



**National Archives and Records Administration (NARA)
Freedom of Information Act (FOIA) Advisory Committee
Meeting Minutes – May 1, 2020**



The FOIA Advisory Committee convened at 10 a.m. on May 1, 2020, virtually.

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 1:00 p.m.

Meeting materials are available on the Committee's website at <https://archives.gov/ogis/foia-advisory-committee/2018-2020-term>

Committee members present at the virtual meeting:

- 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)
- Kevin M. Goldberg, Digital Media Association
- James R. Jacobs, Stanford University Libraries
- Joan Kaminer, U.S. Environmental Protection Agency (Co-Chairperson of the Vision Subcommittee)
- 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
- 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)
- Michael Morisy, MuckRock
- Suzanne J. Piotrowski, Rutgers University School of Public Affairs and Administration
- 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

Committee members absent from the meeting:

- Bradley White, U.S. Department of Homeland Security, (Co-Chairperson of the Time/Volume Subcommittee)

Others present or participating in the virtual 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
- Lauren Ruben, WebEx Operator

Welcome and Announcements

Archivist of the United States David S. Ferriero welcomed everyone to the first ever virtual meeting of the FOIA Advisory Committee. He noted that the inscription, "What is Past is Prologue," on one of the statues outside the National Archives Building speaks both to National Archives records being used to learn from the past in creating a better future, and also a reminder of the important work of FOIA requesters and professionals across the government who work to ensure that records of the public interest are released to the extent that they can be to inform citizens, hold those in power accountable, and to help document these extraordinary times.

He said some of the records released under FOIA during these times will become an important part of the nation's history, and the public health emergency caused by the Coronavirus pandemic is putting unprecedented stress on agency FOIA operations, processes, and staff.

Mr. Ferriero went on to say he understands that since the abrupt shift to full time telework shortly after the FOIA Advisory Committee's March 5 meeting, a small working group has met weekly to write the outline of a final report, while two of the three subcommittees have met to fine tune recommendations to be discussed and voted on today. He applauded the Committee's continued work, quick shift to virtual work, and commitment to completing the work of this third term of the FOIA Advisory Committee. He concluded by saying he looks forward to receiving the final recommendations at the June 4 meeting and thanked the entire FOIA community for everything they do in these challenging days.

Alina M. Semo, FOIA Advisory Committee Chairperson, welcomed everyone to the first virtual meeting of the FOIA Advisory Committee and the eighth meeting of the 2018-2020 term. She noted that during this unprecedented time, the National Archives has temporarily closed nearly all of its facilities and canceled all of its public meetings at least until the end of June so the final meeting on June 4 will also be held virtually.

Ms. Semo thanked the Committee for its work, and in particular wanted to recognize the hard work of the Committee's Designated Federal Officer, Kirsten Mitchell.

Ms. Semo explained the chat function and requested that Committee members refrain from including any comments of substance in the chat to comply with Federal Advisory Committee Act requirements.

Ms. Semo then 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 pointed out that meeting materials are available on the [2018-2020 FOIA Advisory Committee webpage](#), including committee members' biographies and committee documents. Ms. Semo added that to promote openness, transparency, and public engagement, committee updates and information are available on the FOIA Advisory Committee website, blog, and on Twitter at FOIA_ Ombuds.

Ms. Semo reported they have posted the agenda for today's meeting on the FOIA Advisory Committee's website, and the goal for today is to propose, discuss, and vote on recommendations from the Vision subcommittee and the Time/Volume subcommittee.

Ms. Semo then thanked the members of the Working Group, who are working to compile recommendations into a final report. She stated their goal is to circulate a final draft in advance of the final meeting on June 4, and use the last meeting to iron out any outstanding issues and take any final votes, if needed.

Ms. Semo turned to the transcript of the March 5 meeting and noted it did not reflect that she abstained from voting on certain recommendations that the Committee passed. She amended the minutes to reflect that she abstained from voting on specific recommendations related to OGIS and NARA that were voted on during the March 5 meeting.

Ms. Semo asked if anyone had any objections to the March 5, 2020, meeting minutes. Mr. Stocker asked for clarification whether the Time/Volume recommendation number four had been passed entirely or in spirit. Ms. Semo said that the transcript and YouTube video were unclear and moving forward they will make sure everyone knows exactly what the Committee is voting on.

The Committee approved the March 5, 2020, meeting minutes.

Ms. Semo explained the voting procedures adding that Ms. Mitchell, the Designated Federal Officer, will display the [PowerPoint](#) slides with the text of the recommendations, and record and announce the votes. Ms. Semo then turned the meeting over to the Vision subcommittee.

Committee Discussion and Votes on Recommendations from the Vision Subcommittee

Vision Recommendation 1

Mr. Morisy read the recommendation: "The Archivist of United States requests that the Chief FOIA Officers (CFO) Council create a committee for cross-agency collaboration and innovation to: Research and propose a cross-agency grant program and other revenue resources for FOIA programs; Review and promote initiatives for clear career trajectories for FOIA professionals, building on the Government Information Specialist (GIS) job series and in coordination with existing agency efforts; and Explore and recommend models to align agency resources with transparency commitment."

After Mr. Morisy explained the rationale behind the recommendation, Mr. Susman moved to

vote on Vision Recommendation one, which was seconded and passed with Mr. Talebian and Ms. Semo abstaining.

Vision Recommendation 2A

Ms. Weth read the recommendation: “The Archivist of the United States proposes that the Chief FOIA Officers (CFO) Council recommend that agency leadership annually issue a memo reminding the workforce of its responsibilities and obligations under the FOIA and encouraging the workforce to contact the agency’s FOIA Officer for assistance with the FOIA process.”

Ms. Weth then moved to vote on Vision Recommendation two, which was seconded and passed with Mr. Talebian and Ms. Semo abstaining.

Vision Recommendation 2B

Ms. Piotrowski introduced the recommendation: “The Archivist of the United States directs OGIS and requests that DOJ/OIP assist agencies in establishing briefings for senior leaders during transition to a new administration or any change in senior leadership, which provide a thorough understanding of FOIA obligations/expectations, agency FOIA process, agency FOIA resources, and records management. OGIS and DOJ/OIP may provide a senior leadership FOIA training module, provide a FOIA training template with basic information on the FOIA, including important topics to cover and/or host a FOIA roundtable for senior leadership with speakers from the top performing agencies and the requester community.”

Ms. Weth moved to vote on Vision Recommendation 2B, which was seconded and passed with Mr. Talebian and Ms. Semo abstaining.

Vision Recommendation 2C

Ms. Piotrowski introduced the recommendation: “The Archivist of the United States directs NARA/OGIS and requests that DOJ/OIP examine the FOIA performance measures used in their Agency Performance Plans and Reports. The Subcommittee further recommends OGIS submit the results of its assessment and any recommendations to Congress and the President in accordance with 5 U.S.C. § 552 (h)(5).”

Ms. Semo asked if the second sentence should be changed from “Subcommittee” to “Committee.” Mr. Knox asked if making the language consistent is something the Working Group would do and Mr. Moulton said the Working Group had been making changes in the text of the report but not to actual passed recommendation text. Ms. Weth said in this instance the text should be changed to Committee.

The Committee then discussed strengthening and clarifying the language ensuring that FOIA performance measures are used in agency performance plans and reports. Ms. Weth agreed to wordsmith the language based on the discussion and moved that the recommendation be voted on in spirit which was seconded and passed with Mr. Talebian and Ms. Semo abstaining.

Vision Recommendation 3A

Mr. Moulton introduced the recommendation: “We recommend Congress engage in more regular and robust oversight of FOIA and the long-standing problems with its implementation. We encourage Congress to hold more hearings, establish a more regular stream of communication and inquiries to agencies around FOIA issues, and strengthen the Office of Government Information Services with clearer authority and expanded resources.”

Mr. Goldberg suggested amending the language to read, “We encourage Congress to hold more hearings, establish a more regular *and coordinated* stream of communication and inquiries to agencies around FOIA issues.”

Mr. Jacobs suggested adding into the rationale a description of which committees of Congress have jurisdiction over FOIA.

Mr. Law asked if the Committee is requesting directly to Congress that they take this action or are requesting the Archivist of the United States ask Congress to take the action. Mr. Moulton replied that the Working Group will craft an introduction to the full report that includes language that explains that these recommendations are being delivered to the Archivist and that for any recommendations that require action by someone outside of the National Archives, the Committee expects the Archivist to convey them to those parties or those entities.

Ms. Katilius asked if there was one problem or multiple problems to which Mr. Moulton replied there are many and he would add some explanatory text to the rationale section.

Mr. Moulton moved to vote on the amended Vision Recommendation 3A adding the language “and coordinated,” which was seconded and passed with Mr. Talebian and Mr. Semo abstaining.

Vision Recommendation 3B

Mr. Moulton read the recommendation: “We recommend Congress directly address the issue of funding for FOIA offices and ensure that agencies receive and commit sufficient dedicated resources to meet their legal obligations to respond to FOIA requests in a timely manner both today and in the future.”

Mr. Law moved to vote on Vision Recommendation 3B, which was seconded and passed with Mr. Talebian and Ms. Semo abstaining.

Vision Recommendation 3C

Mr. Moulton introduced the recommendation: “We recommend Congress expand the Freedom of Information Act law to include new statutory requirements for the federal legislative and judicial branches to establish processes through which individuals can officially request records. The new provisions should mirror those in place for the executive branch establishing clear proactive disclosure requirements, clear categories of covered and excluded records, exemptions for withholding, an appeals process, and the right to judicial review.”

Mr. Susman noted that Congress has always been very supportive of transparency of the executive branch and cautioned losing congressional support for oversight and strengthening of FOIA, and that it's not under the purview of the Committee.

Mr. Goldberg added the recommendation would not improve access to judicial documents, access to which is constitutional. Mr. Stocker encouraged the Committee to specifically think about what problem the recommendation is trying to solve. Mr. Steven spoke in favor of the recommendation, noting that he has observed some federal agency records that involve Congress are taken out of the FOIA process by being considered congressional records and thus not subject to FOIA.

Mr. Baron pointed out that in the U.S. Code, the definition of a federal agency is any executive agency or any establishment of the legislative and judicial branch of the government except for the Supreme Court, the Senate, the House, and the Architect of the Capitol, and with that in mind, possibly the next term of this Committee could craft a proposal that attempts to harmonize the FOIA with the Federal Records Act in a way that would allow for other legislative entities, such as the Government Accountability Office or the Library of Congress, as being within the scope of the FOIA.

Ms. Semo asked if the general consensus is this issue should be recommended to the next term of the Committee to which the Committee agreed, and Mr. Moulton withdrew the recommendation.

The Committee took a 15-minute break.

Vision Recommendation 4

Mr. Baron read the recommendation, "The Archivist of the United States should continue to take a leadership role in ensuring that ongoing and future federal data strategies incorporate existing FOIA access and federal recordkeeping policies."

Mr. Susman moved to vote on Vision Recommendation 4, which was seconded and passed with Mr. Talebian and Ms. Semo abstaining.

Vision Recommendation 2C

Ms. Weth reintroduced a revised version of Vision Recommendation 2C, the original of which the Committee approved in spirit before the break. Ms. Weth read the revised Vision Recommendation 2C; "The Archivist of the United States directs NARA/OGIS and requests that DOJ/OIP examine the FOIA performance measures used in the Agency Performance Plans and Reports to encourage agencies to include FOIA in their performance plans. The Committee further recommends OGIS submit the results of its assessment and any recommendations to Congress and the President in accordance with 5 U.S.C. § 552 (h)(5)."

Ms. Weth moved to vote on Vision Recommendation 2C, which was seconded and passed with Mr. Talebian and Ms. Semo abstaining.

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

Ms. Semo noted that she was going to skip Time/Volume recommendation 1 because it was passed as a best practice during the last meeting.

Time/Volume Recommendation 2

Ms. Weth introduced the recommendation: “That the Archivist requests that DOJ/OIP collect information as part of each agency’s Chief FOIA Officer (CFO) Report regarding 1) the Standard Operating Procedures (SOPs) for the processing of FOIA requests; and 2) the FOIA webpage. Potential topics to be covered include the frequency of updates to the SOP and FOIA webpage, types of agency resources available on the FOIA webpage, such as the SOP and FOIA manual, and information available on the FOIA webpage to assist requesters in understanding the FOIA process.”

Ms. Weth moved to vote on Time/Volume Recommendation 2, which was seconded and passed with Mr. Talebian abstaining.

Time/Volume Recommendation 3

Ms. Kaminer introduced the recommendation: “Request that OIP issue guidance requesting agencies to provide annual mandatory FOIA training to all agency employees, as well as provide FOIA training to all new agency employees and contractors onboarding with an agency, including program-specific training if applicable. Further, direct OGIS and request OIP to undertake a study of agencies’ current FOIA training requirements and content. [The study may include an evaluation of current agency requirements for mandatory training, onboarding and supplemental training, first-line supervisor training, and program-specific training for subject matter experts and technology professionals.] Further request that OGIS ask Congress to support this recommendation by providing [a line-item] appropriation for agency FOIA training costs.”

The Committee then discussed whether the bracketed text should be included and came to a consensus that it should be removed from the text of the recommendation and added to the rationale section.

Ms. Kaminer moved to vote on Time/Volume Recommendation 3 with the bracketed language removed, which was seconded and passed with Mr. Talebian and Ms. Semo abstaining.

Time/Volume Recommendation 4

Mr. Stocker read the recommendation, “Recommend that the Archivist request 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. Law moved to vote on Time/Volume Recommendation 4, which was seconded and passed with Mr. Talebian and Ms. Semo abstaining.

Time/Volume Recommendation 5

Ms. Mosheim introduced 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. In support of 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 the 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. Susman moved to vote on Time/Volume Recommendation 5, which was seconded and passed with Mr. Talebian and Ms. Semo abstaining.

Comments from the Working Group on the Draft Final Report

Mr. Moulton presented the Working Group’s outline for the final report. He reported they took some of the structure from the previous term’s report, the idea executive summary and introduction, but then organized the recommendations by the audience to whom the recommendations are directed rather than by subcommittee. He noted the Working Group has not yet attempted to merge any recommendations that overlap. He noted the rest of the report is pretty standard and asked for questions or comments.

Ms. Semo noted the Working Group is hoping to have the draft report to the Committee and made public by mid-May.

Public Comments

Ms. Semo asked if anyone on the phone had any questions or comments. Michael Binder from the Air Force Declassification Office spoke as a member of the public. He noted there is a lot of talk about the application of technology with regard to FOIA review, and there are other government organizations that do the same work and yet there is no way for the individual agencies to know what each other is doing because there is no central coordinating office. Mr. Binder recommended that if NARA is eager for agencies to apply technology, NARA should serve the function of being that central coordinating office for that technology development.

Ms. Semo asked if there were any other comments by phone or chat. Ms. Kratz read a comment from Michael Heiss who asked whether, in regards to Vision recommendation 2A, there is a sample memo.

Ms. Mitchell replied that he should stay tuned to the OGIS blog and the final report and

recommendations, which will be shared publicly.

Mr. Moulton replied to Mr. Binder's comment by saying he has had subcommittee conversations in which they wanted to see the FOIA Chief Officers Council step in and play the role of centralizing. Mr. Baron added that they are recommending that the Archivist, OGIS, and DOJ/OIP adopt new technologies that are available but also look to the AI future, and recommend looking at the final report when it is publicly available for those kinds of recommendations.

Closing Remarks and Adjournment

Ms. Semo noted the next meeting will be held on Thursday, June 4, 2020, at 10 a.m. and will be virtual. She reminded everyone to check the OGIS website for the Eventbrite registration which will close a couple days ahead of time to ensure link registrations are sent out. She again thanked everyone for joining today under these unprecedented circumstances and hoped that everyone and their families remain safe, healthy, and resilient.

Ms. Semo adjourned the meeting at 1:00 p.m.

I certify that, to the best of my knowledge, the foregoing minutes are accurate and complete on [May 28, 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