

National Archives and Records Administration

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Freedom of Information Act (FOIA) Advisory Committee Meeting Transcript

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DEBRA STEIDEL WALL: Morning, I'm Debra Wall, Deputy Archivist of the United States. Welcome to the National Archives and Records Administration and this sixth meeting of the 2018 – 2020 term of the Freedom of Information Act Advisory Committee. Whether here in McGowan, on the stage or audience or joining us on our YouTube channel, we're pleased you're able to join us. David, who usually welcomes the committee and public, sends his regards. He's at the christening of the aircraft carrier *USS John F. Kennedy* today. And that's particularly special for him because he served as a Navy Hospital corpsman during the Vietnam War.

President Kennedy's term in Congress occurred before the Freedom of Information Act but recognized openness. In a speech in 1961, President Kennedy said the very word secrecy is repugnant in a free and open society. We are as a people inherently and historically opposed to a secret society, secret oaths, and secret proceedings. Nearly 60 years later, President Kennedy's words are manifested in the important and transparent work of this committee. Earlier this fall the committee began first discussions of proposed recommendation, and I understand today's meeting will focus on continued discussion and deliberation about the possible recommendations.

Committee members, thank you for your important work. It's gratifying to see collaboration among professionals from both sides of the FOIA process—agencies and requesters—and your shared vision of making the FOIA process work better for all.

I'll turn the meeting over to Committee Chairperson Alina Semo now. Thank you.

ALINA M. SEMO: Thank you Deb. Good morning, as Director of the Office of Government Information Service, OGIS, and this committee's chair person, it is my pleasure to welcome everyone to McGowan Theater and the National Archives and Records Administration for the sixth meeting of the 2018-2020 term of the FOIA Advisory Committee, whether in person, telephone, or via live stream. Shortly I'll go through basic housekeeping rules, review the agenda, and set expectations for today's meeting.

First, we have not done this for a while, so I decided to switch things up and keep everyone on their toes. I would like to give the committee members an opportunity to introduce

themselves. Those on the phone with us, or here at the table. Let's start with the folks on the phone, and that way we can check in and make sure you're all there. Suzanne J. Piotrowski?

SUZANNE PIOTROWSKI: Yes. Hi, this is Suzanne, can you hear me?

ALINA M. SEMO: Yes, we can hear you. Can you introduce yourself and your affiliation?

SUZANNE PIOTROWSKI: This is Suzanne Piotrowski and I'm at Rutgers in Newark. I'm an Associate Professor and the Director of the Governance Center, and I do a lot of research on transparency, open government, and FOIA issues.

ALINA M. SEMO: Great, thank you Suzanne. Patricia, are you with us?

PATRICIA WETH: Yes, good morning, this is Patricia Weth, and I'm Deputy Assistant General Counsel for the FOIA branch at National Labor Relations Board.

ALINA M. SEMO: Okay, anyone else on the phone? By chance, do we have Chris Knox? I believe Chris is going to be joining us later by phone. Hopefully he'll chime in when he's there. Let's hear from all of those of you here in person, I'll start with the folks on my right. I'm looking at Ryan Law. If you could introduce yourself that would be great.

RYAN LAW: My name is Ryan Law, I'm the Deputy Assistant Secretary for Privacy, Transparency, and Records at the United States Department of Treasury.

JASON R. BARON: I'm Jason Baron and I work at Drinker Biddle. I'm the former Director of Litigation at the National Archives.

JAMES R. JACOBS: James Jacobs, I'm a Government Information Librarian at Stanford University.

JOAN KAMINER: Joan Kaminer, attorney-adviser in the General Law Office Information Law Practice Group at the Environmental Protection Agency.

MICHAEL MORISY: Michael Morisy, Chief Executive and co-founder of MuckRock.

TOM SUSMAN: Tom Susman. Half of my time at the Government Affairs Office of the American Bar Association and the other half working on FOIA issues pro bono, like this.

BOBBY TALEBIAN: Bobby Talebian, Acting Director of the Office of Information Policy at the Department of Justice.

KIRSTEN MITCHELL: Kirsten Mitchell—I'm not a member of the committee but the

committee's Designated Federal Officer.

SEAN MOULTON: Sean Moulton, Senior Policy Analyst, Project on Government Oversight.

SARAH KOTLER: I'm Sarah Kotler, I'm the Director of the FOIA program at the Food and Drug Administration.

JAMES R. STOCKER: James Stocker, associate professor at Trinity Washington University and I'm the representative of historians and historical organizations.

LEE STEVEN: Lee Steven, I work with Cause of Action Institute.

ABIOYE MOSHEIM: Abioye Mosheim, I'm Assistant General Counsel for FOIA and Privacy at the Consumer Product Safety Commission.

EMILY CREIGHTON: Emily Creighton, Directing Attorney of Transparent at the American Immigration Council.

BRADLEY WHITE: I'm Bradley White Senior Director of FOIA Litigation, Appeals, and Policy at the Department of Homeland Security.

ALINA M. SEMO: Great job, everyone. We didn't even practice that. Good job. I want to note committee members Kevin Goldberg and Lizzette Katilius are not able to make the meeting. Chris Knox hopefully will join us later and chime in. I'll work to check with Suzanne and Patricia on the phone. If I forget please remind me and speak up if you have concerns or questions.

Now I would like to have a brief break to pass on a few messages from our sponsors NARA AV team. And, an important reminder to make sure to identify yourself by name and affiliation whenever you speak during the meeting. This helps tremendously with the transcript and minutes both of which are required by the Federal Advisory Committee Act as Kirsten is always reminding me.

Also, please keep in mind there will be slight delays between the time members on the telephone speak and when the microphones in the room are turned back on. This ensures that the live stream captures all audio. I am very guilty of this. I always forget but try to remember. And I would like to recognize the contributions of NARA's AV team who are the behind the scenes people who do a lot of work to make these come together and work so smoothly—Jamie Atkinson, Julie Reid, Jason Winston, Alexis VanDyke, Brian Cipperly, and I apologize for mispronouncing. A big thank you to all of you for ensuring that meetings run smoothly and that the NARA YouTube channel captures all of the committee's activities. We really appreciate it.

At this time I would like to welcome two new members to the committee and bid farewell to another. I would like to welcome Bobby Talebian to my right who is currently the Acting Director Office of Information Policy at the U.S. Department of Justice, prior to being named Director, Bobby was Acting Chief of Staff—there's a lot of acting—and head of compliance efforts at OIP. Bobby spent three years adjudicating administrative appeals for DOJ. Welcome, Bobby.

BOBBY TALEBIAN: Thank you.

ALINA M. SEMO: We're really glad you're here. As Kirsten noted in her email to committee members earlier this week we had to bid farewell to Ginger McCall. If you're watching Ginger, hello, we miss you. Ginger most recently served as public records advocate for the state of Oregon. She has returned to the DC area and joined the Federal Emergency Management Agency but unfortunately she was unable to secure approval from FEMA to continue serving on the committee this term. We will certainly miss Ginger a lot. As many of you know she served on the committee as both a non-government and government member. She was a key player shepherding the report of the 2016-2018 committee to its completion. So, we appreciate all of her work. Thank you, again, Ginger.

I would like to welcome Sean Moulton to my left. Senior Policy Analyst at the Government Oversight, Project on Government Oversight (POGO). The Archivist of the United States David Ferriero appointed Sean on Wednesday to serve out Ginger's term through 2020. Sean has many years of experience working on government efforts, accountability issues rather. He led open government efforts at the Center for Effective Government for 13 years before joining POGO. He's spoken in government issues and has appeared on C-SPAN, NPR, ABC, NBC, and has been quoted in *The New York Times*—this is all true? Oh, and the *Washington Post* and other major news publications. But most importantly Sean is a prior committee member and has already hit the ground running with what transpired thus far in the third term of the committee. So, welcome, Sean, and many, many thanks for agreeing to step in. And he has already volunteered to serve on all three subcommittees. I'm kidding, I'm kidding. [Laughter]

He's thinking what to do. A few additional reminders—as most of you know FOIA Advisory Committee which reports to the Archivist of the United States provides a forum of public discussion of FOIA issues and offers members of the public the opportunity to provide feedback and ideas for improving the FOIA process. We encourage public comments, suggestions, and feedback that you may submit at any time by e-mailing foia-advisory-committee@nara.gov. At the end of today's meeting we have time for public comments and look forward to hearing from any non-committee members who have thoughts and comments to share. We're also monitoring the live streams so if you have any comments you may submit them and we'll read them out loud during the public comment period. To promote openness and public engagement, we post information to our website, our blog,

and on Twitter @FOIAOmbuds. The URLs are usually posed on slides behind me. Doesn't appear they are today. Stay up to date on the latest OGIS and the FOIA Advisory Committee's latest news, activities, and events.

A reminder, we will make the video, transcript, and meeting material available on the committee's web page as soon as possible. Information about the committee including member's biographies and committee documents are available on the FOIA Advisory Committee webpage on the OGIS website. I ask you to join me in welcoming our NARA colleague Jessie Kratz who will be monitoring the live stream on the NARA YouTube channel. Jessie wave to everyone. She will also read out questions and comments during the public comment period. Jessie is the National Archives Historian and established and manages the National Archives History Office dedicated to preserving the history of our agency. Jessie is joining us on a part time basis to assist Kirsten as Designated Federal Officer. Did I say that correctly? As part of her day job preserving NARA's history, Jessie is very much interested in learning about OGIS and its activities—at least that is what she told us—we're grateful for her willingness to help out and she has already helped a great deal. Thank you again, Jessie.

Next, some more housekeeping we need to approve the minutes from the last meeting which Kirsten sent around by e-mail Wednesday. We have gotten a few comments which we have incorporated. Are there any other comments the members need to bring up at this time? I'm seeing a lot of no, nods. Okay. And Suzanne and Patricia, you're good on the phone?

SUZANNE PIOTROWSKI: Yes.

PATRICIA WETH: Yes.

ALINA M. SEMO: Okay. Since there are no objections, Kirsten and I will certify the minutes later today to be true, complete, and accurate which we're required to do under the Federal Advisory Committee Act within 90 days of last meeting, so I think we're right at that juncture. I need a motion to approve the minutes.

JAMES R. JACOBS: So moved.

ALINA M. SEMO: Thank you. I never need a second but I'm always happy to take one and Tom is always my second. [Laughter] All present in person in favor?

[Chorus of ayes]

ALINA M. SEMO: Those on the phone in favor?

SUZANNE PIOTROWSKI: Aye.

PATRICIA WETH: Aye.

ALINA M. SEMO: Any opposed? Either in person or on the phone? I hear no nays there for the minutes from the September 5 meeting are approved.

Okay, so we have a pretty packed agenda today and maybe we'll end early. I can't promise that. We have a lot of work to get done today. But I would like to start by inviting the OGIS Deputy Director, Martha Murphy, to provide an update on the FOIA Advisory Committee recommendations and best practices from the last two committee terms. As you all know Martha has been doing a great job tracking those recommendations and reporting to us every time. So thank you, Martha.

MARTHA MURPHY: This will be very quick. We have all of the recommendations in the slides that you have. I'm only going to comment on ones where there's been some sort of update. Pleased to say the CFO technology subcommittee has been meeting throughout 2018 and '19 and is currently finalizing its report. So we're waiting anxiously for the finalization of that report—we really appreciate the hard they put in to doing some research and so it should be interesting.

I believe we reported on this last time. OGIS published an issue assessment on leveraging technology to improve FOIA searches so that closes out that recommendation. I wanted to let you know that OGIS' draft business case for a presentation to the FAR is basically done from our perspective. We're waiting for NARA's representative to the FAR to complete the final revisions and submit to the FAR council. No change in recommendation to No. 4. Happily, I can tell you that OGIS' compliance team is now fully staffed at two. Kirsten has a person working for her. Christa Lemelin, you all may know Christa, she used to be in our mediation team. So she is well- prepared, and very knowledgeable about agency practices and is anxiously moving ahead on some assessments that we're working on. Our goal is to complete this assessment in fiscal year 2020.

No change on this one. And again this assessment should also be completed in 2020 now that we are fully staffed. And I believe that's it. No change on this one either. Thank you.

ALINA M. SEMO: Thanks Martha. That was really quick. Could have taken a lot more time. Okay, as you all know members appointed to this committee by the Archivist and we're tasked to collaboratively develop solutions and recommendations that will be sent to the Archivist which address some of the greatest challenges related to the FOIA process. Earlier this year, I know we agreed, or at least I sprung upon you a very ambitious schedule of target dates in order to ensure that the committee has enough time to fully consider all of the recommendations resulting from all of the hard work that the subcommittees have been doing. I really appreciate the fact everyone embraced that challenge. I want to thank all of you for your enthusiasm and the effort you devoted to this very important work to date. So,

thank you. I want to extend a special thank you to our six committee co-chairs who have been instrumental in guiding the subcommittee's work and keeping momentum moving forward. So thank you. Thank you. Walking backwards from our final meeting June 6, 2020, which sounds a long way away but it will be here before you know it. We are asking the subcommittees to finalize all draft recommendations by early calendar year 2020 with an eye towards presenting relatively final recommendations by our March 5, 2020, meeting. I'm seeing nods that's good, everyone is still on that schedule.

We have also scheduled an additional meeting on Friday May 1, 2020, to allow time for additional discussions and deliberations. And as I've discussed in prior meetings, I am still interested in coalescing a small working group of the committee to collect and compile all of the subcommittee reports and recommendations into a final report between our March meeting and our May meeting. So, thank you to the following members who have volunteered, and who— am I supposed to formally appoint them? I'm now formally appointing to be on the final report and recommendations working group: Jason Baron, Abi Mosheim, and Patricia Weth. I would appreciate one or two more volunteers. Unfortunately, we lost Ginger who agreed to serve on the working group. So, please either express your interest loudly now, not all at once, or see me during one of our breaks.

So, at this time, any questions before I move on? I think we're getting ready to roll up our sleeves and get started.

Today we'll hear from each of our committee's three subcommittees: Time/Volume, Vision, and Records Management. Kirsten and I have not allocated specific time slots for each subcommittee. We want to let the conversation go where it may. There might be some overlap in the subcommittees, we're aware of that as well. So we just want there to be collaboration. You also notice there's no break noted on the agenda but we promise that we will take a break at a logical stopping point during our discussions. To begin our discussion, I'll ask the subcommittee co-chairs to briefly discuss, and I can take out the word briefly, you can discuss at length the substance of your recommendations so far. We will then open up the floor to the committee for a period of general comments, feedback, questions, and I don't believe I'm just going to confirm, I don't believe the subcommittees are bringing up their recommendations for a vote today. Is that correct?

Okay. All right. Just wanted to triple check that. Because we're ready with voting procedures in case we need them. Kirsten included them in your folders so hang on to them for the next time.

First we're going to hear from Time/Volume subcommittee and chairpersons Emily Creighton and Bradley White. I'll let you decide who wants to present.

EMILY CREIGHTON: Thank you Alina, I'll kick it off and then turn it over to Bradley who has been really instrumental in drafting our recommendations. The working group has really done a tremendous amount of work.

Just to provide a little bit of context and background for those—I think most of you know we worked as a subcommittee and with other committee members on other committees, like the Vision subcommittee, to think through ways to do some of the evidence-gathering and research we needed to produce recommendations that arrive and recommendations that we felt really reflected the needs of the requester community, and the agencies, and so what we decided to do, and I know this has been something that past subcommittees have explored and done, is to draft a survey, and so, that was, I think a really important process in terms of thinking through creative ways of asking for information that we needed with some of our hypotheses in place about what some of the issues might be.

So, as a committee, we drafted questions that we thought would help us get to our recommendation, and so really instrumental in that process, I would like to recognize Suzanne Piotrowski who with her background was able to help us complete the survey and get it into a format where we were able to share it digitally and have people submit responses.

Also instrumental in the process was Claire Shanley, the Director of the American Society of Access Professionals, and folks at ASAP who helped us reach the agency community and their membership to receive responses to the survey questions. And this all happened over the summer, so we had responses this fall and began to think about what they meant and how they inform recommendations.

We had a FOIA officer survey we called it and 111 responses to that survey. We received 111 responses to that survey and you'll find a summary of that survey in the materials here and posted on the OGIS website. And summaries of the responses are there. We received 81 responses to the FOIA requester survey and there are also summaries of the responses here and that is thanks to Suzanne and her colleagues who helped pull that together.

So, I think I'll just leave it there, in that we feel we're at a place where we have a solid start, and we have, as I mentioned, smaller working groups who have been working on these recommendations, so we began to think through in the last month or so, which recommendations we really wanted to assign to certain smaller working groups, so folks have really been taking them and running with them. So we feel the work has been nicely spread across the subcommittee.

If there are any questions about the process and sort of how we arrived here, I'd be happy to answer those now. Okay.



I think I'll turn it over to Bradley to get us started with the recommendations in their current form.

BRADLEY WHITE: Thank you, Emily. This is Bradley White. I'm just going to kind of run through and I'll pause after each recommendation or proposed recommendation to allow some debate or discussion if there is any.

EMILY CREIGHTON: Maybe one point, I think we did assign people for each recommendation, so, the first two are you. And then we'll turn it over to the other folks.

BRADLEY WHITE: Yes. So, the first proposed recommendation we have is that: *Agencies conduct a comprehensive review of their technological and staffing capabilities and requirements to ensure that they have the resources necessary to respond to changing FOIA needs. This should include planning to address future increases in the number of FOIA requests received, as well as high-volume e-discovery style document reviews.*

So, some of the reasoning behind that is, for, especially folks like me at DHS, we've seen a need to address both our staffing, and our technological capabilities dealing with the number of e-mail and high-volume requests we get, and just the high-volume of records we get in response to the majority of FOIA requests and internally at DHS we have been looking at ways to address these issues and to move forward to both help us and the requester community. So, this one we thought would be something good to get out there.

At that, I'll pause for any comments or questions.

SEAN MOULTON: Hi, this is Sean Moulton, Project and Government Oversight. I think it's a great overview recommendation. I think one of my frustrations has been in some FOIA reports, chief officer reports, and things like that, they have occasionally addressed this kind of question. I think the frustrating point from outside the government has been, regardless how big the backlog is or how long they've had a backlog, the answer always seems to be staffing is fine, technology is fine, we're doing great. I get it that FOIA doesn't necessarily garner the attention of resources that we, on the stage, probably want it to. But, I'm just, in raising that, I don't have a solution to how to get them to make the more honest assessment which is what I think we really want out of them. Because I worry that the agencies, even if they did this, will just say, we've looked at everything and we think we're on track, and so I just raise that point.

BRADLEY WHITE: Bradley again. I also share that concern to an extent. And I think one of the things about this is that we want to be forward-looking. Because it's really easy to address what your current problems are and address what your current workload is. The problem is, when you address those current issues, five years down the line, something changes. We generally know that when there's a change in an administration, there is an increase in FOIA

requests for actions related to that administration, and we need to be able to look ahead, and predict those types of surges that may come and also there's the simple fact that technology, excuse me, changes incredibly fast. And if we're only looking for technological solutions based on our current needs, by the time we go through the procurement process and get the things we need currently, we're already going to be behind the curve. So, you're right. But it is important to look ahead and to see what could be coming down the line and try to prepare for that.

EMILY CREIGHTON: I'll add one thing, when we were discussing this, I'm not sure if it was Alina or Kirsten, but someone said this sounds like a strategic plan. You're asking an agency to come up with a strategic plan for bettering their FOIA process. How to put teeth into that, I think is a question I have, from the requester community. So, maybe that could be something that we could explore here if folks have ideas. I think that's sort of the key question, right? And I'm sure that people at the table are thinking, maybe it's true, that there might be something like a strategic plan at an agency. I'm fighting, it's very eye opening to hear from different agencies about how different they do think about their FOIA processes, and planning and preparing. So, that's just more of a comment.

MICHAEL MORISY: So, this would be a separate document, just to make sure, that this would be a separate document outside the FOIA annual report not something incorporated in the annual report, correct?

BRADLEY WHITE: Yes, that's correct.

MICHAEL MORISY: Oh, I'm sorry, I'm Michael Morisy, my apologies. One thing, I think this was really great. I saw this included in some of the other recommendations, but I think one thing I would love to find better ways to highlight, sort of how often agencies invest in programs that kind of avoid the need for a FOIA in the first place and if there's a way that they could talk, get a chance to kind of show off, hey, we launched this new portal that does X, we launched a new public database that we think that is going to reduce these types of requests. I love for more ways for agencies to surface and highlight that work that they're doing that often goes unacknowledged and I think within recommendation 1 there's potential for them to talk through that.

EMILY CREIGHTON: And look at recommendation 4.

BRADLEY WHITE: Recommendation that will be discussed later, not in our subcommittee, kind of goes to that as well. Any other comments on the first one?

BOBBY TALEBIAN: Just to note that in the Chief FOIA Officer reports we have really focused on technology and it's something that's a standard core section of the Chief FOIA Officer report and provided agencies to show successes. Obviously there's a range of agencies that also face

challenges. I think there's a lot of value in the Chief FOIA Officer reports in continued success in using technology. This is Bobby for OIP.

PATRICIA WETH: This is Patricia Weth from NLRB. I just want to say, I could see this recommendation as being kind of a best practice. I mean, this is what we should all be doing, you know? Just to do our job correctly. And I will say something that I use—DOJ, almost two years ago, came out with a FOIA self-assessment tool kit that I think can help FOIA offices a bit. But, anyway, I do think this is the best practice, and something that we should all be doing if we're not. That's all.

RYAN LAW: Hi, Ryan from Treasury. I was going to make a comment. You may want to consider that the recommendation says that agencies conduct a comprehensive review. Would it may be helpful to be more specific to agency Chief FOIA officers or another specific individual be in charge of doing that? And then also, I'd encourage and consider how—I mean, if this is a best practice, I think that the language here is fine, but if we're recommending that the Archivist request that DOJ or recommend that OGIS, just keep in mind that we'll be recommending that action and what is the specific task that we'd like them to accomplish.

EMILY CREIGHTON: Do you have a recommendation Ryan?

RYAN LAW: As a best practice I think it stands on its own. It could be that we as the committee recommend that the Archivist request that OGIS encourage agencies to conduct or agency Chief FOIA officers to conduct comprehensive reviews of their technological staffing capabilities and highlight best practices or something like that or request that DOJ encourage agencies to do the same. That all to action is important. But if it were to stand as a best practice I think it would be sufficient.

ALINA M. SEMO: Alina, I'm sorry. Just want to follow-on to Ryan's idea that might also be helpful to include the CIO working together with the Chief FOIA officer to examine these issues and maybe the Chief Data Officer while we're at it. Ryan, you're all three, right?

RYAN LAW: Yes, Alina, I wear all seven hats. There may, and this is like a 10,000 foot view, but there are some new requirements in A-11 which is a document that OMB produces every year and I also wear the senior agency for privacy hat as well, and there is a new requirement that senior agent officials for privacy participate in the review of agency systems to ensure that privacy controls and funding are available to ensure protection of privacy information. That's a lot. But it seems to me you're looking forward, and doing reviews, and there's some space there to include Chief FOIA Officers, Chief Records, Chief Privacy Officers, Chief Data Officers, all of the chiefs, get them together and do something similar, so that may be an avenue. If the subcommittee were interested in that, I'm happy to meet and talk about that a little more.

OMB produces A-11 every year and provides guidance for agency's in preparation for their annual budgets. That's where that language is now.

BRADLEY WHITE: That's awesome. Thank you.

EMILY CREIGHTON: There's a lot to discuss here, but I think the requester community does have a lot of questions about personnel and when you look at annual reports, and I focus on the immigration agencies in my work, but you see a lot of reactive hiring to address backlogs, which is pretty clear. I think when you sort of look at the agency history, and I think that's part of what we're attempting to resolve here. But maybe, and I don't think we can answer this question now, but since we're all here I'm too tempted to ask, just for some thinking and discussion around what would be steps that would be taken, if you could, just imagine a strategic plan right now. No, you don't know what will happen with the Presidential election necessarily but you could anticipate, as Bradley mentioned, there will be a large number of FOIA requests, or, I mean, how would you do that? Would it be sort of historical analysis that you would just have to look back at the last 10 years, the last 20 years and see fluctuations? I mean, has work like that been done? I mean, I'm just curious to hear thoughts.

RYAN LAW: I'll pause to see if there are any other feds that want to ask that first? [Laughter] Hi, Emily. It's Ryan again. So, I think some agencies do that. Treasury, and I think many other agencies, sometimes it can be reactive, and so in my experience working at DHS, you know large increases in volume in FOIA requests every year, and really staffing was important to meet that challenge, and in the time I was there between 2005 and 2012, I believe, we doubled our FOIA requests every year. And the only way we met that challenge was through staff. So, doing an analysis, looking historically, wouldn't have been successful there. So, a lot of agencies are reactive. My experience at Treasury, we do have a stable request volume. Requests have been going down in large part to the increasing availability of certain information outside of FOIA requests, for example, tax return information, you no longer need to file a FOIA request to get a copy of your tax return. There's a process outside of it. So, we've done some analysis, and so things that we've done to meet those challenges are, looking at technology, we have been reactive there and so we have new mandates to ensure interoperability with the government-wide FOIA portal. So, one of our solutions to that, is to implement new technology and new databases to do that. So, we're working toward those goals. That was a reactive, and on staffing, what we've been able to do is implement contract vehicles, so when we get a surge in requests on a particular topic, if funding is available, we're able to bring in staff to meet that need, as opposed to having a large set of FTEs that, you know, it gives us more flexibility. Those are some of the things agencies might think and consider. There are obviously many other solutions to those problems, but thinking strategically in that way, there are challenges and risks. And there's no one way to do it.

EMILY CREIGHTON: This is Emily. Just really clearly on the staffing model, not my area of expertise, but I see how there are influxes of part-time contract staff and then they disappear

and the backlog goes back up. So, I just think what model might work better I think could be part of that conversation, too.

JOAN KAMINER: This is Joan Kaminer. To add something that we are going to touch on in the Vision draft is the idea of using metrics across the Federal Government is something I feel strongly about. I think this ties in to this full discussion. Because you can't really assess the FTE, the contractor in need, with just the number of FOIA requests that you're dealing with. You also have to understand the capacity of an individual within a certain time frame to process a certain number of pages. And so, I think that adding all of those data points together would allow the Federal Government to be better able to approach and plan for surges, as well as maintaining a steady decrease in their backlog.

BRADLEY WHITE: This is Bradley. I completely agree with that. You need to either design a system where you track it, or have whatever technological solution you're using be able to track that information. Because if you don't know how many pages GS-7 FOIA analyst can process or how many pages a GS-14 supervisor or reviewer can review quality control before it goes out. You won't know whether you have the right people or not to get the job done.

Okay. Any other questions or comments on this one before we move on to the second one? I love that we're discussing this stuff.

SEAN MOULTON: This is Sean Moulton with POGO. One last thing. When we were talking about the best practices involving the other chiefs, it occurred to me if we really were talking about best practices and strategic plan going forward, maybe it would good to encourage these agencies to also involve the FOIA stakeholders, their requester community, it might be a way to provide a little teeth in the process for requesters who are frustrated with that particular agency to push them to be more specific or more honest in any kind of assessment and forward-looking plan.

BRADLEY WHITE: Bradley. That's definitely something to consider. I do not know how many agencies are willing to open up that level of detail, although I think whatever information comes up in this plan and whatever metrics are developed, it should be a transparent process.

Okay, moving on to the second recommendation. The second recommendation is, and, again, when we finalize this, we'll put the action as to who needs to make this recommendation. Recommendation: *That agencies periodically review their FOIA SOP, or create one as necessary, to ensure that the process for receiving and logging-in FOIA requests, and process for searching for, processing, and reviewing records are efficient. The SOP should reflect the current agency practices and technology used, should it be updated at least every two years, and should be publicly available on the agency's website.* And I'll open it up.

EMILY CREIGHTON: I'll say, this is Emily. Here, here. I think there was pushback from agency folks but I'm in favor of this recommendation.

BRADLEY WHITE: Okay. Any comments here?

BOBBY TALEBIAN: This is Bobby from OIP, I'm pretty much in favor of pretty much all of these recommendations, and 2, 3, 4, 5, a lot of these we have broken down in the DOJ self-assessment toolkit. Encouraging reviews using the toolkit is something that agencies can use to make these assessments. The toolkit breaks down specifically for standard procedures or intake what agencies should be looking at as a model of success and provides a way to grade their systems. That resource is out there that agencies have been using and can continue to use.

TOM SUSMAN: Tom Susman. Why two years? With all the resource issues and all the things we're imposing on agencies I mean, I think periodic is pretty good. I'm not in an agency, but I kind of like, you know, we say two years but they won't do it in two years and come back and say, nay, nay, nay. That's the wrong message.

ABIOYE MOSHEIM: This is Abi at the U.S. Consumer Product Safety Commission. I also work on our agency's directive system and prior to the overhaul that we did this year on it, directives SOPs, everything, they weren't getting updated, 10, 20 years. We had some that had not been touched since the '70s. So, I think you have to put a time frame for people to do the review, assess and say, you don't have additional changes and make tweaks to it, but if you don't put some kind of time limitation on it, it will never get done.

BRADLEY WHITE: This Bradley and I recognize that two years might be a little bit ambitious on these. But I also know that the environment within an agency and how they handle FOIA requests can often change relatively quickly. And what you don't want is an SOP that references one system that is not even being used or an SOP that references review procedures with personnel when the entire structure of the office happens to have changed. And then when you, you know, if you need to hold an employee accountable for not following the SOP, or if you're trying to train a new employee, say here, "take a look at the SOP while we're waiting for your laptop to stop working." And then "oh, ignore page 1, we don't do that anymore. And item 17 through 30 is totally different. And we'll explain that to you once you get access." That's not helpful and the document is utterly useless in that. But we can be flexible on the amount of time.

TOM SUSMAN: This is Tom again, follow-up. You've convinced me. Why not put a time frame on recommendation 1 as well with the changes in technology? You do it once, and it does seem to me that at least three or four years later, you're going to need another one.

BRADLEY WHITE: Bradley again. We actually had discussed that and I think the time frame we talked about for strategic planning is five years.

TOM SUSMAN: That makes sense.

EMILY CREIGHTON: I thought we actually included that. We should have. Yeah. We did talk about five years. And I'll just say on recommendation 2, I thought it was really interesting back and forth with Bradley discussing this one because, obviously, the requester community would love to have a better sense of how the whole process works at a particular agency but doesn't want to have outdated material. It's not useful. I shared an anecdote where the requester community had the USCIS SOP for processing FOIAs and it was shared by everyone yet, we weren't sure if it was really current. I think there's a concern in the agency community about being held accountable by the requester community for every tiny little sort of section of the SOP. I just would like to say that the real need is an understanding and less of an—I'm not sure what that accountability might look like, but I think what was interesting to hear is that the agency needs it for its internal efficiencies, and that that would be actually very beneficial to the agency as well.

JAMES R. JACOBS: James Jacobs, Stanford University. I'm just wondering if there would be a process to have OGIS mentioned in this, so the agencies could tell OGIS that their SOPs have been updated or worked on or something like that. Maybe instead of just saying, posting to their websites.

BRADLEY WHITE: This is Bradley, so for example, we could recommend that OGIS recommend or request that the agencies that they update and report and alert OGIS or something like that.

BOBBY TALEBIAN: That is something that we would typically include in the Chief FOIA Officer report. And the Chief FOIA Officer report is something that DOJ checks yearly. And there is a section in the Chief Officer report for technology.

BRADLEY WHITE: Perfect.

RYAN LAW: Ryan from Treasury. The subcommittee for records' first recommendation, there is some alignment there. Our recommendation, which we brought up in the last meeting, we don't plan to discuss today, since we brought up in the previous meeting, but the recommendation was that the Archivist requests DOJ and OGIS, issue guidance to agencies to include records management related materials as part of agency websites, and FOIA handbooks, and one of the main thrusts are our recommendation is to better educate the public about not only about the FOIA process at the specific agency, how do I file the FOIA request, but what specific records are available to me now, and what records exist at the agency and what records do I need to send FOIA requests for. I think there's alignment there.

And our goal here is to better educate the requester community on agency records and processes for FOIA so there may be some way we can connect on that.

BRADLEY WHITE: Bradley. Yeah, that was definitely intentional. And I agree we should definitely work together when we finalize these because I think they could be if not combined they could reference one another. I think Michael, did you have something?

MICHAEL MORISY: This is Michael. It seems like agencies have gotten a lot better about posting this material in their reading rooms. Do you think there are any agencies that are already kind of hitting the standard that you envision.

BRADLEY WHITE: Bradley. Patricia—are you still on the line because I believe you commented on this before.

PATRICIA WETH: Yeah. Hi, thank you Bradley. Patricia Weth with NLRB. To answer your question I think my agency hits the mark. We just actually revamped our FOIA homepage so we have an e-FOIA library, we list a lot of the records that we have on our agency website just to make it easier for requesters to see what is out there so that they don't have to file FOIA requests. And, I do like this recommendation. Again, I think of this as a best practice. We should be doing, you know, in order to do the best that we can in our jobs.

But I think, Bradley, if I remember correctly, you and I were talking about SOPs and handbooks and FOIA homepages. And what we've tried to do at my agency is put a lot of our information on that FOIA homepage so it's easier for requesters. We do have our FOIA handbook on there. It's dated, it's probably about ten years old. I don't think that that contains the information that most requesters want. It talks about how we apply different exemptions, etc. So, when we created the FOIA homepage, we used DOJ's guidance, that they had out there for, you know, revamping in your FOIA home page and actually, we had them review it as well. So, maybe we could put something in here along those lines, about keeping your FOIA homepage current. And maybe the folks who are in the requester community could speak to that better than I can. I mean, I think for me, I like to go to a website, see what's out there, versus having to dig around in an SOP, or a handbook. I'm happy to post them but I think my take would be one would want to know really what the process is, and anyway, I will be quiet and let the requester community speak to that.

ALINA M. SEMO: Patricia, thank you. This is Alina. I heard a beep. Did someone join us, or Suzanne drop off and come back?

SUZANNE PIOTROWSKI: This is Suzanne. No, I've been here the whole time.

ALINA M. SEMO: Okay. Did anyone else join us on the phone? Okay, I must be hearing things.  
[Closed captioner dropped audio]



JOAN KAMINER: Joan Kaminer. To add to this, while EPA might not be meeting the time frame that is outlined here, we are one from the agencies that do not have standard operating procedures publically available. But I think one thing I took from Patricia's comment, and I am going to look at your website, is the distinction between the manuals, handbooks, or procedures. So, the further in detail a document gets, the more likely it is to be out of date, and any change, down to the level of, you know, as an agency where the FOIA processing happens in 10 different regions, multiple facilities, as well as every different headquarters' office. We're looking at very detailed procedures, essentially, that might be distinguishable from the higher level agency FOIA procedure. So I want to make sure that the recommendation very clearly lays out what level of detail we're looking at. I don't think it's helpful for anybody to have, as we mentioned, the out-of-date details that might be contained in an office manual.

BRADLEY WHITE: Thank you. That is a great point.

ABIOYE MOSHEIM: This is Abi. I don't know if this is helpful. At my agency we have multiple SOPs for FOIA. We have a directive with the overall agency FOIA processing, but one of the SOPs that I think would be of most interest to requesters is the one for processing FOIA requests, and it's about four pages in length, and it just states how we process them, who we have to send them to, because we have section 6 in our statute, notification that's similar to exemption 4 where we have to go out and get comment from manufacturers so we know how long it takes for us to do that and we have to incorporate those comments. That's just four pages, so maybe instead of a manual you broke down SOPs into different parts, that would be more helpful.

BRADLEY WHITE: Thank you. Okay, if there's nothing else on No. 2, we'll move over to Joan for No. 3.

JOAN KAMINER: This is Joan. No. 3 is to recommend: *That agencies provide regular training for all staff, including FOIA professionals, subject matter experts, technology professionals, and management/supervisors, responsible for implementing FOIA as a part of agency's FOIA procedures in order to enable staff to properly and efficiently process FOIA requests.*

So, a bit of the background on this proposed recommendation. While I believe all agencies have some level of required FOIA training, this typically is either a higher level for all agency staff for an awareness of FOIA, or specific to the FOIA professionals that may spend the entirety of their position in the processing of FOIA requests and related work. What we're trying to get to is, one, the regular training. So, putting some type of yearly requirement or recommendation on the training, as well as requiring that, specifically, the fields that are often overlooked with FOIA training, are targeted. As subject matter experts, for example, are frequently brought in to provide input on document review and context, but they may not

have an understanding of the FOIA exemptions, the time frame, or the potential repercussions of certain actions that an agency may take.

They may be working on a FOIA review once a year, or maybe once every five years, and so while this is sporadic, potentially, it's very important that subject matter experts have a better understanding. And then, as tied in to where I see across the board with all three groups, the emphasis, on technology, we think it's very important that the technology professionals have a better understanding of the process and responsibilities of an agency, so they can better understand their customers when they're either developing, you know, software, or looking for, you know, new additions to the agency's tools, but also in providing support to professionals.

And then lastly, my favorite was management and supervisors. With most agencies, management and supervisors have a responsibility for approval of FOIA releases, as well as providing the performance evaluations for their staff that are conducting the FOIA work. Giving the supervisors and management, who may spend very little time actually working on FOIA requests, a better understanding of the process and obligations just like the other positions. It's really essential, not only to ensure that they're evaluating it appropriately, but they are also providing enough resources and management support to their team. It's really coming down to understanding the importance of FOIA. And it goes to the resources issue as well. With that, I'm going to open that up for any comments.

JASON R. BARON: Jason Baron. This recommendation, which is something I'm sure we all support, is tied, and probably we should merge the recommendation No. 2 from the records management committee, that looking at the other side, we recommended that either NARA, or DOJ, or OIP, do targeted training in selected topics in Federal records management to FOIA officers. So, in addition to broadening the community that you're talking to Joan about who would be benefitting from FOIA, the knowledge of FOIA, I think there's also FOIA professionals would benefit from a broader array of records issues. So, I see this as a natural, as some kind of merger, if it survives as a recommendation.

I also would say, and it's just a very nit-picking point, recommend that agencies provide training for all staff including FOIA professionals, if you just read that alone, I would say most agencies do that. And so I think what we should say is recommended agencies provide regular training for all staff, including not only FOIA professionals, but a wider array, dot, dot, dot. So, that somebody doesn't question whether the baseline is no training.

RYAN LAW: Ryan Law. Just to add to Jason, perhaps it may be good to say role-based training for agencies, so every individual in an agency has a role in the FOIA process. It's important that they understand that. I think to knock it out of the park, a recommendation may be that we recommend to Congress that in the future updates to FOIA, they make this training required of agency professionals. I know in my Federal career, I've seen some agencies do annual

training very well. Some need resistance to require training of their employees for various reasons, if it's not specifically required by statute. So, having it in the FOIA, would be, I think, a home run, and would improve, as you said, an individual's knowledge of their roles in the FOIA process.

JOAN KAMINER: I think those are both great suggestions, particularly with the role-based training. I definitely really support including that in the recommendations. We've had a lot of success with rolling out supervisor training at EPA, and we created specific role-based training, but it's being geared to that larger picture that supervisors are reflecting on, and I think that it has had a better impact than some of the canned training that's rolled out to all staff. Because supervisors, they are looking at it, sometimes from fiscal resources perspective, but also, how did this impact my office, specifically? So, I'm definitely going to do that.

JAMES R. JACOBS: James Jacobs, Stanford University. I would also like to give a shout out to agency librarians because they are one of the first people that I always go to. I don't necessarily go to the FOIA officer when I need agency information, because if it's already in the library then I don't need to bother the FOIA person. So, if you could include agency librarians, or agency librarians, in that recommendation.

BOBBY TALEBIAN: This is Bobby, OIP, I wanted to note that the Chief Officer reports that we ask every year, we are asking not just FOIA professionals but how they provide training for the non-FOIA professionals. It's really something that we have been encouraging agencies and agencies are reporting on. I think the records management part brings perspective to it. But as far as FOIA professionals we even ask what percentage have the FOIA professionals, to give an idea how much of the FOIA professional is getting substantive FOIA training. I do think training is one of the fundamental, important parts of the successful FOIA administration, but we've really focused on the non-FOIA professionals. Also there's resources out there for them to make it easier. We have new learning training modules for specifically non-FOIA professionals, the other agencies. We also have executive videos for executives. In addition to modules for a FOIA professional. All of the workforce, regardless of not being in a D.C. area, could use that. A lot of people use those resources to target those audiences.

JASON R. BARON: Jason Baron. Are you saying this is accounted for or should be a best practice or is there a gap? Are there types of groups or subgroups or subject matter experts or technology professionals that are not routinely joining FOIA training that is already out there? Because there is either a gap or there isn't.

BOBBY TALEBIAN: Yeah, I mean, I would say this exists already as a best practice and something that's being encouraged. A lot of agencies are doing well, and so, that's the reason I bring up the resources, and the reporting, and it is already being done. Can some agencies do better? We can always do better. But it's not something that's not been untouched.

BRADLEY WHITE: This is Bradley. I'll jump in here. I have to say there's definitely gaps here. When I came on board my last job as the FOIA officer DHS's office of Civil Rights and Civil Liberties, one of the things I did was implement training for all of the managers and opened it up to all of the staff and it was something they hadn't had before. And this was 2016 and 2017. So, I think some agencies do it really, really well. Some people, when I did the training work were incredibly ready shocked their e-mails could go out in the FOIA request. And incredibly shocked.

So, there is a need to, one, explain, "look your e-mails are probably going out," and, two, also let everyone know what their role is, because when I created SOP for my old office, I included a special part on what everyone's role is in the process, including if we ask you for records you are really required to search. You can't just dig in the back and explain what happens from then on out. Because they need to know, not just, here's your role, but then they need to know what happens with the thing after they headed over.

So, yes, there are certainly best practices and all of the FOIA professionals are clearly aware of what OIP resources there are, and many of us say, "hey, take this course senior executives," and then when it gets down to individual employees on a granular level who are doing the programmatic work in the agency that is the subject of the FOIA request, those people do need to know what their work is and I think there's a gap we can fill with in explaining better to everyone involved, because as you know, FOIA is not just the responsibility of the FOIA office. And agencies need to do a better job making that clear to everyone within the agency.

EMILY CREIGHTON: Can I make one quick point. Emily. I just want to say that I know everyone is going to take the time to go through the survey results but I was interested to see in responses from agency personnel that custodian responsiveness was a major problem and it was highlighted by agency personnel. So, I think it goes directly to the gap that we're talking about.

JOAN KAMINER: I will take your point into consideration when we're drafting out, and I think we're able to distinguish, and also explain the resources that are available, the requirements that are available, but also go to how this recommendation might go beyond what we currently ask agencies to illustrate that gap. But also, make it very clear what agencies could utilize in order to better improve what training that they offer.

BRADLEY WHITE: Okay. Moving on to our proposed recommendation No. 4. James?

JAMES R. STOCKER: Good morning, everyone, James Stocker. I'm going to give an overview what the international sub-subcommittee of the Time/Volume subcommittee has been working on and sort of explain a bit of a shift in our focus that has manifested in these two recommendations that are coming out of our sub-subcommittee and then I'll address the

recommendations themselves and preview the work that we plan on doing in the future. Other sub-subcommittee members are very welcome to chime in to correct any misleading impressions I may give because I joined the sub-subcommittee a little bit later in the beginning of the term.

So, the original goal of the international sub-subcommittee was to look into examples of how other countries have addressed issues related to time and volume. Our assumption was this must be an issue that all countries with freedom of information statutes deal with. We identified a number of country cases to look into along with a set of seven questions to ask about them and the questions were designed to get a sense of what the time/volumes might be as well as what has been done or attempted to relieve these issues. Unfortunately, the group members found it was often very difficult to identify answers to these questions. While it was easy to find statistical information or relatively easy to find information about how many freedom of information requests have been filed during particular years, it was often difficult to find information about what had been done to address the time/volume of responses. And part of the reason for this seemed to be that many other countries do not identify time and volume as an issue. Now, why might this be? Well, one of the reasons seems to be that these countries actually received many fewer freedom of information requests per capita than the United States.

Here's just a couple examples. In 2018, the U.S. Federal Government received 863,729 FOIA requests with a population of 327 million and change, this amounts to about 2.63 requests for each thousand citizens. So, thousand citizens, 2.63 requests. In Switzerland, in 2018, 636 FOIA requests were received, which divided by a population of a little over 8 million meant about .075 requests per 1,000 citizens. What does that mean? Basically, the U.S. is getting 35 times the number of FOIA requests per capita. In Germany, the exact number is not easy to find but a Federal report indicated in 2017 almost 13,000 Freedom of Information Act requests were received with an overall population of just over 82 million. So, this basically works out, and I am maybe giving too many statistics here, but the U.S. gets about 17 times as many requests per capita as Germany. All right? Now, we didn't look at all countries around the world but the ones we looked at suggested this was a pretty common ratio—more than tenfold the number of requests per capita.

What explains this gap? Determining the exact causes are a bit beyond the ability of our group to do because of the time and resources available to us. But one likely major contributor to this is something the committee has heard about previously, it's the so-called first person FOIA requests which we heard about from Professor Margaret Kwoka a few months ago in her presentation to the subcommittee. In other words, people having to make Freedom of Information Act requests to get basic information related to themselves, whereas in other countries, there seems to be other processes in place to access this information. So, this led us to two recommendations. One relatively general and one fairly specific. The first is proposed recommendation No. 4. which recommends: *That agencies identify common types*

*of documents requested as part of FOIA and establish alternative processes for providing these documents to requesters on terms equal to or better than FOIA.*

The idea behind this recommendation is the request for certain types of documentation should not have to be FOIA requests. One example that often comes up is that of immigration files which are often needed by individuals during deportation hearings. In some cases, subjects are unable to obtain their immigration files in time for their hearings. So there's a question that should maybe be asked is FOIA acting fast enough but should there be some other process in place for getting access to these types of files. And I think that there are many other types of documents that could fall under this category, commonly requested documents particularly related to first person requests. There could be alternative procedures that could maybe do a better job of addressing that demand, and keeping FOIA for more complicated requests, requests that fall outside of the norm. So, I guess one other thing to comment on, we've included in this is "terms equal or better than freedom of information request." The purpose of that language is ensure whatever other process is provided is not actually more burdensome or slower than the Freedom of Information Act requests. So, we don't want this to result in a slowing down of access to information. Even as it's moved outside of the Freedom of Information Act process.

I think maybe we can open up now for comments or questions or thoughts?

SARAH KOTLER: I have a comment. Sarah Kotler, FDA. I like the sound of it. My agency has some types of records, not so much individuals, but companies can get outside the FOIA process, which is great. But the same people who processed FOIA requests actually have to do that. So it's a very simple request, it doesn't get counted as FOIA request, I guess for the example of first party immigration records what is the hold-up. Where is the slow down? Is it just a volume issue or does it take a long time to find them? Or does someone need to make sure there's not something non-public in them. Because if it's any or all of them calling them something besides a FOIA request may not make it any faster especially if the people who have to do the finding and the looking are the same people, or maybe there are other people but those people have other work that they do, or the theory is you would hire other people, and we know that could take a long time. While I like the idea, I just think it's sort of like the idea that if we just post everything online, then no one will need to make FOIA requests again and that hasn't really been a reality. This idea if we put these records out there, you don't have to call it a FOIA request might not actually make it better for the end user but I think in some situations you would. One just has to look at why is this particular set of records that people are requesting are taking a long time and where is the burden really falling and can moving it outside of FOIA fix that?

EMILY CREIGHTON: I mean I think Bradley and I could go on and on about this particular type of file, and we did just discuss, as an example, wouldn't it be wonderful if A-Files, Alien Files, for individual immigration records were available to immigrants and deportation proceedings

or outside deportation proceedings, they're their files. But I had a follow-up question before answering your question, which is, the process has not been successful, so, you're saying there is a process now, where, they are the same FOIA professionals that are processing records that are not going through the FOIA process, so what is that process?

SARAH KOTLER: So we, for an example, have a company that is inspected by the Food and Drug Administration and they want a copy of their inspection record and they often make a FOIA request for it. And we tell them there's a mechanism the office of Compliance that once they are done with the report they just send it to you through this field management directive. It's a relatively small portion of our FOIA. As an example, it's not a problem or issue, but there's a way—

EMILY CREIGHTON: [Interposing] Once FOIA exemptions are applied there's no—

SARAH KOTLER: Generally speaking, no because it's their own inspection report. But in theory, someone does need to look at it and make sure it doesn't have something in there. So there's still a disclosure aspect to it, even if it's not a FOIA request. This is actually an example that I think actually works quite well, but my question was for the ones that maybe are really causing certain types of records, if they are causing that much of a backlog in the FOIA world, how do you solve that backlog just by taking them out. Now if you take away fees that's good to the extent people might have to pay FOIA fees, it seems kind of unfair if they want their own file, but what about taking that FOIA is going to help?

EMILY CREIGHTON: That's the key question.

BRADLEY WHITE: So, Bradley. I have some experience with immigration records. And what I'll say, it's all three issues. It's the content of the record. It's finding the record especially when they are paper based and in a cave. And it's the people needed to process them because there are so many requests for these records. And while I certainly think there are definitely avenues to explore other ways to make those records available to people, and that's absolutely something to look into. For this one, what I would say is, knowing the kind of stir that this may cause with a couple agencies I can think of, the way to phrase this would be, look into and evaluate the possibility of making these documents available through a process outside of FOIA.

SARAH KOTLER: If that's more efficient.

BRADLEY WHITE: If that's more efficient, yes. Especially because in the context of immigration records that's been an ongoing debate for as long as I've been employed by the agency and I'm sure way before that.

ABIOYE MOSHEIM: This is Abi. And I was on this sub-subcommittee. And this probably goes more to recommendation No. 5. I think you also have to look at when you talk about having

to search in a cave or something for a records, looking at the requirements for agencies to digitize records from the start, when you're creating those records, thinking about how you're going to make it available to the public, so I think about my former agency, the Copyright Office is required to have a public catalog of registrations which is the most sought after information from that agency and from the start when they get a paper application or a digital application, they are entering that information into a database that is going to be published online and people can go there and read it. If it's got personal information in it, sensitive information in it, you can make it a secure database so someone has to have username and password to access their own information but I have to say you would have to start by looking at how you're currently providing it and modernizing it to make it better.

SEAN MOULTON: This is Sean Moulton from POGO. I was going to say something very similar so I'll just add on to that, that I think especially immigration records which I've looked at, I think it's not just providing access, it's about stepping back for some of these records and thinking about record creation to allow for access, easier and to solve this problem of making it so that some portion of the record can be made available without review and therefore save time and segmenting for immigration records, law enforcement sensitive information for Customs and such off to a different record or different segment of the document or database. Until you do that, you are going to be stuck, and it doesn't matter if it's provided here or there. It's going to take a lot of time and effort.

The other thing I would say about this is I think we should call it what it is, which is, for the most part, first person requests, tell agencies what it is. There may be some other records but even the agricultural example is sort of first person, its first person for corporation of their records but it seems to be that if that's the big piece of certain records we're talking about, we should say look at the first person requests for these opportunities. And I agree, that's a good way to phrase it so agencies don't feel this is a requirement that they come up with an alternative process.

JOAN KAMINER: Just for logistical purposes, this is Joan, to the extent this recommendation moves forward the Vision subcommittee was also considering the idea of streamlining the process for certain types of records, such records such as immigration, EEO, that type of thing. I say we continue communication because somebody from our group might want to participate if you guys move forward with that. That's it.

JAMES R. STOCKER: If I can just start to respond. I'm not entirely sure I'm the best person to respond to every single aspect of all of these comments, but, I think that, while this recommendation is partly intended to improve efficiency, I don't think everyone is under the illusion that this will solve the issue of access to information. I think for me the fundamental point of this recommendation is that the Freedom of Information Act has been stretched way beyond its original legislative intent. Originally it was not, I don't believe, and I could be totally wrong about this because I'm not an expert, but I do not believe it was intended to



cover every interaction between individuals and their government. Every single instance in which people request information from the government. Instead it was intended to fill in gaps, you might say. And what seems to have happened over the years is that every time there has been a need for citizens to have access to information, and there was no process in place, agencies have resorted to it being as a freedom of information issue, right? And because of that, the statistics about this are inflated. It becomes really difficult to track what's going on in government. We say right now we have 863,000 FOIA requests a year. That really doesn't tell us anything about what is happening in terms of freedom of information. What it means is people are filing for these requests that they don't otherwise need to file. The fact that this number is expanding exponentially over the years and creating more and more work doesn't tell us our government is becoming more transparent or more open. It just tells us that agencies are relying on this law more. So, by getting rid of some types of requests or at least moving them out of FOIA, it will tell us a little more about what's actually happening in terms of freedom of information. So, I think that that's a purpose of this recommendation that goes beyond efficiency. So, I just wanted to kind of add that. Yep.

EMILY CREIGHTON: I just want to say, I mean, I can't leave the issue of immigration records without just one comment. Which is this is the Time/Volume subcommittee, and we really are looking at volume issues, and I know that when you talk about the 800,000 requests, a huge portion of those requests are requests are for immigration records to an agency within the Department of Homeland Security. I wish I had the statistics.

BRADLEY WHITE: [Interposing] A quarter.

EMILY CREIGHTON: A quarter. So, if we're really talking about revolutionizing the system in some way, and fixing it in a way that it is extraordinary, I think that we should be thinking in creative ways like this. I don't think, sort of, we can tweak it and fix it. I think and that's why I think this is a very, very innovative recommendation, and I wholeheartedly support exploring what this might look like, because I think it would make a tremendous difference in the volume of FOIA requests coming to the department of Homeland Security.

ALINA M. SEMO: I just wanted to say something. I know Sean wants to say something but I want to check with the folks on the phone and give them an opportunity to make sure they are heard. Suzanne or Patricia?

SUZANNE PIOTROWSKI: I don't have anything to add. Thank you.

ALINA M. SEMO: Okay.

PATRICIA WETH: Hi, this is Patricia from NLRB, and I was on this sub-subcommittee, and I think it's a really excellent recommendation, and I think it can help us out a lot with our time/volume issue.

ALINA M. SEMO: Sean?

SEAN MOULTON: Sean Moulton with POGO. I just wanted to follow up on, and I'm sorry, I don't actually know your name. I'm still learning names—on Emily's comment. I agree entirely about the immigration records, and I'm wondering aloud and I'm happy to do this in the subcommittee a little bit. But maybe there needs to be an even more pointed recommendation directly at the immigration records something around a specific task force or specific effort that should be launched to try and solve one quarter of the nation's FOIA requests and it's not going to be easy. It's certainly a very complicated issue. Even if they come up with an innovative solution for moving forward the older records are probably always going to be difficult. But it seems like a worthwhile recommendation to me.

EMILY CREIGHTON: It's an involved and interesting conversation which I think people have begun. It has been litigated to a certain extent. You know, there are questions about, does it look like civil discovery, if you're in removal proceedings, what does it look like, who is processing the records? Is it a DOJ attorney who is litigating the case in litigation court or is it a FOIA officer specially designated to do this? So, yes. I think it's a very interesting, important conversation and I would be happy to go more in that direction and maybe we can explore that. Bradley's very excited about that prospect.

ALINA M. SEMO: Tom, I'm sorry, go ahead.

TOM SUSMAN: Tom Susman. I'm surprised Jason didn't raise this but this is also a records management issue. Because how you take your records in, and you made this point, how they are dealt with at the beginning, facilitates the ease of making them public. The IRS and places like that. If you have certain fields, or SEC, if you have certain fields that can be protected at input, then you don't need a case by case, record by record review for output. So, I wonder if there's something there on the management side or input side.

ALINA M. SEMO: I'm trying to manage our time a little bit. And I would love to be able to get through the end of the Time/Volume subcommittee. So, in that spirit, James, you have the next one, too?

JAMES R. STOCKER: Thank you. Thank you, everyone for all of those thoughts and suggestions and concerns, too. I think we're going to continue to work on this obviously before we put it forward for a vote. So I'm happy to follow up with anyone who wants to talk about that offline as well.

The next recommendation, proposed recommendation No. 5, can be seen as a specific application of recommendation No. 4, specific example of how it could be carried out. So proposed recommendation No. 5 reads as follows: *That agencies utilize existing statutory provisions that allow for the dissemination of information outside of the FOIA and ensure that*

*the programs that provide such information dissemination are robust. Consistent with the Office of Management and Budget/National Archives and Records Administration Memorandum M-19-21 which requires all federal agencies to digitize their records by December 31, 2022, agencies should provide this information electronically, developing online databases where members of the public may access commonly requested (via the FOIA or alternative statutory provisions) 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.*

I'll just open that for comment.

MICHAEL MORISY: This is Michael from MuckRock. So, this kind of goes with the prior recommendation, as well, is there a way that we could recommend incentives for agencies and resources for agencies to do this? I think, one thing I'm always trying to think through is what can we do to give agencies some relief or encourage agencies to be proactive whether that's through grant pool that agencies put in a proposal for, and, sort of say hey, maybe not digitizing all A-files and automating release, but something that could structurally improve a FOIA program within an agency, find a way to give them, you know I think, FOIA agencies, or FOIA officers often say we have this new unfunded mandate, we have to do X, or Y, and I think finding a way to fund infrastructural improvements that are going to pay off for years to go would be great to explicitly pair with some of these recommendations.

EMILY CREIGHTON: A follow-up question to that. So, on the resources, I know this has been batted around a little bit in previous discussions. How specific can we get about how to recommend that things be resourced? I think that's the question I have because I would be happy to explore that. Again, not something that I have expertise around, not sure what language would be acceptable, in terms of having the Archivist recommend how an agency resources change in the agency.

ALINA M. SEMO: I think we can talk about specific language, at this point in the process, I want to say everything is still on the table. So, we should continue to think creatively.

EMILY CREIGHTON: Great. Okay.

ALINA M. SEMO: Okay. Anyone else? Oh, Emily, you're last for No. 6

EMILY CREIGHTON: I'm last

ALINA M. SEMO: Thank James.

EMILY CREIGHTON: Thank you so much. I brought my recommendation, which is sort of maybe a wish list for the requester community to the committee, and we didn't have a lot of

time to discuss this, and I think that this might go to some of the records management, some of the principles behind records management recommendations around explaining the types of records that are maintained by the agency that are on the website, but essentially: *Recommend enhancing agency transparency by providing, on the agency website, contact information for a FOIA Point of Contact, who may or may not be the FOIA Public Liaison; Commonly Asked Questions that include an explanation of the types of records maintained by the agency; and the estimated processing timeframes for simple and complex requests.* So, I was told things are impossible but I'm putting it out for a proposed draft recommendation anyway. What I'm trying to get at here is really this idea that a member of the requesting community can go to an agency and get information prior to drafting and filing a request that would help them file a better drafted, more efficient, you know, sort of request that really will have them obtain the information that they want from the agency. And I've been told that that is something that the agencies would like, that they would like to have some of these first line conversations with the requester community and instead we go straight to a FOIA, a badly drafted FOIA, using agency words, to a lawsuit. So let's avoid that. Let's avoid administrative appeal in the legislation.

So, how can a person sort of communicate with the agency in a way that's effective to achieve that. So, that's one. The commonly asked questions, yes, certainly agencies do this. And I think this is all a best practice, how can this be more consistent across agencies. And the estimated processing time frame, I can understand that an agency might not want to say we are absolutely outside of the time frame. And here's how much outside the statutory time frame we are. But at the same time, I think USCIS does provide an estimate of the time to adjudicate simple and complex requests. And I'm curious to hear more from folk as round the table about this recommendation.

BOBBY TALEBIAN: Bobby from OIP. So, this shouldn't be impossible. It's what agencies should be doing and it's in our guidance. Our website guidance actually asks agencies to consider the Q&A, the processing time, the average processing time, and we actually built this into the FOIA portal that each agency's landing page has that information.

EMILY CREIGHTON: Point of information, I've seen that information. I'm talking about current processing time. So not as of the last annual report?

BOBBY TALEBIAN: Okay. But there's no fear of showing our average processing time. In fact we wanted to put that up front to manage expectations, so you can see what the processing time for a simple request is as opposed to complex request and have all that contact information front and center. The FOIA public liaison, the FOIA officer. On the portal we put multiple different ways that you can contact the agency, have their handbook which has the Q&A and all of this information. Because we certainly want the requester to contact the agency and work in the spirit of cooperation and certainly within all of our guidance with regard to communicating with requesters. So I think this is definitely all good and something

we have embraced and agencies should embrace, if they aren't but a lot of them are embracing.

JOAN KAMINER: I'm a little dubious of the use of simple vs. complex processing time. It goes back to the metrics conversation earlier—a complex request can vary from a few hundred documents to, upwards of hundreds of thousands of documents. And so, I think that I also agree, the average processing time is something that an agency wouldn't have issue with providing, and within a certain time frame of the request that they are evaluating, they can provide that. But I'm not sure how much use that specific information would be. So, I would encourage it to go beyond having a defined processing rate that agencies across the board can try to target. And I'm going to talk about that later as well.

BOBBY TALEBIAN: One thing I would just add, is that obviously the average processing time in whatever frame that we give it kind of gives a place mark or an idea. But I think the most value that the requester needs to have is that conversation they have specific to that request. So you can explain to the requester, this is the amount of pages we have. This is the search that's involved and this is really why it will take this amount of time, to provide an estimate, to come back. If you can't meet that estimate later on, explain why. So you can't get that from anything you put on the website; that conversation. So I think that's really where the biggest value is there. That's having that contact information front and center and agencies and requesters working together through their point of contacts.

SARAH KOTLER: I do think it could be helpful though, and I think we need to look at FAQs to make sure they are totally up to date, to give certain examples because there are certain specific examples where you can say with general certainty, that this type would be considered simple and answered within 20 days. In our agency, we have certain categories that, unless something has gone horribly wrong, is going to be answered in 20 days, and then we actually in the last year put a note up about a certain kind of record that unfortunately is taking much longer and we actually wanted people to be aware of that. And I put it big, red, bold underlined on the website. Nobody seems to care. And sometimes when people request these I have someone in my office call them. If they look like someone that has a previous request, we tell them we want you to know you're requesting this type of record and this is what the wait time will be. And they are not happy about it. But I don't think a single person ever said, "Never mind."

EMILY CREIGHTON: That's really helpful.

ALINA M. SEMO: This is Alina. I just want to add, putting on my OGIS hat, one feedback we get a lot from requesters and customers that call us is their inability to reach a human being at an agency and I know we talk great game about communication between agencies and requesters, but oftentimes requesters are calling us, and it's the first human being they get to talk to and they are very excited about that but also shows there's a breakdown further down

in the process. I know we had a little bit of dialogue in our second term about points of contact. Tom may remember, Tom's nodding. Sean remembers. So, we can certainly discuss further in terms what that would look like. I think there's so much value in just being able to provide other alternatives, other than the FOIA public liaison and FOIA officer. I think that would really go a long way.

PATRICIA WETH: Hi, this is Patricia Weth. And I agree with what you just said, Alina, and Emily, too. You know, I've filed FOIA requests myself in the past, and it's very frustrating to not be able to speak to somebody. And I know when I have called requesters, they, you know, fell off their chair when they actually, you know, spoke to somebody from a FOIA branch. I'm just wondering, I look at it, you know, on our websites, we're required to have the FOIA public liaison's number. We have our FOIA officer's number as well. It's the direct line so folks can get a hold of a live person. And I know OGIS did an advisory regarding our final response letters, and you had a really detailed, put in all of the contact information in our final response letters. We even put in the attorney's name, who did the work, so there's, you know, there are two different people that they can contact, either me as a public liaison or attorney who did the request. I'm wondering if maybe at the front end of FOIA, that I mean, as a practice, in my agency, when my folks get a request they do send out an e-mail directly to the requester with their contact information so that the person can get a hold of them if they have any questions. I'm wondering if that should be a best practice or we should put something in there at the front end where they know they have a live person that they can talk to. Anyway, just a thought.

SARAH KOTLER: This is Sarah. So we do that in our acknowledgment letters. So your acknowledgment letter has an actual person's name on it. Depending on where in the agency—it's someone in my office—but depending where your request is assigned, they have a name and telephone number.

EMILY CREIGHTON: This is Emily. I think that's a very good point.

SARAH KOTLER: Correct.

EMILY CREIGHTON: I think I am talking about even prior to the submission. Before having that conversation.

SARAH KOTLER: Yes, absolutely. And I am wondering, Alina, also if the issue is I literally couldn't figure out who to call or I called and I left a message and didn't get a call back. Customer service is certainly an issue, certainly given the amount of times my phone rings and e-mail. My information is out there. No one is having trouble finding me. I am a responsive person and people are somewhat shocked, and "oh, you actually called me back." I wonder if it's more like, you figure out who to call and they're not getting a call back.

ALINA M. SEMO: I want to say it's all of those things. One of the reasons we actually were really advocating and is we did this in conjunction with OIP, really advocating the agencies make much more clear the contact information that they put in their letters. I call this the mushing factor. Basically, the agency information was getting mushed together and then the OGIS line which was very clear, so OGIS was getting a lot of calls that we needed to send back to agencies. But, the other feedback we have also gotten is that folks are calling, especially agencies that have a lot of FOIA requests, agencies have a voice mailbox, for example, and requesters told us, we keep calling and now the voice mailbox is full and they can't even leave a message, much less talk to a human being. There are a lot of those kinds of things that are going on that frustrate requesters. I'm just giving you some examples of the feedback that we've experienced.

MICHAEL MORISY: This is Michael. A few months ago we did some user testing survey where we just gave people various agency responses acknowledgment letters like people look for having a name they could call. And I think most agencies after some recent recommendations and recent updates to the FOIA have put together much, much better letters. One of the things we have also been seeing as a note of caution is also, if you have five places to contact, such as discussion, like OGIS, like people saw those letters and we were kind of asking them, so, what would you do next or how confident are you that this is being handled and there's too many different places to contact. It's really confusing. They loved having a phone number. Some had a general phone number and FOIA office phone number and FOIA liaison and FOIA appeal, and like I got six different places to call. And I think most people are like, what can we do to provide that access while not overwhelming people with choices. But I think it's worth noting most agencies have gotten really good about providing points of contact and creating here's who you reach out. I really liked FOIA.gov how that's put front and center so I think this is continued improvement. I think there's been huge strides in that area.

ALINA M. SEMO: Any other comments? Anyone else on the phone want to add anything? I think we're all sort of eager for a break. So, let's take a break. 15 minutes. It's 11:45 a.m. Let's be back by noon. And I hope I'm not short-shrifting the Records Management and Vision subcommittees, but you should have enough time. I know you will. Thanks everyone. 15 minutes, reminder, Charter's Cafe available for snacks food or drinks for purchase. No food or drink back in the theater. There are restrooms directly outside the theater, another set near the cafe, enjoy the break and we'll see you in 15 minutes. Thank you.

[ 15 minute break] 1:48

ALINA M. SEMO: All right. Folk, let's start gathering. All right. Thank you for coming back. Most people came back. That's a good sign. Thank you, committee members. For coming back. We'll move on to the Vision subcommittee. Unfortunately, Chris Knox, co-chair, is not able to

call in. So Joan is on her own. She is going to present where the Vision subcommittee is right now and what they've done and where they plan to move forward to.

JOAN KAMINER: This is Joan at first I just want to start with an logistical update to give you an idea where we are now and our plan going forward over the next few weeks. If you have taken a look at the material provision, you know that we are slightly behind the other group but we have a plan to catch up. So, basically, over the next two weeks, we are having two meetings, next Wednesday and the following meeting. Our plan for those two very intensive meetings will be to have a report out from each of our sub-groups to discuss the evaluation, the summaries of the survey results, and how they speak to our current brainstorming or ideas. Next will be to finalize the selection of our recommendations from those that are on the table now and may develop from the report out from the remaining sub-group. And, last, assign responsibility for drafting those recommendations. Our plan is to have the draft of the recommendations completed by mid-to-late January, which should put us on track to meet the overall time frame that the committee is looking for. So, with that, I just want to frame up what you are looking at here. Please keep in mind that if there is a word for a draft of a draft of a draft, that is what you are looking at. It's really a documentation of ideas that we have had, you know, brainstorming. Clearly, not a lot of the wordsmithing going on here. So, give us a little break with the terminology. It's not what you would prefer and definitely not what you're going to be seeing in the final product.

That's my introduction. With that, though, I think we can have some lively discussion from what we have here, some of which has already been covered. So I'll note that as we move forward. And I guess that's it. So, you guys should have a sheet with 11 ideas. So, the first, I don't think we need to go into in any detail. This is a recommendation that's going to be done in conjunction with the Time/Volume subcommittee that Bradley already went through and that we had a discussion related to it. But I just want to note the Vision subcommittee's involvement. The same is with No. 2, which is related to proactive data management. A few months ago, we had a joint conversation with the records committee on our involvement moving forward in that, but as they are further along in their drafting, I'm also going to contact them.

So, on to No. 3, and as was mentioned, Chris, who is from Deloitte, is unable to join us today. So, when it comes to some of the more technical side of things, we're going to miss a bit of his perspective and I'm going to try to frame it up best as I can from conversations I had with him. With regard to 508 compliance the idea of bringing in an industry perspective to 508 compliance, potentially representing to have an industry day, industry involvement, as well as, you know, further work towards the production of a flat PDF, which, as I understand it, would have certain benefits to being able to, you know, be more accessible.

With that, if I can't answer any questions, I will definitely take the notes back to our meeting next week so we can work toward addressing any questions or concerns you might have. If



you have additions, or ways or ideas that you think might add to some of these, please feel free to bring those up as well.

ALINA M. SEMO: We want to pause for a second and just ask for feedback on 1, 2, and 3 so far? Thought, ideas?

RYAN LAW: So one idea, and this might fall outside of your current focus on 508. Looks like you are talking about how to encourage industry to develop tools to ensure that products that we produce are 508 compliant. One additional thing that might be helpful for the agency community is to encourage GSA, if this doesn't already exist, to have government-wide vehicle for agencies to leverage remediating documents. I think each agency, at least each agency I know, does their own thing in this area. And there could be cost savings if we have a standard vehicle that we could leverage to accomplish 508 compliance. Access is incredibly important to make sure everyone has access to materials or releases is very important.

ALINA M. SEMO: Did I hear someone on the phone that wanted to chime in?

PATRICIA WETH: It's Patricia Weth from NLRB. I thought that agency-wide, there was a requirement that all agencies are to be 508 compliant. I don't know if this is maybe a bit repetitive of that requirement. And I can't point to the, you know—

2:13:19 SEAN MOULTON: [Interposing] This is Sean from POGO, I'll jump in, we talked about this 508 compliance quite a bit in the last term of the FOIA Advisory Committee, and the problem is rather an odd one where records are 508 compliant in the agency, but when they are processed for disclosure, often that compliance is stripped out especially when redactions need to be made, and it's the only way for an agency to feel secure that those redactions won't be retrievable. Any of that information. So, the process of processing it for public release turns it into a document that no longer meets 508 compliance which they are required to do if they released everyone, but they are only releasing it to one person because it's a FOIA request, and so they can do that and it's never been a problem up until more recently when we've tried to pursue release to one, release to all and we realized then we kind of painted ourselves into a corner. So, one of the things I did want to raise, as I notice is an ongoing problem, was the idea that if there's a large volume of records that are not 508 compliant that have been released to someone, one of the solutions may be a listing of 508 compliant listing, or index of those records that are available upon request, again, without a new FOIA review where we don't have the same problem we're talking about with volume, that they would be released and since they would only be sent upon request they wouldn't be violating the law to keep them non-508 compliant. So as long as the searchable index is 508 compliance the agency would remain in complete compliance. It's less than ideal solution but could be a stop gap until we have the right technology.

ALINA M. SEMO: This is Alina pat on the back to OGIS. In our legislative recommendation in our annual report this past year we actually suggested that very thing. You might want to look at that. And we tried to give a few different ideas to Congress. So it's something we're still very interested in trying to move forward. So, I'm very excited about continuing this dialogue.

BRADLEY WHITE: One additional thing—however this recommendation winds up being fully framed we mentioned early about unfunded mandates. This something that's definitely going to be expensive. So, if the recommendation to OGIS to seek some kind of information. I would suggest putting in the recommendation that OGIS asked Congress to fund this.

JOAN KAMINER: With that, Joan again, moving on to No. 4 which we discussed briefly and I think might be an opportunity to work potentially in conjunction with Time/Volume is the concept of streamlining the process for certain types of records. It does stop short of your recommendation of taking these first party request records outside of the FOIA process. We were envisioning something more like a streamlined process, a specific track for certain types of records which would require defining both those categories as long as the owning agencies, potentially a portal for those specific types of records, something to help speed up the process for what accounts for a large volume of FOIA requests. I don't know if there's any additional discussions we need to have on that. We're throwing our hat in the ring on that one.

EMILY CREIGHTON: This is Emily, I'll just say that I know in immigration context they already have certain processes that are supposed to facilitate or streamline certain types of FOIA requests for certain records, for example, I talked about current processing times on USCIS's website, but they talk about A-files, simple, none A-file, complex, non-A-file. So, they're tracking it that way, and there are forms that are very straightforward, and not just not sure that that really helps solve the problem in that context, anyway.

JAMES R. STOCKER: Yeah. I think that is an interesting request or recommendation. I think we have to think about whether or not this is something that is an alternative to the idea of separating them for FOIA, or could be done alongside it, too. If these are separated, we can also urge that they are streamlined as well. One of the items behind our recommendation was that maybe it's possible that some records are taking longer to get out to the public because of the FOIA, whereas it might be easier to give access to people particularly if this is combined with the electronic databases recommendation that we had also. I don't think anyone would oppose the idea of streamlining access to these types of records. It doesn't necessarily have to be seen as an alternative.

JOAN KAMINER: And just to add, from my perspective, I was envisioning something potentially like the my property system that we utilize which of course would not be enough to address some of the privacy concern, but more as like a conceptual starting point, where individuals who are looking for records about their personal property, literally their house,

your superfund sites or different things like that, have a portal they can go to directly access certain records and they are pulled all across the agency into one repository, and they are tagged based on certain identifying information for that property. I agree. I think that not an or situation, and just throwing a couple of ideas there that might be able—if you're looking at maybe a ten year out goal, there's something that can be done along the way.

And No. 5, further defining or redefining search reasonableness such as standards for reasonably described request. I know something that troubles both the requester community and agency community, is having a more solid foundation for knowing how to frame a fair request and an agency and how to respond to certain requests. We're receiving more and more of these certain requests for all documents, all communications in particular, and given the, I like to call a tsunami of electronically stored information, that escalates, you know, such an exponential rate every year for the Federal Government. When you take what, you know, a request that's asking for all communications for an individual for even a month period, it can result in such a high volume of records. Now, I'm in no way saying that's not a reasonably described request. You can look at the record on all of that. But, I think that having some type of, you know, base level, it could be opportunities to include subject matter, search term, but I think it's going to require communication from both the requester community as well as the agencies.

ALINA M. SEMO: This is Alina. This sounds like it pairs up very nicely with No. 6 from Time/Volume. So, maybe Emily and Joan, you guys need to talk.

LEE STEVENS: I wouldn't want that one to get lost on the requester side, which is having some way to understand and challenge as a result the reasonableness of the search. From our perspective, when we often suspect the search was inadequate based on our other knowledge of the subject matter, and it's often difficult to know, and we do have that communication, and some FOIA officers are quite happy to go back and respond to those requests. We suspect, others are using the opaqueness to avoid having to do a further search. Let's put it that way. So, I don't know how exactly that would come out in terms of terminology and wording of this, but you did mention that it was from both sides. So, further guidance on what is a reasonable search and communication of that to the requester, I think would be helpful.

SARAH KOTLER: This is Sarah Kotler, I actually just did a little bit of research into this very issue for something I was working on and there is a lengthy discussion, case law, in the DOJ guide about this very issue that specifically talks about any and all FOIA type request that I found very useful and helpful. So, it's something that you may want to look at in understanding. It's not entirely clear, there are some cases that have gone some way and some the other. But we do, you know, are on alert for those kinds of requests, because I think often they don't work well for requesters. It's really hard to do a search for any and all records, and sometimes I find that requesters aren't really doing themselves a service by

being, they think, if I'm really broad that will get me the best result, but sometimes that's actually not the key. And at one part of that recommendation could be, and one of the recommendations from the last Advisory Committee was to post our logs directing requesters of such types of requests to the log can actually be quite helpful as a starting point.

JOAN KAMINER: This is Joan again. So, that's where I think that the interplay between a reasonably described request and a reasonably constructed search really play together. Because I agree, I'm familiar with the DOJ guidance particularly on all records related to a particular subject, but given that the vast majority of FOIA requests that agencies are processing are in electronic system, you're also looking at whether or not an the agency is capable of conducting a particular search, so it may be reasonable that an agency search for, like I said, all communication without a subject matter qualifier. If you have a custodian, if you have a date range, that is really all a lot of agencies need to do a search. That said, you're getting more into the unduly burdensome aspect of it. So, that's going back to Lee's point, why I think it's so important for it to be a conversation between the requester community and agency community, because I think it really benefits both to have an understanding of how requests can be framed, that will not only result in a lower burden on an agency, but also on a quicker response to requesters, to really target what they are looking for. But it does have to be, you know, a balanced discussion.

ALINA M. SEMO: Anyone on the phone have any questions or comments? Keep moving. You're doing great.

JOAN KAMINER: No. 6 a new pending FOIA legislation particularly on making private prisons subject to the FOIA. I will say, since Chris is not on the call, I don't have a whole lot of familiarity with it, just in reading that one right there. I don't know if anyone is familiar with it and wants to chime in. But it sounds like a great thing. I'm not sure.

JAMES R. JACOBS: Hi, James Jacobs Stanford University. I would just note that South Africa does something similar to this. In their FOIA law they cover NGOs and non-profits, or organizations that do government work. And I know that the U.S. government doesn't do that. But I think this points to that, you know, covering private prisons under FOIA. It would be really interesting to, you know, cover contract research organizations, and defense contractors, and places like that.

MICHAEL MORISY: This is Michael from MuckRock. A number of states do as well. I don't know if we want to be endorsing specific legislation. I'm happy to endorse legislation or proposed legislation. If we can endorse or come together with a suggestion as more government businesses privatize, we do need to make sure it still encapsulates the spirit of openness and transparency as prior I think that would be a really good thing to include in a recommendation some mechanism of tracking that.

TOM SUSMAN: Tom Susman. Congress did take a mini step in this direction when it said outside non-governmental entities that hold records for the government are going to be subject. So, you can't outsource your archiving in order to get the information outside of FOIA. And I think Michael's point, there's some very good and broad state laws that say if you're spending government funds to perform traditionally government functions then the entity should be subject to that. Then the question is the procedure and that is beyond our issue here. But there's also the Open Data Act, I think, is also another precedent for this. Where, if an agency relies on private research, and promulgates a rule, then that data has to be available for public disclosure.

ALINA M. SEMO: Anyone else? All right.

JOAN KAMINER: Joan Kaminer. So, moving on to No. 7, release to one, release to all. As you can see from the notes it has been around for a while. But the potential recommendation that it is finalized, and rolled out formally. Open to comment?

BOBBY TALEBIAN: I guess I should probably comment on that. And so, I think it goes hand in hand with what Sean had talked a little bit before with 508, during the pilot we had identified challenges. This committee examined some of those challenges. They still exist. Very much in favor of the policy of practical disclosures, but just being mindful of that. But, it's still something that's under consideration.

BRADLEY WHITE: This is Bradley. This relates really closely with one from the recommendations that we recommend and something we're going to talk about later. I have to say representing DHS with our huge volume of FOIA requests has issues with making this policy standard for everything. First and foremost there's the issue of individual requesters and I know that we discussed making a carve-out for those kinds of things outside of FOIA but those are things that cannot be released to all. The other thing is, depends on what you mean by this kind of policy. If you mean that every single FOIA release gets he posted on a website, who pays for that storage, where is it going to go, how are they going to get to it? Those are all things that can be incredibly expensive and incredibly burdensome on an agency. So, wherever this goes it needs to take those things into consideration.

JOAHN KAMINER: So, now moving on to No. 8. Agencies paying for litigation losses and FOIA litigation. Some of you might be familiar, but just to make sure everybody understands, agencies, when they pay out attorneys' fees for losses in FOIA litigation, that money does come from the agency's funding. I don't know how it works at other agencies, but down to a program level. So, imagine whatever program in whichever agency was the lead on a particular FOIA request, be it a failure to respond, or withholdings that were later found to be improper, any settlement, either through negotiation with the plaintiff, or at a court order, will come from that program's personal funding. And that has I would hope unintended consequences but very clear consequences on that agency, specifically for the resources

available to process other FOIA requests. It compounds the problem. They have fewer financial resources, and staff focus needing to shift to litigation because of that financial impact on the agency, then potentially results with less staff focused on processing incoming FOIA requests. There are a number of what I consider creative options out there to address this problem. There are potential, just ideas please remember, potential limits on fees based on sizes of organizations. Of course, there is the recommendation which I don't know if we actually get to, shifting the financial obligation to a general fund, and this is going beyond some of my expertise there. But I don't know if that's on the table.

Additionally, the pre-2007 approach to FOIA attorneys' fees, was that if the issues were resolved prior to a summary judgment decision from the court, the plaintiff was typically not eligible for attorney's fees. That would likely have to be a result of a statutory revision, I imagine, so we, like I said, we're looking vision here, big picture ten year out, but you may or may not be surprised at what a dramatic impact this does have on agencies.

LEE STEVEN: This is Lee Steven. I guess my question is what would your recommendation be here? Are you trying to limit fees?

JOAN KAMINER: As presented there are a few options. Because we have not finalized what recommendations we are moving forward with, we are presenting possible ideas that we will reflect on and get your take having the benefit of getting everybody's assessment of these ideas before we select what recommendations we will move forward with. Yes, there's potential limiting attorneys' fees and putting caps on things, on the amount that could be paid out or the shifting of the obligation is also I think an opportunity. The third one you mentioned, the pre-2007 approach to attorney's fees, I understand would also have a potentially negative impact on the requester community, but I do want to present that as a potential option for recommendation. So, when you say what am I suggesting, could be any of the above. We have to decide but I would like to get everybody's take on those possible options.

LEE STEVEN: But the perspective is that you're coming from on this, just for my own clarity, is that you think that the fee is being paid out right now are a problem for the agency, and that's the problem you're trying to address with this recommendation. Is that correct?

JOAN KAMINER: Yes.

LEE STEVEN: You said it has been a burden. Could you describe for me what level are we talking about? What level of burden? What dollar figures, what actually is the problem?

ALINA M. SEMO: I'm going to jump in.

JOAN KAMINER: Thank you.

ALINA M. SEMO: At one point in my career I felt very strongly about this. As you may or may not know I ran the FOIA litigation unit at the FBI so we experienced lots of litigation, and there was definitely as far as I know a lot of intent behind this legislative change that was made. My understanding was that the requester community really pushed for it. Because they were finding that things weren't working the way they should. And one way we can pitch it in a negative fashion to say it was a pay to punish agencies, right? But a way to look at it from an impact perspective I agree with Joan. From the FBI for example, the general counsel's office was the one that took the hit and it was my particular section actually. I used to say for the \$100,000 in attorneys' fees I had to play to X plaintiff those were seven copiers or four printers that we can't buy for our section. It really hit down to that. My understanding was that's what Congress wanted, for agencies to really feel the pinch, but I'm just telling you from a practical perspective that's what was going on.

SARAH KOTLER: This is Sarah, in an agency with a lot of FOIA litigation. While I understand the incentive idea that a program office is getting dinged and learning a lesson but if the reason the FOIA requests were not being processed as quickly as they could be in the first place that resulted in litigation was a lack of resources, now we have exacerbated the problem by reducing it even more and making it subject to even more litigation and even more attorneys' fees.

TOM SUSMAN: Tom Susman. I think punishment was not the goal. This Vision subcommittee is continuing to the future, these recommendations would look ten years and beyond and the past. Because Congress made the change in paying out of the agency pocket rather than treasury's pocket specifically and not allowing agencies to delay, delay, delay, and then hand out the information in court and avoid having to pay out anything. These didn't come easy, and they came because the public, media, requester community, all felt that it would help change agency performance.

Now, the question that I would have, and I was an advocate for these changes, is if it didn't impact incentives, then I would certainly be open to adjustments. But we don't know that. It's easy to say, this takes resources how much, to what extent? Six copiers? Is that academic mathematics, or do you have examples of agencies that have been directly impacted and could it have been avoided? The other side of this, agencies that play games and get dinged. I've been on the collecting fees side of things where the agency should have never contested these. Okay? You recall at one point even the Justice Department took a position they wouldn't defend agencies in certain cases because some of the defenses were frivolous. So, in those cases, agencies should get punished, dinged because the incentive didn't work but maybe it would after a while. I would like to have a stronger empirical base to know what the result has been and whether we can more surgically draw a line to help provide some incentive and maybe in some cases punishment without abandoning the whole notion that, you know, these are expensive lawsuits for requesters, and they shouldn't have to sue every time the agency decides to be, well.

JOAN KAMINER: This is Joan again. Where I think there's an opportunity there, and I appreciate the need for there to be a little more precision here, the stipulation of dismissals, whatever we pull together numbers and associate that particularly with failure to respond litigation, which is where I think that this, and I'm going to call it a vicious cycle, has the strongest impact. So, for example, if we're able to put together the data in a fiscal year, the amount of attorney's fees one particular agency paid out for failure to respond litigation, which I know that we won't be able to say definitively is only due to resource issue, but I do think that there is a connection there. I think that maybe that type of information might be a little more persuasive. And if you think about it in the full circle, if an agency is unable to respond to a FOIA request in 20 day or 30 day statutory time frame depending on the situation, and a requester then litigates soon after, I know there's a lot more to that detail but if it's due to a resource issue, due to a high volume of FOIA requests, you know trying to work through very voluminous requests, any number of things, but simply because they failed to respond in they are in litigation and they make a production in the course of litigation, very frequently there's no further briefing on withholdings in those situations. It's purely a litigation that results in a agreed to production schedule. The agency produces records. There's no contested withholdings and the parties then move on their way but typically with settling with attorneys' fees. That's the type of situation that I think is best suitable for this recommendation. Because then you have that cyclical fashion where the agency has less resources and is unable, and also have shifted resources to the litigation, and therefore not able to fully tackle the incoming request, which then they failed to respond to and may result in additional litigation.

JASON R. BARON: Alina, could you make a point of order? I feel very bad for James Jacobs who has traveled from California to talk about two very fleshed out recommendations that are more mature than the discussion here. So, we really do need to have time for him.

ALINA SEMO: Sure. No. That's fair. I think James wanted to say something. I'm just going to give him that opportunity.

JAMES R. STOCKER: I think this is an area where we can learn from the examples of other countries, in Switzerland, for instance, they created a trial run of what they called accelerated summary procedure with oral arbitration hearings to avoid litigation, I guess this would be some sort of a binding arbitration process which I guess is not the case in FOIA cases here and there's people smiling a little bit, so maybe there's obvious objections to this that I would miss. But if we could be innovative in ways like that, there may be ways to think outside the box to avoid going to court in the first place.

BRADLEY WHITE: Can we continue the next part of the discussion in the next meeting or another time because a lot of us have a lot to say about this but we really do need to get to the other two things.



JAMES R. STOCKER: Sorry for that.

JOAN KAMINER: Then, with that, with No. 9, we're going to put a pin in that one. There is also a lot to say and that one clearly is not fleshed out at all. And I think it can be taken just on the face of it in many different ways. So, with that, I would like to very just quickly address No. 10 and 11 which do have a bit more context to them. With No. 10, it's establishing the briefing for senior leaders during the transition to new administration. The idea would be either, through OGIS or potentially DOJ, either having a basic template with standardized information across the agency or alternatively, I really think that DOJ provides excellent training on FOIA. There's the potential for there to be training specifically for senior leaders during transition.

BOBBY TALEBIAN: I think it's a great idea.

JOAN KAMINER: Thank you, I endorse this message. No. 11 the recommendation to revise the statutory time frame permitted for responding to complex FOIA requests—this could be an alternative idea, the second part or in conjunction with the first which is basing this time frame on metrics provided by agencies on processing times for complex requests. I do want to point out FBI and DHS having successfully being able to defend metrics and a defined processing rate of pages per month in numerous litigations which you guys are my heroes. I believe that there's an opportunity for both requester opportunity involvement as well as agency involvement in a potential work group that could help establish and we are getting into a lot of math which is beyond my abilities, and making sure it's well supported. But I think looking towards that ten years in the future idea, I understand that we may not be successful in the idea of modifying the statutory time frame. But with that expectation idea, that came from managing expectations in our group, of having that underlying metrics to support our estimated completion dates, it really supports requesters and knowing how long it's going to take to have things as well as agencies unable to defend requests for funding. I feel particularly strongly about metrics and being able to utilize those through the FOIA process.

ALINA M. SEMO: Okay. Joan, thank you for all of that. Does anyone else want to discuss anything, please join the Vision subcommittee, and we could continue the dialogue. I want to quickly intercede. I understand and I was told at break and forgot to address this earlier and we've had a lot of lively chatter on live stream and we will have a period of time for addressing any questions or comments at the end. So, we don't want the folks out there in YouTube land to feel like we're ignoring them. But this is for committee deliberation. So, with that, James or Ryan?

RYAN LAW: I'm Ryan and on behalf of the Records subcommittee I want to briefly talk about our efforts today. We've had several meetings since our September meeting, if you recall during the September full committee meeting we introduced seven recommendations, invited feedback, and comments. We've gotten some of those. Those recommendations have

not significantly changed since that meeting. So, we don't plan to go over them today. We will introduce those back to the full committee for discussion at the next session.

Today, we would like to introduce two recommendations that we discussed since the last meeting and I want to recognize Mr. Jacobs to talk about this.

JAMES R. JACOBS: This is James Jacobs, Stanford University. Originally it was one recommendation that we split into two. The first proposed recommendation that I'd like to hear your feedback and comments, has to do with, well, I'll read it out: *We recommend the Archivist of the United States request NARA/OGIS and DOJ/OIP work together to encourage agencies to work toward a goal of collecting, describing, and giving access to FOIA-released records in one or more central repositories in standard identified ways, in addition to providing access on agency websites.*

This is something I believe Bobby gave us feedback on that, and so we did fold your input into the new recommendation. I would love to hear your comments on it.

ALINA M. SEMO: Comment, questions? Folks on the phone we're not ignoring you.

ABIOYE MOSHEIM: This is Abi, I have a question. So if it's not on the website, where would it be? Are you thinking FOIA.gov?

JAMES R. JACOBS: There's FOIAonline.gov. FOIA.gov. Maybe an agency has its own repository, those kinds of places. We don't want to prescribe where the agency is required to post it but we want to recommend they work to maybe centralize those documents.

RYAN LAW: Ryan, just to give an example, the State Department has a fantastic centralized portal now where their FOIA records are posted. They are searchable. They are accessible. And I think that is a good example. Other agencies that use FOIA online, requesters are able to go to FOIA online and do searches of records at those locations. Other agencies have centralized locations on their websites where you can search across the web. Again, not prescribing a specific solution or standard portal but giving flexibility.

JAMES R. JACOBS: I need to give a hats off to Document Cloud and MuckRock, because Document Cloud has all of the organizations that use Document Cloud, they have a database, a central database where you can search for the FOIA'ed information that those organizations, news agencies, etc., etc., have posted to a central repository and makes discovery of FOIA'ed information much easier for the requester community.

SEAN MOULTON: This is Sean Moulton with POGO. I was just wondering if you guys while drafting this, I like the idea, I just wonder if there's something more specific rather than just encouraging agencies. Maybe this is something for the Chief FOIA Officers Council to do a best practices under the guidance of OGIS and OIP, so that there would be something substantive

at the end that other agencies could use as a touchstone as they start to try to accomplish this.

JAMES R. JACOBS: Thank you. That's a good idea

ALINA M. SEMO: We're taking note

JAMES R. JACOBS: We are, too

ALINA M. SEMO: All right. Anyone else on No. 8? Anyone on the phone on No. 8? Going once, going twice. All right. Thank you.

JAMES R. JACOBS: Okay. So, the ninth recommendation we have, reads the following: *We recommend the Archivist of the United States request NARA/OGIS and DOJ/OIP to together encourage agencies to release documents to the public on their FOIA websites and in FOIA portals in both human-readable and machine-actionable formats, to the extent feasible.*

And that comes out the idea of open data and machine actionable, machine readable documents, has been around since, well at least 2013, with Obama's Executive Order, 13642. It's also been in proposed legislation from Congressman Quigley and others, that has not passed but has been submitted to Congress, every Congress, for the last ten years or so at least.

BRADLEY WHITE: Bradley White here. For this one I'll raise the same objection I raised before. This kind of thing is going to cost a ton of money for agencies to do. Recommendation makes it kind of squishy. But finding a way to put everything out there. I mean release to one, release to all as we said in the last portion raises a ton of additional issues that there's just a lot to go into with, again, format. Where is it going to be stored? Who is going to get it? If this were linking to reading rooms with information that the agency decided was publicly released, I'd have no objection to it, but this one just raises a lot of red flags with me.

JAMES R. JACOBS: That could certainly be a first step. I think that's a really good idea to add something about information that is already released under FOIA on agency websites. That is a good idea.

JAMES R. STOCKER: This is James Stocker. This is a follow up and maybe a question to Bradley about the cost. I mean I understand it is expensive to store documents online but that seems to be something where you basically end up saving money with scale. Right? The requirement to cooperate between agencies, for instance to have a common portal or use FOIA online, would that go some way toward addressing the cost concerns?

BRADLEY WHITE: I don't necessarily think it would. Because if you look at the way, say, the cost for FOIA online as it currently exists are spread around the agency, there's an agency that barely uses it that pays a large share of the costs for that. So, it depends on the usage and what can go up and what can go out. So, if it's based on, say, based on that agency's share of all government FOIAs, if the majority of those records request for individuals' records, then that proportion wouldn't be fair to the agency paying the bulk of the costs. And just data storage in and of itself. It has to go somewhere and someone has to pay for it. And unless there's something Congress is setting aside, this is the fund for storing FOIA records on this portal, which is unlikely. It's going to be apportioned among the agencies in some form, and, again, it raises a lot of red flags.

ALINA M. SEMO: Tom, did you have a comment?

TOM SUSMAN: Tom Susman. It sort of brought to mind, when Ryan was describing the State Department, is that prohibitively expensive? Do we know? These are the sort of things that say, wow, what a great sort of model, best practices, and then you turn around and sort of a few seconds later, oh this approach is prohibitively, well it wasn't prohibitively expensive for the State Department. But I guess I would like to know more about where the line is between, you know, a modeled best practice and prohibitively expensive.

EMILY CREIGHTON: Emily. I have one quick comment. I wonder if this lends itself to pilot and the other question, the human-readable and machine-actionable piece of it. Is that something that can be pulled out?

JASON R. BARON: Actually you're channeling my thoughts. So, we had discussions about this, and noting Bradley's concern, but it may well be that this is the kind of thing that is properly considered a pilot, or part of the vision part of whatever the final report is.

ALINA M. SEMO: All right. Anyone else have any thoughts about No. 9? Anyone on the phone for No. 9? Okay. Hopefully we still have folk on the phone. All right. Any other comments over all, or should we move into the public feedback part of our meeting? Anyone have anything else they want to say? Okay. So, we're now at the juncture where we would entertain comments from those in attendance, either via live stream or here in person. Please approach the microphones that are on each side of the room. For the record, please state your name and affiliation if that's appropriate and fire away.

ALEX HOWARD: Not sure this is on.

ALINA M. SEMO: It is. We hear you.

ALEX HOWARD: Thank you. My name is Alex Howard. It's good to see you all here talking about these issues because I think it's fair to say that public trust in government has never been lower, and that secrecy is at an all-time high. You mentioned the volume of FOIA

requests, well one other metric that would be useful to talk about is the volume of FOIA lawsuits and number one reason you hear from the requester community is that agencies do not respond. So your recommendations here are important and I celebrate the service of FOIA officers here and your colleagues under that case load. But I have some concerns that you're not addressing some of the direct problems with FOIA in these recommendations or acknowledging the laws. We just heard of the Open Government Data Act which President Trump signed into law in January that actually mandates already that you all post information as open government data in a machine-readable format. Already. So, instead of recommending that there be another system, on another portal, why are you not recommending that agencies disclose responsive records on their open data websites and federate them and make them searchable to FOIA.gov or Data.gov which was just codified by the law. Why are they coming up with duplicative, redundant recommendations to build a brand-new system? Is this an idea for Congress?

There is a specific question that I have raised many times before that has come up with respect to the release to one, release to all pilot which I commented on, when I was at the Sunlight Foundation we supported it, which I since petitioned government formally with the Cause of Action Institute. You're responding today as acting Director, that specifically it's still something that's under consideration. It's been under consideration for these years. Is that an official response to the petition that it is still under consideration?

BOBBY TALEBIAN: I mean, this is something I know you brought up at the last meeting and a couple meetings.

ALEX HOWARD: I've been bringing it up since 2017.

BOBBY TALEBIAN: And I don't have anything more that I can share about that.

ALEX HOWARD: Is the committee aware there was a Cross Agency Priority (CAP) goal for the FOIA established at the beginning of 2017? Anyone?

SEAN MOULTON: This is Sean Moulton. I'm aware of the CAP goal and saw it in the previous minutes that it was raised in the previous meeting. I was unaware until reading this that the CAP goal had been removed.

ALEX HOWARD: Has there ever been any official acknowledgment for why OMB removed the CAP goal from its website and refuses to acknowledge it ever existed?

SEAN MOULTON: Not to my knowledge and it's certainly something I'm happy to look into outside of government but it is disappointing from a requester perspective that we had a CAP goal and it was at some point unceremoniously removed.

ALEX HOWARD: As you all are considering recommendations to the United States government to improve FOIA compliance may I suggest that you recommend to OMB that it takes a leadership position, restores the CAP goal, and reminds agencies FOIA is not something to punish senior ambassadors who have been recalled from posts abroad and make them do but something that is an honorable public service that provides the public with our records under the law and to encourage them to recognize your work and coordinate your work and to support the United States government's FOIA portal which Congress mandated that OMB work with DOJ to create by reminding them the mandate exists. I would suggest one of the reasons we're seeing a raise in costs and that we are seeing public frustration with this, is that the very top of our United States government is not reminding to the public that these records exist either in a proactively disclosed form or that there are better tools for getting them or there are existing obligations that they are under. Now, we all know that your recommendations are not being taken up across government and I'm not convinced, following up on our last conversation that Congress is adopting them into statute but if you do make recommendations in this area, I would encourage you to highlight the role that OMB has in getting people to follow the law.

And on that particular count, these are wonderful, technical recommendations. Has anyone in the committee talked about culture or politics? Are you going to? Because political interference in FOIA requests was something that was a problem in the last administration and is certainly one is now. Are you going to recommend FOIA officers are able to be responsive without having appointees step in. I'm used to no one responding, but I always want to give you an opportunity.

ALINA M. SEMO: I want to say, Alex, this is Alina, certainly not directly under the jurisdiction of any of the three subcommittees. I will say that. We did brainstorm at the beginning of this term as to how we were going to divide up subcommittees. I don't recall that topic necessarily falling neatly into one from the three. So we appreciate the feedback. I think we're all listening, and we will discuss further.

EMILY CREIGHTON: This is Emily. I had one comment. I think I wasn't entirely certain what you meant by culture. I hear you on political interference. We had with the Time/Volume subcommittee really looked closely and through the survey as mentioned before what is happening inside these agencies that FOIA requests are not being responded to. And I think we truly emanate, and I know the word training has been batted around and what does that mean and how is that implemented, but I do think that goes to that culture question to a certain extent. How can the inside of an agency work better and more efficiently together to respond to FOIA requests.

BOBBY TALEBIAN: I'll just make one comment going back to the portal and OMB and the CAP goals. A significant part of the CAP goal was the establishment of the National FOIA Portal. OMB has been incredibly supportive in our effort there, not only launching it but designating

a line of business funding for it and making sure it will continue to build in the future and not be stagnant. I'm looking forward to working with everyone here and you, to find new ways to expand on that. And I also open an invitation, Alex, any time you want to talk to OIP, come on over, I would love to hear your recommendations, that's an open invitation to everyone.

ALEX HOWARD: Thank you, I'll just start off the bat and say do a search of how many U.S. government accounts have shared FOIA.gov since 2017. You can search a URL or you can search across Facebook, you can search across websites. See how many times the U.S. government has engaged the public about the thing that you built. Beautifully, I would say with full disclosure. I was involved in that. I gave feedback. I was a beta tester. I was the person, the only person, who came to your launch at DOJ.

So, I've showed up but the government is not engaging the public about the resource it has built. That would understandably lead us to wonder about its commitment to making sure the people know that these things exist so that we can save money on the front end, and save your time on the back end and get to the more complex requests that we know do require the lawyers, and other people, to get involved.

I say this last issue—one of the previous meetings we talked about technology and technology comes up a lot here and that's important. I've spent my career in Washington covering government technology and open government. The American people are getting a really poor investment for the money that we are paying. I hear about the cost that it spent. Do you know how expensive it is to put a spreadsheet or PDF on Amazon web services now? Pennies. Fractions of pennies. Cost is no longer a driving factor there. Do you know how much we pay for a small number of companies to provide software for handling FOIA requests? I would say that number and those companies, and getting agency feedback on the quality of the software they have to process these requests should be right at the top of your list of things to figure out. Get the GAO to do a study get, Congress to look into it, go back and audit and see how many of these very same companies are lobbying Congress to prevent the government from building something better itself or opening up the process. We're having a terrible time on our nation's investment in technology. This is one area actively hindering public knowledge.

Now, I am sensitive to the fact that you are hobbled by procurement regulations that were created by stuff, and not software. But you have resources to help you with this at 18F. Go find some of the brilliant people at USDS. Look at the Presidential Innovation Fellows, find someone to help you do this better. And I hope that as you look at this talk to the Federal web council. Look at Project Open Data. Because I'm seeing recommendations here that look like they were from five years ago to me, and I can say that because I was covering recommendations to Congress in 2014 when FOIA reform came up and got undermined by the Department of Justice lobbying against it. Including release to one, release to all kinds of ideas with the presumption of openness.

I watched a YouTube stream full of people who are upset with government. There's not a lot of them. They left after the recess. And I spend my day seeing people angry at government. I would encourage all of you to be as frank and open and tough on government's performance here as possible and to continue to ask people outside of government what their experience is with your systems, with your staff, with your websites, with access to data. Because it cannot stay here in this room. Archives is being amazing by broadcasting this information online, posting this information online, it's a model of open government in the United States and in a number of very important ways by making this more open to the public. But if the public doesn't see you grappling with the reality FOIA as it is experienced by requesters and making recommendation that both recognize the law as that have been recently enacted, and, I think, gets to the core point of why people are so upset and why the requesters keep suing, I'm not sure your time is being well used. I appreciate the opportunity to comment.

ALINA M. SEMO: Thanks, Alex. I believe we have some live stream comments that Jessie is going to bring up.

JESSIE KRATZ: There's just one question. It's from a representative from Reclaim the Records: "USCIS has come up a lot—obviously they need to be leaned on. I'm here representing Reclaim the Records. My question, what powers or ability does NARA have to compel USCIS to comply with records schedules to alleviate the public to use FOIA to obtain records? Or can NARA suggest that USCIS amend records schedules to speed up surrender of records."

ALINA M. SEMO: Great question. Not necessarily within my jurisdiction, it is something we need to talk about with my colleagues in the Corporate Records Office. We'll put a pin in that and continue that dialogue. Anything else on the chat? Okay. Anyone else in the audience?

Okay. So, I think we're just about out of time or over our time. So, thank you, everyone, for being so patient. I think we got a lot of work done today. We still have a lot of work to do. We invite everyone to visit our website and social media for more information about how you can participate and give us further comments. A reminder that our next meeting is Thursday, March 5, 2020, 10:00 a.m. right here in the McGowan Theater. Does anyone have any other comments or thoughts or questions? Looking around at committee member, Jason?

JASON R. BARON: We talked about process, and what you might say to the committee in terms of the next work product that's expected and the form of it.

ALINA M. SEMO: Sure. I think it would actually be extremely helpful. I know some of these ideas are very nascent and we're still working on them and I really respect that. Kudos to Joan for being brave enough to bring all of them to the table and we definitely will revisit some of them next time. One thing I would like subcommittee co-chairs to focus on in the interim is giving some more full body experience, if you will, to the recommendations, and perhaps developing a written explanation of why these recommendations came about. And



what the rationale is behind them and what the goal is that you're trying to accomplish with each one. I think that would really be helpful.

All right. Thank you, again, for your time and participation. I know Kirsten is going to ask you again, please leave your folders behind, they are highly coveted value for NARA, and have been quite expensive for us to procure, so we would like to reuse them. If there are no other questions or concerns, we stand adjourned. Thank you.

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