, have nearly 20 proposed recommendations for action to improve the FOIA process and he looked forward to seeing a final package of recommendations.

Alina M. Semo, FOIA Advisory Committee Chairperson, welcomed all attending in person, by telephone, or via live stream. Before going through housekeeping rules, Ms. Semo asked Committee members to introduce themselves and noted there will be more members on the phone than usual. After introductions, Ms. Semo congratulated Bobby Talebian for being selected as the permanent Director of the Office of Information Policy of the Department of Justice.

Ms. Semo reminded everyone that the FOIA Advisory Committee reports to the Archivist of the United States and provides a forum for public discussion on FOIA issues. She encouraged public comments to be e-mailed to foia-advisory-committee@nara.gov. Ms. Semo said that at the end of the meeting, the public can comment or ask questions either in person or via the YouTube link, which is being monitored by NARA Historian Jessie Kratz who is on a part-time detail with OGIS. Ms. Semo also reminded everyone that the meeting materials are available on the FOIA Advisory Committee website, and the transcript will be made available online as soon as possible.

Ms. Semo then thanked the members of the Working Group, who will compile the recommendations into a final report. She stated their goal is to circulate a fairly final draft in advance of the May 1 meeting, and would like to use that meeting to iron out outstanding issues and take final votes on outstanding recommendations as needed.

The Committee then approved the December 5, 2019, meeting minutes.

Ms. Semo invited Kirsten Mitchell, Designated Federal Officer, to provide an abbreviated version of a presentation she gave to federal records managers that is of interest to the Committee. Ms. Mitchell then gave a brief presentation on [Assessing FOIA Compliance through the 2018 Records Management Self-Assessment](#).

Committee Discussion and Votes on Recommendations from the Records Management Subcommittee

Ms. Semo pointed out the draft recommendations can be found on the [FOIA Advisory Committee webpage](#), as well as in folders for the Committee members in McGowan Theater. Before moving to subcommittee recommendations, Ms. Semo reminded the Committee that its Charter specifically states that the objective is to study the Federal FOIA landscape and make recommendations to the Archivist of the United States and any recommendations that the committee ultimately submits to the Archivist have to be ones that the Archivist has legal authority to act on. She explained that during the 2016-2018 term, the Committee made several recommendations that ended up as best practices because the Archivist lacked authority to act on them.

Ms. Weth pointed out overlap with some of the Records Management and Time/Volume subcommittee recommendations, and asked if, as the Committee goes through the Records Management subcommittee recommendations, some of the Time/ Volume subcommittee recommendations could be incorporated. Ms. Semo replied that some can be discussed in today's meeting, but it is also something the Working Group could tackle and mentioned that Ms. Mitchell was working to bucket recommendations that have similar themes.

Ms. Semo then went through the voting procedures and noted that Ms. Mitchell will be recording the votes. Ms. Semo noted that they did not allocate specific timeframes for each of the subcommittees and thought they would let the discussion be more free flowing. She then asked Jason Baron and Ryan Law to begin with the Records Management subcommittee.

Mr. Baron provided introductory remarks and pointed to NARA's strategic goal to "make access happen" as a view shared by their subcommittee. He said the Archives is looking to the future with both the 2012 Managing Government Records Directive and the 2019 Transition to Electronic Records Memorandum jointly issued by OMB, and the idea of looking to the future is important when evaluating the recommendations of the subcommittee.

Mr. Law said his plan was to bring nine recommendations from the Records Management subcommittee to vote. He said all members of the Committee and the public have had an opportunity to read and provide feedback on them. He thanked the Committee for their feedback and thanked Mr. Baron, Ms. Semo, and Mr. Talebian for their help. He also acknowledged Kyle Douglas in the NARA's Office of the Chief Records Officer for the U.S. Government, and Wendy Couch and Ron Swecker, records management leaders in federal agencies, for their help as well.

Mr. Law outlined the procedures for voting—he will read each recommendation individually, pause to give members an opportunity to ask questions or provide feedback, and if all issues are resolved or if there are no more questions or comments, he will request a full vote on the committee for each recommendation.

Records Management Recommendation 1

Mr. Law read the recommendation: “We recommend the Archivist request that the Department of Justice, Office of Information Policy (DOJ/OIP), issue guidance to require agencies to include records management-related materials as part of agency websites and FOIA handbooks maintained pursuant to FOIA.”

Ms. Weth pointed out that there is overlap between this recommendation and one from the Time/Volume subcommittee. Ms. Creighton, Time/Volume subcommittee co-chairperson suggested that the Committee could agree to generally support the spirit of the recommendations and they would be included in a combined recommendation at a later date.

Ms. Kaminer asked if there could be an exception for certain kinds of information such as sensitive intelligence information. Mr. Baron said that is a valid point and they could certainly make a reference in this or the final document.

Mr. Law then moved to vote on recommendation one, which was seconded and passed with Mr. Talebian abstaining.

Records Management Recommendation 2

Mr. Law read the recommendation: “We recommend that the Archivist of the United States direct NARA and request that DOJ/OIP offer targeted training in selected topics in Federal records management to FOIA officers and FOIA Public Liaisons in Federal agencies, and otherwise include a FOIA module in selected records management training courses open to all Federal employees.”

The Committee discussed which agency would offer and implement the training, and what staff would receive it. Mr. White said the point is to have something consistent across all of the government so that everyone is receiving the same training. Mr. Law added that they want training targeted for FOIA professionals because FOIA staff can do their jobs better if they understand federal records management processes. Ms. Mosheim asked if DOJ/OIP offered the training would they incorporate records management into existing DOJ training. Mr. Law said it would be up to OGIS and OIP to implement.

Mr. Law then moved to vote on recommendation two, which was seconded and passed with Mr. Talebian abstaining. These minutes are amended to reflect that Committee Chairperson and OGIS Director Ms. Semo abstained from voting on specific recommendations related to OGIS and NARA.

Records Management Recommendation 3

Mr. Law read the recommendation: “We recommend that the Archivist of the United States request that DOJ/OIP provide further best practice guidance on the use of e-discovery tools to assist agencies in meeting their obligations to conduct an adequate search of electronic records, including but not limited to email in Capstone repositories.”

Mr. Law asked for questions and after hearing none moved to vote on recommendation three, which was seconded and passed with Mr. Talebian abstaining.

Records Management Recommendation 4

Mr. Law read the recommendation: “We recommend that as part of the Federal Electronic Records Modernization Initiative (FERMI), the Archivist of the United States direct NARA to incorporate and further develop the idea of public access to Federal records, including through FOIA.”

Mr. Law asked for questions and after hearing none moved to vote on recommendation four, which was seconded and passed with Mr. Talebian abstaining.

Records Management Recommendation 5

Mr. Law read the recommendation: “We recommend that the Archivist of the United States make a formal request to the Chair of the Council of the Inspectors General on Integrity and Efficiency (CIGIE) that CIGIE consider designating as a cross-cutting project or priority area regarding the issue of how agencies are doing in providing FOIA access to agency records in electronic or digital form.”

Mr. Law asked for questions and after hearing none moved to vote on recommendation five, which was seconded and passed with Mr. Talebian abstaining.

Records Management Recommendation 6

Mr. Law read the recommendation: “We recommend that the Archivist of the United States direct NARA and request that DOJ/OIP each establish a liaison with the newly created Chief Data Officer (CDO) Council, for the purpose of ensuring that CDO officials understand the importance of Federal recordkeeping and FOIA requirements and how such laws apply to the maintenance of data within agencies.”

Mr. Law asked for questions and after hearing none moved to vote on recommendation six, which was seconded and passed with Mr. Talebian abstaining. These minutes are amended to reflect that Committee Chairperson and OGIS Director Ms. Semo abstained from voting on specific recommendations related to OGIS and NARA.

Records Management Recommendation 7

Mr. Law read the recommendation: “We recommend that the Archivist of the United States work with other governmental components and industry in promoting research into using artificial intelligence (AI), including machine learning technologies, to (i) improve the ability to search through government electronic record repositories for responsive records, and (ii) segregate sensitive material in government records, including but not limited to material otherwise within the scope of existing FOIA exemptions and exclusions.”

Ms. Semo asked if OGIS would be tasked with working with other governmental components to

which Mr. Baron replied it could be OGIS or a number of other NARA offices. Ms. Creighton asked how would Artificial Intelligence determine an exemption, to which Mr. Baron replied there are technologies available although they do need human input to feed into a machine-learning algorithm.

Mr. Sean Moulton, suggested a wording change from “segregate sensitive material in government records” to “identify sensitive material in government records for potential segregation.”

Mr. Law moved to vote on recommendation seven as amended to read “identify sensitive material in government records for potential segregation including, but not limited to material otherwise within the scope of existing FOIA exemptions and exclusions,” which was seconded and passed with Mr. Talebian abstaining. These minutes are amended to reflect that Committee Chairperson and OGIS Director Ms. Semo abstained from voting on specific recommendations related to OGIS and NARA.

Records Management Recommendation 8

Mr. Law read the recommendation: “We recommend that the Archivist of the United States request that NARA/OGIS work together with DOJ/OIP to encourage agencies to work towards the goal of collecting, describing, and giving access to FOIA-released records in one or more central repositories in standardized ways, in addition to providing access on agency websites.”

Ms. Kaminer suggested the recommendation be strengthened by adding “directing” instead of “requesting.” After some Committee discussion on amending the wording, and what a central repository would entail, the Committee agreed to proceed with the language as written.

The Committee discussed how the recommendation, if passed, might affect agencies, with some noting that posting all FOIA-released records online would be a great burden to agencies in terms of staffing and technology and would be cost-prohibitive.

Mr. Law moved to vote on recommendation eight as written, which was seconded and passed with two nays and Mr. Talebian abstaining. These minutes are amended to reflect that Committee Chairperson and OGIS Director Ms. Semo abstained from voting on specific recommendations related to OGIS and NARA.

Ms. Semo said there is a general consensus to move forward with the language as written and the working group can look at it further.

Records Management Recommendation 9

Mr. Law read the recommendation: “We recommend that the Archivist of the United States request NARA/OGIS to work together with DOJ/OIP to encourage agencies to release FOIA documents to the public on their FOIA Websites, and in FOIA portals in open, machine-readable and machine-actionable formats, to the extent feasible.”

Mr. Stocker suggested the recommendation be amended to include the word “legible” since legibility is key for OCR (optical character recognition) or other technologies that recognize text.

Mr. Law moved to vote on recommendation nine as amended to include the word “legible” after “open,” which was seconded and passed with two nays and Mr. Talebian abstaining. These minutes are amended to reflect that Committee Chairperson and OGIS Director Ms. Semo abstained from voting on specific recommendations related to OGIS and NARA.

The Committee took a 15-minute break.

Committee Discussion and Votes on Recommendations from the Time/Volume Subcommittee

Mr. White noted that the Time/Volume subcommittee recommendations are not as fully polished as the Records Management recommendations and expects more of a spirited discussion on some of them. He said each recommendation will be presented by the member who drafted it and he’ll begin since he drafted recommendation one.

Time/Volume Recommendation 1

Mr. White read the recommendation: “That the Archivist request that agencies conduct a comprehensive review of their technological and staffing capabilities and requirements within two years to identify the resources needed to respond to their current FOIA needs and the anticipated FOIA demands of the future. Further recommend that the Archivist request that agencies apply the results of their comprehensive reviews to create agency-specific strategic plans that address expected increases in the number of FOIA requests received, as well as high-volume e-discovery style document reviews.”

After Committee discussion about the extent of the Archivist’s authority, Mr. Talebian suggested the recommendation be a best practice because it is something that aligns with the guidance already out there and is something that they [OIP] would promote that agencies should do as a best practice every two years, some level of this review. The Committee agreed to move forward with the recommendation as a best practice.

Time/Volume Recommendation 6

Ms. Semo suggested the Committee move to recommendation six. Ms. Creighton read the recommendation: “The Archivist recommends OGIS undertake an assessment of information agencies make publicly available on their website to facilitate the FOIA filing process. After the assessment, OGIS will recommend best practices. The assessment will examine how agencies describe the process for filing a FOIA request on their websites, the viability of agencies providing expected wait times for complex and simple requests, and the best contact information for an agency representative that can answer questions prior to the filing of the FOIA request.”

The Committee then discussed the difference between simple and complex request wait times and agencies making that information available to the public.

Mr. White then moved to vote on recommendation six, which was seconded and passed with Mr. Talebian abstaining. These minutes are amended to reflect that Committee Chairperson and

OGIS Director Ms. Semo abstained from voting on specific recommendations related to OGIS and NARA.

Time/Volume Recommendation 2

Ms. Weth read the recommendation: “That OIP collect information, as part of each agency’s Chief FOIA Officer (CFO) Report, regarding the Standard Operating Procedure (SOP) for the processing of FOIA requests and the FOIA webpage.”

The Committee then discussed updating the wording to ensure the Committee has authority to make the recommendation and clarify where the SOPs would be posted.

Ms. Creighton moved to vote on the spirit of recommendation two as discussed and said the Committee can vote again on the wordsmithed language at the May 1 meeting. The motion was seconded and passed with Mr. Talebian abstaining.

Time/Volume Recommendation 3

Ms. Kaminer said an older version of recommendation three was included in the packet, and read the updated recommendation: “That the Archivist direct OGIS to undertake a study of agencies’ FOIA training requirements and content, including an evaluation of mandatory training, onboarding, or supplemental training, firstline supervisor training, and subject-specific training for subject matter experts and technology professionals. The study should also include an assessment of funding sources and allocations for the identified training. The committee further recommends that OGIS submit the results of its assessment and any recommendations to Congress and the President in accordance with 5 USC Section 552 (h) (5).”

The Committee discussed the logistics of the training. Mr. Baron said he supports training and this might be a good recommendation to combine with a Records Management subcommittee recommendation, and also pointed out a typo in the USC code citation. After additional discussion on OIP’s and OGIS’s roles in the training, the Committee agreed to move on by voting on the spirit of the recommendation and a revised version will be voted on in the May 1 meeting.

Ms. Kaminer moved to vote on the spirit of recommendation three which was seconded and passed. These minutes are amended to reflect that Committee Chairperson and OGIS Director Ms. Semo abstained from voting on specific recommendations related to OGIS and NARA.

Time/Volume Recommendation 4

James Stocker read the recommendation: “That agencies identify common categories of documents requested frequently under the FOIA and/or Privacy Act by or on behalf of individuals seeking records about themselves, and establish alternative processes for providing access to these documents to requesters in a more efficient manner than the FOIA.”

Mr. White suggested amending the language to read that agencies “look into” establishing these matters rather than flat out requiring or attempting to require that the agencies do so because there will be some categories of records where this may not be feasible such as Alien Files at US

Citizenship and Immigration Services which contain more than just the information provided by the individual, such as law enforcement information. The Committee then discussed how technology could be used for more complicated types of record requests and how changes on the records creation process could ultimately make records more accessible.

Ms. Semo noted that the Committee has passed the 1:00 end time and solicited Committee members' feedback on how to proceed and suggested having public comment online. Alex Howard from the audience requested the Committee stick to public comment at the end of the meeting noting that this is a public meeting and there should be public comment. Ms. Semo said the Committee would get through the remainder of the Time/Volume subcommittee recommendations and have 10 minutes of public comment at the end of the meeting.

The Committee resumed its discussion of recommendation four, which Ms. Creighton asked to be voted on in spirit. Mr. Moulton suggested "seek to" rather than "look into." Mr. Stocker read the amended recommendation: "Recommend that the Archivist of the United States requests that OGIS and OIP request that agencies identify common categories of documents requested frequently under the FOIA and/or Privacy Act by or on behalf of individuals seeking records about themselves, and seek to establish alternative processes for providing access to these documents to requesters in a more efficient manner than the FOIA."

Mr. Stocker moved to vote on the amended version of recommendation four which was seconded and passed with Mr. Talebian abstaining. It is unclear whether Committee members believed they were voting on the recommendation in spirit.

Time/Volume Recommendation 5

Ms. Mosheim read the recommendation: "A. Recommend that the Archivist address agencies' need to provide for the dissemination of information outside of the FOIA and ensure that the programs that provide such information dissemination are robust."

"B. Consistent with the National Archives and Records Administration's M-19-21 Memorandum which directs agencies to ensure that all Federal records are created, retained and managed in electronic formats, with appropriate metadata, by December 31, 2022, recommend that that Archivist address agencies' need to provide these records electronically, developing online databases where members of the public may access commonly requested types of documents that go to the heart of the agency's mission, and providing secure online databases where that information contains personally identifiable information or other sensitive information."

Mr. Baron said the A, B structure was complicated and confusing, and requested a simplification. Ms. Mosheim said the Committee could vote on the spirit and rework the language later.

Ms. Semo asked for a motion, which was seconded and the Committee passed the spirit of recommendation five with Mr. Talebian abstaining. These minutes are amended to reflect that Committee Chairperson and OGIS Director Ms. Semo abstained from voting on specific recommendations related to OGIS and NARA.

Public Comments

Ms. Semo asked if anyone in the room or on the live stream had any questions or comments. From the room, Alex Howard from the Digital Democracy Project at the Demand Progress and Education Fund thanked the Committee members for their service and noted it has never been more important to have open discussion of these issues. He said he was glad to see such commitment because there are commitments in past National Action Plans for Open Government that are gone that were developed and were not something that was mandated.

Mr. Howard pointed to the National Action Plan 2.0's mandate that the government will establish a committee comprised of government and non-government members to foster dialogue between the administration and the requester community, solicit public comments, and develop consensus recommendations for improving FOIA administration and proactive disclosures. He noted that it is not legally binding, and the Committee is not constrained by anything but what it defines itself, and he encouraged the Committee to take that opportunity to make the most of these discussions.

Mr. Howard said that while he is encouraged by how responsive and specific these recommendations are he is also dismayed because the Committee is still discussing a centralized repository when there is already DATA.gov; about the difficulties of putting things online when 11 percent of agencies have no procedures for using FOIA reading rooms as defined by the eFOIA Act back in 1996; and discussing the difficulties of pushing up machine-readable data on agency websites and making it searchable, accessible, and findable by tagging it with metadata not just through FOIA.gov or USA.gov or DATA.gov but through Google's or Bing's search engines.

He encouraged the Committee to think big, and expressed his gratitude that the Committee provides the opportunity for public comment as part of its mandate because of a massively disaffected public that does not trust government as evidenced in the YouTube comments.

He also encouraged the Committee to be more specific and pointed in some of these recommendations. He asked why hasn't OIP put its response to the Senate online from the questions they asked last year; why isn't the Chief FOIA Officers Council's report promulgated and pushed up through Justice Department channels; and why isn't the Committee holding itself to account for promulgating these reports through these channels? He said through engaging the public with these tools and the recommendations could be pretty straightforward.

Mr. Howard said there seems to be a direct correlation between the increase in FOIA lawsuits and the lack of FOIA responsiveness from agencies, and the Committee could tell agencies to make sure to respond to every FOIA request within 20 days by acknowledging it; not necessarily giving them documents—that is what the requester community asks. He asked why isn't that in these recommendations; why is the Committee not recommending that the Office of Management and Budget sets and leads on FOIA; and why is the Committee not recommending that the House provide more oversight and resources where capacity is needed?

Mr. Howard said that he asks these questions not to be intentionally provocative but to suggest that there might be some limit here that the Committee is setting in its recommendations and their scope. He said that there is no law here that says the Committee has to exist, and the only

law they need to abide by is the FACA which is something that the Committee observes and really cares about.

Mr. Howard ended by saying the National Archives continues to be a national leader in making its public meetings accessible to the public through technology, including ensuring the meeting information is online, live-streaming the meeting with someone monitoring the chat, and taking public questions. He said it's a model for the rest of the U.S. government and that he protested taking only public comments online because it has never been more important that the Committee leads on public access issues.

Ms. Semo thanked Mr. Howard for his comments and asked if there were any comments from the live-stream. Ms. Kratz said she believed that one commenter is referring to the Records Management subcommittee proposal number eight, and the question is: "Without specific wording that the standard is the minimum for access, is there a danger of hampering agencies who will assume they are prevented from providing additional public access despite their wish to do so? Is this not contrary to the public good?"

Mr. Baron replied that their subcommittee certainly would want to encourage agencies to maximize the elements of standardized data; not minimize it. There was a comment earlier and the subcommittee will take that into account.

Closing Remarks and Adjournment

Ms. Semo then asked the Committee on how they wanted to proceed since the Vision subcommittee didn't have a chance to present and suggested the possibility of the virtual meeting. After Committee discussion, Ms. Semo said she will build in additional time for the May 1 meeting to both address the Vision subcommittee recommendations and the progress of the Working Group.

Mr. Baron said he wanted to put on the public record that the Vision subcommittee has been thinking big about proposals for legislation and resources and he believes that the Vision subcommittee should think big about a few more elements that could be part of a set of recommendations for the final document. He continued that one key that he wanted to put on the record is he believes that the Archivist should work with the White House, OMB, and DOJ to ensure that NARA is involved in the ongoing federal data strategy discussions at the highest level of government and that FOIA and Federal Records Act issues are considered in the mix. He ended by saying that the Committee should align itself with the highest level plans, agendas, and federal data strategies that are out there in various documents, and should think for the next five to ten years as to how FOIA and how federal recordkeeping can be harmonized with an attention paid to open government and open data.

Ms. Semo thanked Mr. Baron, asked for additional comments, and after hearing none adjourned the meeting at 1:35 p.m.

I certify that, to the best of my knowledge, the foregoing minutes are accurate and complete on May 1, 2020.

S /Kirsten B. Mitchell/

Kirsten B. Mitchell

Designated Federal Officer

2018-2020 Term

S /Alina M. Semo/

Alina M. Semo

Chairperson

2018-2020 Term