

National Archives and Records Administration

May 1, 2020

Freedom of Information Act (FOIA) Advisory Committee Meeting Transcript

10:00 a.m. - 1:00 p.m. (EDT)

Lauren [Operator]: Welcome and thank you for joining the FOIA Advisory Committee meeting. Before we begin, please ensure you have opened the WebEx chat panel using the associated icon located at the bottom of your screen. Note that all audio connections are muted at this time. You're able to submit questions throughout the presentation by selecting all panelists from the drop-down menu in the chat panel and entering your question in the message box provided. If you require technical assistance, send a chat to the event producer. With that I'll turn the conference over to David Ferriero. David?

David S. Ferriero: Good morning and welcome to the National Archives and Records Administration and our very first virtual meeting of the FOIA Advisory Committee. I usually welcome you to my building. Today, I welcome you to my office. Today, as we distance ourselves from the downtown building where this committee usually meets, I'm reminded of one of the four monumental statues placed at either side of the two entrances of the building. One of the statues and an allegorical figure designed by Robert Aiken and actually chiseled by the Piccirilli brothers who did the great lions at the New York Public Library. It depicts a young woman with an open book gazing into the future above an inscription that reads "What is Past is Prologue."

This quote, as you know from Shakespeare's "The Tempest," speaks particularly to the National Archives records being used to learn from the past in creating a better future, but the quote is also a reminder of a very important work that goes on every day by FOIA requesters and professionals across the government who work to ensure that records of the public interest are released to the extent that they can be to inform citizens, hold those in power accountable, and to help document these extraordinary times.

Some of the records released under FOIA during these times will become an important part of our nation's history. The public health emergency caused by the Coronavirus pandemic is putting unprecedented stress on agency FOIA operations, processes, and staff. FOIA staff and requesters alike, there's uncertainty and anxiety and staying healthy and educating

children from a home while continuing to ensure that the FOIA process works. This is not easy for any of us.

I understand that since the abrupt shift to full time telework, just more than a week after the FOIA Advisory Committee's March 5 meeting, a small working group has met weekly to write the outline of a final report. While two of the three subcommittees have met to fine tune recommendations to be discussed and voted on here today.

In the face of such uncertainty, I applaud your continued work, quick shift to virtual work, and commitment to completing the work of this third term of the FOIA Advisory Committee. I look forward to receiving your final recommendations at the June 4 meeting, the final for this term. I thank the entire FOIA community for all you do in these challenging days. Like the statue of the young woman gazing into the future, I also look to the future and the time when we can meet together again in our downtown building. Take care, stay safe, be well. I return the meeting now back to Alina Semo.

Alina M. Semo:

Okay. Good morning, everyone. Thank you so much for joining us. Thank you so much, David. We really appreciate it. As the Director of the Office of Government Information Services and this committee's chairperson, it is my pleasure to welcome you all to our very first ever virtual meeting of the FOIA Advisory Committee and also our eighth meeting of the 2018-2020 term of the FOIA Advisory Committee. I hope everyone who's joining us today has been staying healthy, safe, and well.

During these unprecedented times, the National Archives has temporarily closed nearly all of its facilities. Certain of our facilities do remain open with reduced operations, but NARA has canceled all of its public meetings at least until the end of June. We will not be gathering in the McGowan Theater as we have for the past several years as we finish off the current term of our committee.

I know it's been challenging times as we all navigate changes to our personal and professional lives, but as we navigate through the COVID-19 pandemic and work with these atypical circumstances, it is more important than ever to recognize the value of this committee. I want to thank all of you for your service and for your passion and commitment to developing consensus recommendations for improving FOIA administration.

I remain grateful for everything this committee has accomplished despite these challenging times. I especially would like to recognize all the hard work of the committee's Designated Federal Officer, Kirsten Mitchell. Give her a round of applause. She has done a great job. We are all in this together. We're also in the home stretch, so that's the good news.

Today, I will go ahead and cover some housekeeping rules, review our general agenda, and along the way set some expectations for today's meeting.

As David pointed out earlier, we are ambitiously trying this new mode of holding this committee meeting and our next one as well virtually. The virtual environment in lieu of the in-person medium has many advantages including much shorter commute for all of us and very casual Fridays.

The disadvantage for me and Kirsten is that we will not be able to see you raising your hands or eagerly leaning forward ready to make a comment or ask a question. I have asked all of you to turn on your camera so I could try to see you throughout the meeting. I will be doing my best to monitor your verbal cues during the webcast. But I do want to remind everyone, we will need to be respectful of one another and try not to speak over one another, although I realize that maybe inevitable at times.

I also want to encourage all committee members to use the "all panelists" option from the drop-down menu in the chat function if they would like to speak. You can also chat me directly, but I also want to point out to everyone that in the spirit of complying with the Federal Advisory Committee Act, please keep any communications in the chat function to only housekeeping and procedural matters. No substantive comments should be made in that chat function as they will not be recorded in the transcript of the meeting.

Any questions so far? Nope. Okay. If you need to take a break, please do not disconnect from either the audio or video or the web event. Put your phone on mute and close your camera and join us again as soon as you can. Just a reminder again, as I remind everyone at every meeting, please identify yourself by name and affiliation each time you speak. This will help us down the road with both the transcript and the minutes, both of which are required by the Federal Advisory Committee Act.

As most of you know, the federal FOIA Advisory Committee which reports to the Archivist of the United States provides a forum for public discussion of FOIA issues and offers members of the public the opportunity to provide their feedback and ideas for improving the FOIA process. We encourage public comments, suggestions, and feedback that you may submit at any time by emailing foia-advisory-committee@nara.gov. Meeting materials are available on the committee's webpage. We will upload a transcript and video of today's meeting as soon as it is available to the committee's webpage.

Information about the committee including members' biographies, and committee documents are available on the 2018-2020 FOIA Advisory Committee on the OGIS website. I invite everyone to visit the site and that way we can dispense with introductions today. Nearly all of our members are participating today.

Bradley White from the Department of Homeland Security is unable to join us today and Sarah Kotler from the Food and Drug Administration will need to depart approximately halfway through our meeting. Everyone else, please hang in there. To promote openness, transparency, and public engagement, we post committee updates and information to our website, blog and on Twitter at FOIA_ Ombuds. Stay up to date on the latest FOIA Advisory Committee news, activities, and events by following us on social media.

We have posted the agenda for today's meeting on the FOIA Advisory Committee's website, and our goal as a committee today is to propose, discuss and vote on recommendations from the Vision subcommittee and the Time/Volume subcommittee. We have not allocated specific timeframes for each subcommittee. We thought we would see how the meeting progresses and flows, but I do promise that although there is no break on the agenda, we will take a 15-minute break at a logical point and if anyone wants to prompt me in that direction, please feel free to do that.

Although we have an ambitious agenda today, we will ensure there is time at the end of the meeting for public comments and we look forward to hearing from any non-committee participants who have ideas or comments to share.

Jessie Kratz, the National Archives Historian who is assisting OGIS with its many administrative responsibilities for the FOIA Advisory

Committee, will be monitoring the chat function during the webinar and I will ask her to read out loud any questions or comments during the public comment period at the end of our meeting. I also looked at sufficient time during today's meeting to discuss the final report outline item on our agenda. Thank you very much to the following working group members who have been hard at work already, Jason R. Baron, Abi Mosheim, Sean Moulton, and Patricia Weth.

Since our last meeting on March 5, the small but mighty group has been hard at work drafting a report of those recommendations that the committee has already passed, we will be able to make additional headway once the Vision and Time/Volume subcommittees' recommendations are voted on today.

The goal is to circulate a final draft well in advance of our final meeting on June 4 and use our last meeting to iron out any outstanding issues and take any final votes, if needed.

Next, I would like to...first, before I move on, any questions from any of our committee members? No, I'm seeing lots of head shaking. No. Great. Okay. I would like to try to approve the meeting minutes from our March 5 meeting. Kirsten circulated those earlier this morning. We apologize for the last-minute circulation. We were just trying to finalize things. Did everyone on the committee receive the minutes from the March 5 meeting? Great. I'm seeing a lot of nods. I love that.

I want to note that the transcripts in the March 5 meetings did not reflect the fact that I abstained from voting on certain recommendations that were passed by the committee. That is consistent with the position I took during the second term of the committee as well. In order to avoid a potential conflict of interest, I have and will continue to specifically abstain on any specific recommendations that relate to the Office of Government Information Services and/or NARA. And there will be several other recommendations that are coming into play today that involve the Chief FOIA Officers Council. Since I am co-chair of that council, I also plan to abstain from those. I have added that statement in the minutes for the relevant recommendations that we considered and voted on during our March 5 meeting. Bobby Talebian has across the board so his job is so much easier.

Later today, Kirsten and I would like to certify the minutes to be accurate and complete, which we are required to do within 90 days. We're actually well ahead of that 90-day requirement in the advisory committee act. If I don't see anyone objecting, do I have a motion to approve the March 5 meetings in our current--

James R. Stocker: Can I make a comment? This is James Stocker.

Alina M. Semo: Yes, please. James?

James R. Stocker: I appreciate all the work that goes into the minutes. I know it's very difficult to put these things together, but I just want to draw attention to one particular point in regards to the Time/Volume recommendation number four at the end. The minutes note that, "Mr. Stocker moved to vote on the amended version of the recommendation for which was seconded and passed with Mr. Talebian abstaining. It's unclear whether committee members believed they were voting on the recommendation in spirit."

My comment on this is that it is very important to accurately record what we are voting on. I was under the impression that we had actually voted to pass the resolution. Now, I think we can come back to this today and vote on it and not worry about what happened in the last meeting because we can have another vote today. I just want us to be very clear before we vote today on whether or not we are voting for a recommendation in spirit or to actually pass. I just wanted to make that comment so that we are aware of this issue going forward and they were very clear on what we're voting on.

Alina M. Semo: James, thank you very much for that comment. Yes, Kirsten, Jessie, and I spent a while going back and forth trying to figure out exactly what happened. We tried to look at the transcript carefully. We also listened to the YouTube video. We agree there's definitely uncertainty. I see Kirsten nodding her head as well. I definitely agree with you. It's very important today that we ensure that we're voting on each recommendation, not in spirit but as the language that we're proposing.

We have actually provided and are sharing with everyone, attendees, and committee members, the slides that have each of the recommendations as written. I definitely wanted to encourage you in particular, James, to make sure that you go back over Time/Volume recommendation number four and make sure that we vote on exactly the language that you want. I think it's a very fair point.

James R. Stocker: Thank you.

Alina M. Semo: Anyone else have any questions or comments? Okay. Do I have a motion then to try to approve the March 5 meetings in their current form?

James R. Stocker: I motion.

Alina M. Semo: Thank you, James. No second required but do I have a second? Usually, I have Tom seconding, but he is silent today.

Jason R. Baron: Second.

Alina M. Semo: Thank you, Jason. I believe that was you. All present? Please indicate if you are in favor by saying aye.

All: Aye.

Alina M. Semo: Is anyone a nay on the minutes? Okay. Is anyone abstaining from the minutes? Bobby, you are not abstaining on the minutes, correct?

Bobby Talebian: No.

Alina M. Semo: Okay. Just wanted to double check. All right, so it looks like we passed them unanimously. We have approved the minutes and we will get those posted as soon as possible after today's meeting. I do want to just briefly review the voting procedures in our last meeting we did include them physically in your individual folders. Obviously, we weren't able to provide your folders today. Any member of the committee can move to vote on a recommendation. The motion does not need to be seconded, although it seems like you've been doing that. Happy to entertain that.

The vote can pass by the unanimous decision, which is when every voting member except that abstentions is in favor of or opposed to a particular motion, a general consensus, which is what at least two-thirds of the total votes cast are in favor of or opposed to a particular motion, and general majority, which is when a majority of the total votes cast on favor of or opposed to a particular motion.

In the event of a tie, we will reopen discussion and the committee will continue to vote until there is a majority. If you are in favor of recommendations, I will ask you to say "aye." If you are against a recommendation, I will ask you to say "nay." If you do not wish to vote,

say “abstain.” In this current virtual environment, we will try to take a voice vote. We’ll continue that practice.

Kirsten and I will make sure that we pay particular attention to any nays and abstentions to make sure we have the record clear. Kirsten as our DFO will record and announce the results of the votes. I’m not sure we announced them last time, but we can certainly get that out this time.

Today, to begin our discussion, I’m going to ask each of the subcommittees to present their recommendation and as I understand it from each of the two subcommittees, we’re going to have individual subcommittee members present on individual recommendations. Hopefully, I’ll remember to turn it over to each correct member.

Folks should feel free to comment, ask questions, and discuss. I will open up the floor after those recommendations have been presented for that comment period. Feedback also welcomed. After comments, questions, discussion, and feedback, I will ask whether the committee is prepared to take a vote on each of those recommendations and we will vote on each one and hopefully, the record will be crystal clear this time on what we’re voting on.

Before I go on to the substance of the meeting, I want to make sure the committee members are all good. Anyone have any questions? Okay, got it. Thumbs up from Tom. Thank you. All right, looks like we’re good.

I promised last time the Vision subcommittee would go first today since I took away any of their airtime last time. I again apologize for that, we did run out of time. At this time, I would normally turn it over to Chris and Joan, do either one of you might want to make any preliminary introductory remarks?

Joan Kaminer: No, I don't have anything to say upfront. Thank you, though.

Alina M. Semo: Okay. Thanks, Joan.

Chris Knox: No, Alina Semo. Same for me. Thank you.

Alina M. Semo: I believe, Kirsten, if you could move the presentation to Vision recommendation number one. I believe Michael Morisy is going to present on that recommendation.

Michael Morisy: Hi. Yes, am I coming through?

Alina M. Semo: Yes.

Michael Morisy: For Vision recommendation one, thank you. First of all, a lot of people had some really great feedback as we're kind of crafting this in terms of thinking through what would be most effective. And the recommendation comes down to, "The Archivist of United States requests that the Chief FOIA Officers (CFO) Council create a committee for cross-agency collaboration and innovation to: Research and propose a cross-agency grant program and other revenue resources for FOIA programs; Review and promote initiatives for clear career trajectories for FOIA professionals, building on the Government Information Specialist (GIS) job series and in coordination with existing agency efforts; and Explore and recommend models to align agency resources with transparency commitment."

As we're thinking through, what do we need to do to kind of better align the agencies that resources have with the jobs that they're charged to do. We wanted to find a way to kind of let agencies sort of highlight their needs and make sure that FOIA officers, FOIA processors, FOIA officers feel supported both in the short-term with resources and innovation grants but also in the long-term to make sure that they feel that this is a field where they can really build a career.

I think there's been some really wonderful efforts in that area over the last few years, both by individual agencies as well as support groups as well as sort of the government information specialist job series. We really want to give FOIA processing community an avenue to kind of say, "Hey, here's what we're seeing is working and not working within our career fields" and how agencies can better support long-term professional growth and stability for that field.

I think one of the more discussions around the proposal to research and propose a cross- agency grant program. Anything that involves spending new money is always a tricky proposition. But one thing that was really important to me was as you move forward with future legislative improvements and changes to the FOIA programs, really having suggestions on the table, really finding ways to let FOIA offices kind of highlight pain points and opportunities for future investment, I think is really important.

I think with FOIA reforms, with FOIA changes in legislative efforts, we've seen a lot about what the requester community wants, and we haven't seen up in terms of what is needed to actually support that work as well as support the workloads that FOIA offices currently struggle with.

This seemed like a good way to kind of give a voice to FOIA offices and let them say, "Hey, here's what we need. Here are areas where we could use funding. Here's the experimental programs that we would like a chance to work on." It's always challenging for agencies to kind of lobby on their own behalf. I think finding ways to let good ideas come out and have specific grant proposals that will be in need of funding, but I think that's at least a starting point for future conversations.

Alina M. Semo: All right, Michael. Thank you very much for that.

Michael Morisy: I think the applause was muted.

Alina M. Semo: Yes, the applause was muted. I want to open up the floor to questions, comments, thoughts, reactions.

Operator: As a reminder, you can submit a question or comment by sending a chat to all panelists, or if you want to make your comment over the phone, you may dial #2 to indicate that you wish to ask a question.

Michael Morisy: The only thing I would just--

Patricia Weth: I just wanted to say that I like this recommendation a lot and I think that we've seen success from prior subcommittees that were created by the Chief FOIA Officer Council in the technology committee. We've seen how much that's assisted us. I think this is going to be a very interesting committee and I look forward to their findings.

Alina M. Semo: Michael, did you want to add something? I thought I heard you speak up earlier.

Michael Morisy: Yeah, sorry. This is Michael Morisy from MuckRock again, and apologies for not introducing myself last time, but I do just want to note that I do want to fill out, I did get some really good feedback the last few days about more context and background that can be included below the actual recommendation itself and some hope is to kind of have a beefier version of that in the coming days.

Alina M. Semo: All right. Thanks, Michael. Patricia, thank you so much for your comment. Really appreciate that. Anyone else want to chime in? Ryan, I see you leaning in. Do you want to say anything?

Ryan Law: Yeah, no, thank you, Alina Semo. This is Ryan. I really like this recommendation. I think particularly in highlighting and promoting best practices for and improving career trajectories for FOIA professionals. I know there are some agencies that do it very well. Others can do a better job. I think I really liked this recommendation. I don't have anything to improve it though.

Alina M. Semo: Okay, great. Thank you. All right, anyone else? Lizzette and Sarah, I just want you to know I can't see you on camera nor can I see Patricia. If you guys are leaning forward like Ryan was just a second ago, I'm not able to see you so don't be afraid to speak up.

Sarah Kotler: Well, I appreciate that. My camera is not enabled on my computer, so you will not see me, but I probably am slouching as well.

Patricia Weth: This is Patricia. You can't see me at all, is that right?

Alina M. Semo: Correct.

Patricia Weth: I will try and figure that out. Sorry about that.

Alina M. Semo: No problem. Anyone else want to comment on Vision recommendation number one? Going once. Going twice. Okay, do you all think that we're ready to vote on it?

Patricia Weth: Yes.

Alina M. Semo: Okay. Thank you for the yes. Does anyone want to make a motion?

Tom Susman: So moved.

Alina M. Semo: I'm sorry. I didn't hear who moved. Can someone say that again?

Tom Susman: Tom Susman moved.

Alina M. Semo: Tom Susman, thank you for the motion of the recommendation number one. Do I have a second?

Patricia Weth: This is Patricia Weth. I second.

Alina M. Semo: Thank you, Patricia. All those in favor of passing Vision recommendation one as proposed on the screen in front of you, please say aye.

All: Aye.

Alina M. Semo: Anyone opposed to Vision recommendation number one, please say nay. Any abstention?

Bobby Talebian: I'll continue to abstain. Thank you.

Alina M. Semo: I will also abstain for this one based on my comments earlier. Kirsten, do you want to read out the vote on this one?

Kirsten Mitchell: This is recommendation number one, passes. With two abstentions, Alina Semo and Bobby Talebian.

Alina M. Semo: Okay, great. Thank you very much. Moving right along. The next Vision recommendation number two, Kirsten, you're going to turn the slide, right? I believe we're going to have Patricia Weth and Suzanne Piotrowski presenting on 2A, 2B. and 2C. I'm going to turn it over to Patricia and Suzanne. I don't know who wants to go first, but the floor is all yours.

Patricia Weth: Sure, good morning. This is Patricia Weth from NLRB. The first part of our recommendation is regarding raising the priority of FOIA and this is obtaining support from leadership. I'll just read the recommendation: "The Archivist of the United States proposes that the Chief FOIA Officers (CFO) Council recommend that agency leadership annually issue a memo reminding the workforce of its responsibilities and obligations under the FOIA and encouraging the workforce to contact the agency's FOIA Officer for assistance with the FOIA process."

The goal here was that if the agency leadership sends out this memo to the employees, it really highlights the importance of FOIA throughout the agency.

A little bit of background information on how we came up with this recommendation. Back in 2013, OGIS, provider for this recommendation, and they recommended that agency leadership actively support FOIA programs and encourage the issuance of memos by their senior officials.

They made this recommendation but not only that, they led by example and that the Archivist sends this memo around agency-wide.

During that time, 2013 to my knowledge, two other agencies, followed suit and that was the Department of Transportation and Department of Energy. I was at the Department of Energy when the Secretary issued this memo. I can tell you it really assisted the FOIA program there greatly. Before my colleagues did not realize that we were limited and that we only had 20 working days to turn around a FOIA request was when we needed a consultation with them again, that we had a limited time constraint.

And just this simple memo going around really helped the employees become more engaged and realized that FOIA is everyone's responsibility. Since that time I was at two other agencies, including my current one, where this memo has been issued by leadership and I can tell it does engage employees and it just shows that the leaders at the agencies support the program.

Our thought in having the Chief FOIA Officers Council recommend this is because those are the folks at the agencies who can really obtain the leadership buy-in into sending such a memo. We thought that would be the best group of folks to make that recommendation. I think by doing that it will really make it much easier for those types of memos to be coming down. Our goal is that it would be sent out annually, but so there you have it. Does anyone have any questions or comments regarding this recommendation?

Alina M. Semo: Very quiet, Patricia. Did everyone have their coffee this morning? I just want to make sure we are all awake.

Bobby Talebian: This is Bobby--

Chris Knox: Go ahead, Bobby.

Bobby Talebian: I was just saying, this one and the previous one are great recommendations which is probably why people aren't commenting as much.

Chris Knox: Alina, this Chris Knox with Deloitte. On the Vision subcommittee, we've talked about these recommendations extensively. I wouldn't expect to hear much from the Vision subcommittee.

Alina M. Semo: Okay. Thank you. All right, any other comments?

Michael Morisy: This is Michael Morisy from MuckRock. I just love the fact that this is something that doesn't cost a lot of money. This isn't something that, it doesn't require big programmatic shifts, but it is something that has had demonstrated success in the past. I think we have really seen that the messaging from the top matters. I think this is just a great recommendation, a lot of thought went into that. I think this is something where FOIA is a team sport and I think we don't often enough recognize that it really requires the whole team plan on, and I think this helps with that.

Alina M. Semo: I'd love to coin expression. Michael, can I play as a team sport? That's great. I love that. Especially because we can't have any team sports right now. That's wonderful. Thank you. Okay, any other comments? Along with FOIA is everyone's responsibility. Absolutely. Okay, anyone else? It sounds like I'm seeing shaking of heads. No, no more comments. Sounds like we're ready to vote on this recommendation 2A of the Vision subcommittee. Do I have a motion to pass this recommendation?

Patricia Weth: I move to pass this recommendation.

Alina M. Semo: Do I have a second from anyone?

Suzanne Piotrowski: Sure. This is Suzanne Piotrowski. I move to second.

Alina M. Semo: Okay, all those in favor of Vision recommendation 2A as it is displayed on your screen currently, please say aye.

All: Aye.

Alina M. Semo: Okay. Hopefully, I heard everyone. Hopefully, Kirsten, did you get everyone? Is there anyone who's opposed? Please say nay. I didn't hear any nays. Is anyone abstaining?

Bobby Talebian: Hi, this is Bobby abstaining.

Alina M. Semo: And Alina Semo abstaining. Kirsten, can you read us out?

Kirsten Mitchell: Yes, Vision recommendation 2A passes 17 to zero. There are two abstentions, Alina and Bobby.

Alina M. Semo: Thank you very much. Okay. We're doing a great job guys. Moving right along to Visual recommendation 2B, I believe Patricia and Suzanne, you guys still have the floor, so please by all means, go ahead.

Suzanne Piotrowski: Great. This one was mine. This is Suzanne Piotrowski from Rutgers. I won't read you the recommendations since everybody has it on the screen and probably has it in front of them as well. But the title is FOIA and administrative transitions. The gist of it is trying to figure out ways to brief senior leadership after transitions or other times of leadership change. The rationale is that there is a lot of good training right now for FOIA officers or staff dealing with FOIA but not, there's not a formal training or briefing within your leadership. This is the intention of the recommendation to make briefings for senior leaders when they come in either during transitions or other time. I think that's it.

Patricia Weth: This is Patricia Weth. One of the things that Suzanne and I thought was that to have OGIS and OIP work together to prepare these briefings for the different federal agencies would really carry weight with the agencies in that it's not just one particular agency's briefing. I think when new leadership comes in and they hear that this type of training was created by OGIS and OIP, they will really take note of that, I believe.

Alina M. Semo: Thank you for that, Patricia.

Sean Moulton: This is Sean Moulton with Project on Government Oversight. I think this dovetails as Michael just said about the previous recommendation about FOIA being a team sport and the importance of leadership. I think it's going to be really important for leadership to even understand FOIA and when we have these big transitions, that could be one of the things that as a new team comes in, they've got a lot on their plate. I think this one can get lost for a long time. That can be a real problem. I think that what this is trying to address, and I think it does it well.

Alina M. Semo: Okay, Sean, thank you very much. Any other comments or reactions? Emily, are you trying to speak? Not here, Emily. Did you unmute?

Ryan Law: Alina Semo, this is Ryan Law. I like this recommendation. I think it's incredibly important for all the reasons that our fellow panel members have mentioned. I know that the DOJ had five years ago, Melanie did a great, quick 10-minute briefing done by video that I know that Treasury utilized during the transition. I think that worked well. We made one to

ensure that's updated as well. Then also, I think we could find other opportunities to provide that training to them, but I think this recommendation is great. I think the committee should pass it.

Bobby Talebian: This is Bobby. Thanks Ryan. That's actually partly what I had thought about for this recommendation too is to update that video.

Alina M. Semo: I think Emily is trying to talk to us as opposed to her being on another call, but we cannot hear her, right? Can anyone else hear her? Emily, if you have something that you could chat to all of us, even though it violates my role of no housekeeping of anything other than housekeeping rather, we could read it out loud.

Chris Knox: Alina Semo, this is Chris Knox. There was a note in the chat that most of the lines are muted, you need to hit star six to unmute, I think that might be the issue.

Alina M. Semo: Yeah, Lauren, our event producer chatted all of us and I just chatted that to Emily as well. If you can press star six that would be great. If I miss reading any of Emily's cues. Okay, in the meantime anyone else want to chime in on anything with regard to recommendation 2B from the Vision subcommittee. Sounds like there's positive support. All right so are we ready to vote on it?

Patricia Weth: Yes.

Alina M. Semo: Okay, do I have a motion for recommendation 2B from the Vision subcommittee?

Patricia Weth: I move to vote on recommendation 2B.

Alina M. Semo: Thank you, Patricia. Do I have a second?

Tom Susman: Second.

Alina M. Semo: Tom, thank you for the second. Okay. All those in favor of passing Vision recommendation 2B as it appears on the screen, please say aye.

Male Speaker: Aye.

Alina M. Semo: All those opposed, please say nay. No nays, any abstention?

Bobby Talebian: This is Bobby. I abstain.

Alina M. Semo: This is Alina Semo. I also abstain. Kirsten, I'm just concerned about Emily not being able to hear, to be able to chime in. Lauren, do you have any suggestions for Emily to see if her audio is working? I just wanted to be sure she's getting the opportunity to be heard and able to get her votes heard.

Lauren: Emily, if you're able to, can you dial #2 on your telephone keypad if you can hear us. Okay. It looks like Emily is on the attendee lines. I'll just go ahead and unmute her.

Alina M. Semo: Okay. Thank you.

Lauren: Is this Emily?

Alina M. Semo: Yeah, thank you. I'm really glad to hear you. You're apparently on the attendee line.

Ryan Law: I'm unable to hear Emily.

Alina M. Semo: No, we can't hear her.

Kirsten Mitchell: I can't hear her either.

Lauren: The line disconnected. Emily might be trying to come in on the speaker line at this time.

Alina M. Semo: Okay. That would be great. Can everyone just bear with us for one second? Give Emily a chance to catch up with us. Thank you. I appreciate your patience. Now, we've lost, no?

Emily Creighton: Can you hear me now?

Alina M. Semo: Yes. Hi, Emily. No, it's okay. If you want to make a comment on recommendation 2B.

Emily Creighton: Ryan sort of addressed my question which was I think I am not sure practically-speaking how some of this training would be introduced. I think that he provided some insight for me, so I think my question was essentially answered.

Alina M. Semo: Okay since I'm concerned that we couldn't hear you before, I just want to be sure that your vote on recommendation 2B is an "aye" or a "nay"? I can't hear you, can anyone else hear her?

Emily Creighton: It was an aye. Can you hear me?

Alina M. Semo: Yes, and just to be clear to our Vision recommendation 2A, were you also an aye?

Emily Creighton: Yes.

Alina M. Semo: Thank you very much. I just want to be sure we're clear. And Kirsten, now you can go ahead and report out the vote please for recommendation 2B.

Kirsten Mitchell: Yes, thank you. Vision recommendation 2B passes with two abstentions. Alina and Bobby.

Alina M. Semo: All right. Thanks everyone. Let's move along. How are we doing? Hanging in there? Recommendation 2C of the Vision subcommittee on again, turning it back to Patricia and Suzanne. I don't know who's going to present.

Suzanne Piotrowski: This is Suzanne Piotrowski again. I'll kick it off and Patricia will jump in. You already got it up there. Thank you, Kirsten. This is speaking to the issue of FOIA and agency performance plans. This is a relatively new topic it seems for the group as a whole. The recommendation as currently written is relatively broad to give OGIS and OIP, a little bit of room to think this through. Again, in the same way that the prior one was asking for the team between OGIS and OIP, this one is also. And this one is directing OGIS and requesting OIP examine the FOIA performance measures and agency performance plan.

Just as sort of like a little side note, these are not individual employees' performance evaluations. We are talking about performance plans as agencies as a whole. Then the next step would be actually, I'm reading here now, it says the subcommittee further recommends, I guess that's right, that OGIS would submit the results of an assessment of how FOIA is used and performance plans to Congress and the President. The rationale behind this is generally you get what you measure. We are including FOIA performance in at least more of the agency plans. Maybe

hopefully there's more likely to be there's more attention that will be given to FOIA processes. Patricia, do you want to add anything?

Patricia Weth: Yes, well, I will add this. I remember our first meeting and Suzanne made a comment about the lack of FOIA performance measures in the various agencies' plans. It never even dawned on me that they would not be incorporated in an agency plan. I remember this from our first full committee meeting and I just thought it was such a brilliant idea. I did go back to the office that day and I checked my agency this year if we had measures in our performance plan. I'm happy to say we did, but I think it's really something that can help FOIA programs at the various agencies and also add in to have that leadership support. Because once you have the support of leadership, I mean, it's everything for a FOIA program.

Alina M. Semo: Patricia, thank you so much. Can I just chime in Suzanne and Patricia, do we want to change in the second sentence from subcommittee to committee?

Suzanne Piotrowski: Yes, I think so.

Patricia Weth: The reason why we had subcommittee there was just that this is the Vision subcommittee recommending but yes, you're right. It should be the full committee, if passed.

Suzanne Piotrowski: If passed. I guess we would change it to committee now and then if it's passed, it's full committee.

Aline Semo: Is everyone good with that? With that tweaks? I'm seeing nods. Anyone else want to comment or chime in on this recommendation?

Chris Knox: This is Chris Knox. Actually, a question about the working group. As they compile these, are they rolling them all up as committee recommendations so that any language that might've sat at the subcommittee is rising up as we vote on them and approve them as the committee recommending it? I would assume that the working group is doing that.

Alina M. Semo: I'm pausing for a second. Sean and Jason and Patricia and Abi, can you guys help me out with this? I'd definitely not answer that.

Patricia Weth: I didn't hear the question.

Sean Moulton: That's okay. So the question was, are we fixing things if we come across them in the drafting committee, if we have a language problem like this where the subcommittee there, are we making it all from the committee? I think the answer to that is yes and no. I think we feel the freedom to do it in the body. When it comes to the formal bolded recommendation language, we haven't really been changing anything. If we think about doing it or have discussions about that, the idea has been to come back to the full committee to get approval for any.

Chris Knox: I agree with that approach. I just wanted to confirm. Thank you.

Alina M. Semo: Patricia, did you want to add anything to that?

Patricia Weth: No, but I think for this particular recommendation, we can all agree that we're changing subcommittee to committee so that when it is indeed passed, we'll have the correct language.

Alina M. Semo: Okay. I see Tom Susman raising his hand.

Tom Susman: Make sure you can hear me out here.

Alina M. Semo: Yes.

Tom Susman: When I first read just the recommendation, the recommendation was pulled out from any explanation. It doesn't really tell us why they're examining the performance measures and what the assessment and recommendation is. The discussion language suggests the goal of agencies creating performance plans. I think that ought to be lifted up into the recommendation because otherwise "examined." I mean, we'll examine the measures and then we report, but what are we, why are we assessing, and what are we assessing? So, it doesn't really stand on its own. I think maybe the drafting committee even could make some slight additions to show why it's being examined and what kind of criteria assessments will be based on.

Alina M. Semo: Patricia and Suzanne, do you want to react to that?

Patricia Weth: I mean, I think that makes a lot of sense if it would be clear by adding additional language or moving language up then I think we should do that.

Alina M. Semo: Tom, do you have a particular suggestion for language you were thinking of when you're reading this, and it feels like something's missing.

Tom Susman: No, I just... maybe just taking the language from the goal statement in the report, in the discussion that says “should examine FOIA performance measures using the agency performance records to ensure that agencies include FOIA in their performance plans” and then the committee recommendation of the assessment and the assessment is whether they’re including it. I guess the assessment, I leave to maybe Patricia, should the assessment be qualitative or simply at this point, the determination that FOIA is included?

Patricia Weth: Well, I appreciate your notes, Tom. I think that the first and foremost, most important aspect is that they even address FOIA in their agency performance plans because from Suzanne's research, there were a great number of agencies that didn't even mention FOIA in their plan. I think that's the first step, but you make a great point about putting in maybe some language, taking some portions of the rationale below and incorporating that up top. That's something Suzanne and I can work on.

Jason R. Baron: Alina Semo, this is Jason. Well, one simple possible fix is to say that the Archivist of the United States directs OGIS and requests the DOJ/OIP examine whether FOIA performance measures are used in agency performance plans and reports with the presumption being that they should be.

Alina M. Semo: Yes, Jason. Although, I hear Tom wanting to add to that sentence “and to ensure that FOIA performance measures are included in the agency performance plans and reports.”

Tom Susman: Well, yes, I mean if you need that as a motion, I'll be glad to do it. And I will certainly defer to Patricia's notion that that's step one and that we don't need to get into any kind of qualitative standards for assessment here.

Suzanne Piotrowski: Tom, this is Suzanne here and as you know better than me, different agencies have different relationships with FOIA. How NARA would include FOIA and their performance plan would be different than another agency. We just would want to make sure we recognize that reality. I think this would your additions would.

Tom Susman: Okay, I'll take yes for an answer.

Alina M. Semo: Are we comfortable with the addition that I cited earlier? If we add the clause and to ensure FOIA performance measures are included in agency performance plans that would work?

Tom Susman: Works for me.

Patricia Weth: Alina, this is Patricia. Can you say that again and to ensure that agency...?

Alina M. Semo: To ensure that agency FOIA performance measures are included in agency performance plans and reports.

Patricia Weth: Okay and then we would insert the word “whether” after “examine” per Jason's suggestion, correct?

Jason R. Baron: Not necessarily. I like mine. It's simpler, but I understand the point. Whatever the word, I guess, it's fine.

Sean Moulton: This is Sean from POGO. I'm wondering if we make that change of “ensure that FOIA performance measures are used in their agency performance plans and reports,” do we even need to request that we examine, I mean, examine if they're used and ensure they're used if we're saying OGIS and OIP should ensure that they're used? I would assume that would entail an examination. Then other steps.

Jason R. Baron: Well, it is in some tension with the second sentence then, which is recommending that some results of some assessment be made rather than a direction to do something.

Alina M. Semo: That was Jason Baron for the record.

Jason R. Baron: Yes, it was.

Sean Moulton: I mean, I think if we take Tom's recommendation to strengthen the first sentence and go from “examined” to “ensure,” to make it a recommendation that these proactively be done is our recommendation, then it negates the need for submitting the results of the assessment recommendations to Congress.

Although we could change that to say it'd be a lot of wordsmithing right now, but the committee further recommends that if agencies are found not to be using them then any recommendations be submitted to Congress and

the President, etc. We could still include a sentence there. Like I said, it's a lot of words missing right now, but...

Joan Kaminer: This is Joan. I like the idea of making it more proactive for the direction to do something. But I think that it would simplify things like striking the second sentence if we did make that change to be the first part. That would be my preference. I do think that it gets complicated if OGIS is providing recommendations to Congress and the President. Would it be reporting on the agencies that have failed to do this? I think we would have to dig down into what OGIS can report to Congress and the President. It's possible they could do that. They could make a report of agency's failure to do something. But I think it would require a little bit of research.

Bobby Talebian: This is Bobby. I'm a bit more in favor of the "examine" with the goal being to ensure that FOIA is in their performance plans. Simply just to give us flexibility, not knowing how much we can impact an agency's overall performance plan or where that would come from. It clearly states that the overall goal of the work that we'll be doing is to ensure agencies are including it in their plans.

Alina M. Semo: This is Alina Semo. I just want to comment that certainly wearing my hat as the OGIS Director, we have not felt as though we have any particular constraints about what kinds of recommendations we can take to Congress. I think they're very open to hearing from us. I think there are some other legislative recommendations later on. We're going to discuss as well which adds to our plate.

I'm agnostic and then I was actually going to abstain from this recommendation as well in terms of how you guys want to proceed with all of this. Kirsten is prepared to read wordsmithed language if we want to go in that direction. The other option is we table recommendation 2C until our next and final meeting and have it wordsmithed circulated. Then we vote on the final language at the next meeting. I'm going to look to Patricia and Suzanne and Joan and Chris as to how you guys want to proceed.

Patricia Weth: This is Patricia Weth from NLRB. I appreciate everyone's comments and feedback. Very helpful. The reason why we drafted it as we did was one, we wanted to see how many agencies were addressing the FOIA program and their agency plan. Then to have OGIS submit a report to Congress on it with recommendations. We felt that would carry some weight with the

agencies and that they would then consider putting FOIA performance measures in their plans.

The one concern I have about adding the language saying examine and ensure that agencies... that performances are included in the plans, is to say and to ensure, is that something that OGIS and DOJ can do right now? Because I don't know that there has been, to my knowledge, a recommendation by OGIS or by OIP to include FOIA performance measures and plans. That's the reason why we drafted it the way we did.

Suzanne Piotrowski: This is Suzanne Piotrowski again. I'm agreeing with everything Patricia says and maybe you need to wordsmith this some work because it is getting a little complicated. I also am not so sure, "ensure" feels very strong and I'm not so sure OGIS can do that. Maybe "encourage," "report and encourage agencies" to include FOIA in their performance plans or "facilitate" or something along that line. I think the idea with some type of reporting out was a bit of the naming and shaming. You have a report which says which agencies are and are not including it and maybe that would facilitate or encourage agencies to include. It's up to the group. Joan or Chris, did you want to handle it?

Patricia Weth: This is Patricia Weth. Can I just also say something else? I think someone had suggested that we remove that second portion of the recommendation where the committee recommends OGIS submit the results of its assessment to Congress. I think that really needs to stay in because OGIS would be the proper group to make such an assessment. I think again, if OGIS is doing an assessment of this, I think that will encourage agencies to take this suggestion seriously.

Joan Kaminer: This is Joan. The suggestion to remove the second sentence is only if we change the first, and move away from an examination. I agree that if it remains as an examination, there's a real benefit to including the reporting in the recommendation. I agree with Suzanne that we might end up losing some clarity if we continue to verbally discuss what the language would look like. I think that there's a benefit for seeing any suggested altered language via email or something like that. That would be my suggestion.

Alina M. Semo: Chris, do you want to weigh in as co-chair?

Chris Knox: I agree with Joan as well.

Alina M. Semo: Okay. It sounds to me like the consensus is we want to wordsmith some more between now and the next meeting and we're going to table this recommendation to see and not vote on it today. Is that correct?

Patricia Weth: Alina, this is Patricia. Similar to what we did with Time/Volume, may I suggest we vote on the spirit of this recommendation.

Alina M. Semo: Sure. I'm happy to do that. It's only that we're still playing around with the language and we need to firm up whether we add language to the first sentence, whether the second sentence stays in or comes out, etc. Is everyone prepared to vote on the spirit of the recommendation? Sort of seeing mostly yeses. Thank you, James Jacob. Okay, can I have a motion as that we are voting on the spirit of recommendation 2C on the Vision subcommittees?

Patricia Weth: I so move.

Alina M. Semo: All right, thank you, Patricia. Do I have a second?

Jason R. Baron: I second.

Tom Susman: I second.

Alina M. Semo: Thank you, Tom. Thank you. I think it was Jason who seconded. Let's all vote all in favor of moving for the in-spirit recommendation 2C of the Vision subcommittee, please say aye.

All: Aye.

Alina M. Semo: All right. All those in favor, please say nay. Did I hear any nays? Any abstentions?

Bobby Talebian: This is Bobby and I abstain.

Alina M. Semo: Alina Semo, I also abstain. Kirsten, can you read off that vote please?

Kirsten Mitchell: Yes. Vision recommendation 2C in spirit was passed with two abstentions, Alina and Bobby.

Alina M. Semo: Thank you. All right. Let's keep moving and I want to go onto Vision recommendations three. It's got three parts to it, A, B and C as well. I

understand Sean Moulton from POGO is going to present on this. Sean, over to you.

Sean Moulton: Thank you. I welcome all the committee members to the controversial portion of our meeting. One of the ideas here was to come up with a series of recommendations for a legislative action or congressional action, I should say. Not necessarily bills per se, and there has been some discussion which I won't go over here. I'm sure we'll go over as we finalize the report, but ways that and if this subcommittee or this committee can make recommendations directed at Congress. I think we have enough wiggle room in the final consensus is that we can craft something if that's the committee's choice.

I've structured these three in ascending order of controversy. The first one that you'll see on the slide in front of you is about strengthening oversight. This is both congressional action with hearings, more regular hearings, more regular communications, and information collection with agencies rather than the maybe once a year hearing we get in FOIA right now, right around Sunshine Week.

Then also to, as you'll see at the end, strengthen the Office of Government Information Services with clearer authority and expanded resources. The language supporting this explains that they've done terrific work since being founded but that they are a very small office trying to assist with FOIA across the entire federal government. They need greater resources and clear authority for when interacting with other agencies. I will pause there for this first recommendation and open it to discussion.

James R. Stocker: This is James Stocker. I just want to applaud the spirit of this recommendation. I think it's extremely important that Congress plays a stronger role in the oversight of the Freedom of Information Act. It's good to issue a clear call for the Congress. I think it would be nice to see more specifics in this recommendation. I know the Vision subcommittee, I think saw its job, maybe you can tell me if I'm right, as coming up with a very broad vision rather than as specifics here, but I think that there would be a lot of different areas in which this could be made more clear.

One example that comes to mind is determining which part of Congress is in charge of FOIA. I could be wrong about this, but I don't think that there are any committees within Congress specifically have FOIA or transparency as their subject or their domain in the way that they might

not say foreign affairs or homeland security of innovation or combating the different drugs or whatever else.

Maybe one way to, I don't want to say put teeth into this, but to focus the measure would be to have Congress to identify particular agencies that would be in charge of the issue. I'm not sure whether that was fit within a particular recommendation or not. Maybe that's something that needs to be done in a future session with this committee in the next term. But it just would be helpful to have more specifics here for the Congress. Thank you.

Tom Susman: Tom, raise my hand. Yeah. We're at least 50-something years. The committees in the House and Senate with jurisdiction over FOIA have remained the same and constant. They may have changed names of subcommittees or the House committee name, but I don't think there's a mistake in who has jurisdiction. The question of what this addresses purposes, they don't do anything about it. Once a year usually when there's Sunshine Week, there's a hearing. Sometimes oversight. I think it's useful to encourage Congress to do more because that's always extremely helpful.

Kevin M. Goldberg: This is Kevin. I hope you can hear me. Kevin Goldberg. One of the things I was thinking about is, it would be a slight tweak, but after the word regular add "and coordinated," because this picks up on what Tom was just saying, you tend to have one a year maybe if you're lucky twice a year hearing. What often happens is in the interest of time, an agency official, and I'm not picking on you Bobby, but usually your office is brought up to testify, ask a bunch of questions, the answers are given, and then there's no follow-up to that specific to see what has happened since. There's just a new set of problems a year later that we're dealing with. That's what I mean coordinated. If there's a better way, we can say that is kind of an issue, because it doesn't always have to be hearing. There just has to be follow-up to make sure that things are occurring as promised.

Alina M. Semo: Kevin, just to clarify, which regular did you want to add that word to? Is it the first regular or the second regular?

Kevin M. Goldberg: Sorry. Yeah, that's a great point. I would put it in there. I didn't even notice that I was so hyper-focused on the second sentence. I would say "We encourage Congress to hold more hearings, establish a more regular and coordinated stream of communication and inquires to agencies around FOIA issues" and take it from there.

Sean Moulton: That's fine. Sean from POGO. I agree, I think Kevin raises a good point that it's the oversight we have seen comes across as disjointed from time.

Kevin M. Goldberg: Now, I have to step away from my computer but not out of the room.

Alina M. Semo: Thank you, Kevin. Okay, any other comments or feedback on this? Sorry, Sean.

Sean Moulton: That's exactly what I was going to ask, so that's fine.

Alina M. Semo: Are we ready to vote on this recommendation? Nods, yes. Okay. Are we in agreement, we're going to add the words "and coordinated" in the second sentence after the word regular and before stream? We're voting on recommendation 3A of Vision subcommittee. Second sentence would read, "We encourage Congress to hold more hearings, establish a more regular and coordinated stream of communication." The rest goes on. Okay. Can I have a motion--?

James R. Jacobs: Sorry, this is James Jacobs, I had a question. Were we going to add the specific committee as per James Stocker's comments or is that not necessary? Just a question.

Alina M. Semo: Good question. Sean, what do you want to do?

Sean Moulton: Ryan, did you want to speak on this?

Ryan Law: No, I'm sorry. I'm just making sure I hold my place in line.

Sean Moulton: As to James' point, I tend to agree with Tom that I feel like from Congress's point of view, it is pretty set with committees in the House and Senate have jurisdiction over FOIA. I mean I think we could make cases that issue committees like environmental committees might get involved more. Certainly, we could see an expansion if an agency like EPA or an agency like Interior or not to call any agency out here, but I'm just saying that the committees with jurisdiction over those agencies could also get a little involved in FOIA, which I would be fine with. But I think the real oversight of FOIA as a system and process, I do feel is pretty established.

James R. Jacobs: Maybe just as a further on recommendation, just putting it into the rationale to describe so that the public would know which committees of Congress do have jurisdiction over FOIA. That would be very helpful.

Sean Moulton: I can certainly add it into the text if it gets approved, move it into the full report and everyone can be able to see it. Yeah, I could do that.

Alina M. Semo: Thank you, James. James Stocker, does that make you happier?

James R. Stocker: Yes, I think that's fine. I mean, I think that there are different ways that this could be taken further. I think if this is an issue that is just seen as sort of a small part of one committee's duty that may be why they're not paying as much attention to it. Perhaps Congress could rethink the way that it organizes or names the committees, if it's a Committee on Oversight and Reform or something that's dealing with FOIA, it could be Oversight, Reform, and Transparency. If the authors of this recommendation don't feel the need to take this any further, then I'm not going to push for it.

Alina M. Semo: Ryan, did you raise your hand?

Ryan Law: I did yes. I'm sorry for the late question. This is Ryan Law. Just to be clear, are we as the committee requesting directly to Congress that they take this action or are we requesting the Archivist of the United States requests that Congress or recommend that Congress, who is doing the action here?

Sean Moulton: My understanding, and as I said, we had some subgroup discussions as to how we might handle this. What we're going to try to do is craft in the introduction of the full report some language that explains these recommendations the follow that all of them are being delivered to the Archivist and that any recommendations that require action by someone outside of the National Archives, we fully expect the Archivist to convey them to those parties or those entities.

That way we don't have to, I try to avoid the, "we recommend the National Archivist convey to Congress." That's why it's saying we recommend Congress right now. I just thought it would read simpler, but these are still going to be delivered to the Archivist and the ideas and hopefully maybe we'll be able to streamline some of the language with the other ones by moving that "these are all being delivered to the Archivist" to the very front of the report.

Ryan Law: Okay. Thank you.

Alina M. Semo: Any other questions or comments before we vote on 3A?

Lizzette Katilius: Yeah. Hi, this is Lizzette.

Alina M. Semo: Hi, Lizzette.

Lizzette Katilius: This kind of following up in that same vein of maybe providing a little more specificity for the portion of the recommendation that says long standing problem. I'm just curious. I was looking at the other material I received. Are we talking about one specific problem or kind of several? I just didn't know what we were discussing here or what this was referring to.

Sean Moulton: I drafted it and you raised a good point—I was definitely talking about multiple problems and I didn't really illuminate with any detail. But I'm happy to include some of the larger problems or the longer-standing problems, the delays, increasing backlogs, problems with resources, updating regulations. I mean, there's a good number that we could we could list, but—

Lizzette Katilius: Okay. Yeah, that's helpful.

Alina M. Semo: Okay, Sean. You can add that to the rationale section.

Sean Moulton: Yes, I can and will.

Alina M. Semo: We have the rationale sentence. The first paragraph starts with the fact that, given the difficulty of the responsibilities laid on FOIA... so maybe telling everyone of the challenges would be helpful.

Sean Moulton: Yeah, I agree.

Alina M. Semo: Okay, thank you Lizette for that comment. That's very helpful. Anyone else before we vote? Do I have a motion to vote on recommendation 3A the Vision subcommittee with the words "and coordinated" added in the second sentence after regular and before stream as proposed by Kevin Goldberg?

Sean Moulton: I move.

Alina M. Semo: We have a motion. Do I have a second?

Kevin M. Goldberg: I'll second it. This is Kevin.

Alina M. Semo: All right, thank you, Kevin. All those in favor, please say aye.

All: Aye.

Alina M. Semo: All those opposed, nay. There aren't any nays, abstentions?

Bobby Talebian: This is Bobby. I abstain.

Alina M. Semo: This is Alina Semo. I also abstain. Okay. Sean, you have your work cut out for you on 3A. Do you want to take us to 3B so we can keep the momentum going? I'm just going to check in with everyone. Before you get to 3B, usually around this time, we'll take a break. Sean, how quickly do you think he could get through 3B and 3C?

Sean Moulton: It's a fair question. I do think that there, I'm fine with keeping conversation limited. My expectation is that 3C will be something and we've discussed this in great detail on our subcommittee, that's something that we'll probably have to be moved over to or held over to another term of the FOIA Advisory Committee. It's a rather subjective one, but I did want to at least have some discussion for this term. I think we could get through the two of them by noon. Maybe sooner, but I'm just throwing that out there. And I did want to say, did we want to have Kirsten report in on the voting?

Alina M. Semo: Sorry about that. I forgot to turn to Kirsten. Kirsten, thank you. Please record on Vision recommendation 3A.

Kirsten Mitchell: Yes, thank you. Vision recommendation 3A passes with the language agreed upon with two abstentions, Alina and Bobby.

Alina M. Semo: Okay. Thank you, Kirsten. All right, so Sean, do you want to present on 3B?

Sean Moulton: Sure. 3B, I tried to keep the language simple. I'm actually going to read it. Just because, "We recommend Congress directly address the issue of funding for FOIA offices and ensure that agencies receive and commit sufficient dedicated resources to meet their legal obligations to respond to FOIA requests in a timely manner both today and in the future."

We did not, if you've read through the supporting text, we did not say exactly how Congress should do this. I actually raised the idea of a budget line item for FOIA in the future or also report language, but neither are specifically recommended to be pursued. The idea was behind this idea, the idea behind this recommendation was Congress gave the agency this responsibility. Congress controls broadly the purse strings of government and they should make sure that resources are brought to bear.

Obviously, agencies have the potential to solve the resources problem and we have some recommendations for that. But I also think Congress could weigh in and should weigh in on this. I open it up for discussion.

Alina M. Semo: I don't hear anyone typing in. Does everyone just want to get to our break? Is that what's going on here? Anyone want to comment on this?

Joan Kaminer: This is Joan Kaminer, EPA. I just note that in the Time/Volume we do have a request for budget funding resources. I fully support this recommendation and I think that goes along with it. FOIA is quite expensive and we probably could be more effective with more resources.

Alina M. Semo: Anyone else?

Ryan Law: This is Ryan Law. One, and this may be something the subcommittee considered. Excuse me. Although Congress does set agency budgets and is sometimes very specific on how agencies spend those tax dollars. But the document that guides, well, of course the President's budget, which is agencies develop Circular A-108, is the document that's put out by OMB every year.

I checked quickly, there were six references to the word FOIA in it. They all dealt with how information regarding the disclosure of the budget would be handled. Not a really scientific evaluation of the content of A-11 but it seems that I think this recommendation is great, but another way to crack the nut might be to request that OMB be included in A-11 specific instructions to agencies to include in their agency submissions for their annual budgets funding sufficient for FOIA operations. I'll put that out there for consideration and I would like to hear if the subcommittee considered that.

Sean Moulton: I did not, I mean I included a reference in the supporting text saying that maybe we put a line item and that is in part a reference to the fact that it's

not included in any agency budget right now and is specifically broken out line item for Congress to even consider. I still would, probably my personal preference is to approach this from Congress rather than to just try and come through OMB. I do think that's a potential point where if we got a line item from agencies, that alone would be a real victory.

Ryan Law: Thank you. I think that's good.

Alina M. Semo: Okay. Any other comments or questions? Adjusted language? Do you think we're ready to vote on this recommendation? There is no language crafting that we've done here so it's as is, does anyone have a motion they would like to make?

Ryan Law: This is Ryan. I'll move to vote.

Alina M. Semo: Thank you, Ryan. Do I have a second?

James R. Jacobs: This is James. I'll second.

Alina M. Semo: Thank you, James. All those in favor say aye.

All: Aye.

Alina M. Semo: Anyone opposed, please say nay? Any abstentions?

Bobby Talebian: This is Bobby. I abstain.

Alina M. Semo: Alina, I abstain. Kirsten, can you report out please?

Kirsten Mitchell: Yes. Vision recommendation 3B has passed with two abstentions, Alina and Bobby.

Alina M. Semo: Thank you very much. Sean, you're on a roll. Over to you for recommendation 3C.

Sean Moulton: Where that roll will immediately stop. This is certainly the most controversial one. We've had a lot of back and forth in our subcommittee which was so much fun that I thought I would bring it to the full committee. If we could advance the slide, I don't know if I can do that. Nope, I cannot. There we go.

The concept behind this was expanding in some way the FOIA statute, so that there would be requirements to those bodies in the federal legislative and judicial branches to accept and a requirement that they respond to requests for information that they would be laid out the idea of exemptions, excluded records that all of this be appealable and judicially reviewable, but that the essential principles of FOIA be applied to some bodies. Again, we could play around with it but to the judicial and legislative branches. Right now, there's a lot of information that comes out from both those branches, which is obviously very good.

For the most part, there's no legal requirement that that information be available. A lot of that information could change. There would be no legal recourse for people if suddenly a committee started to operate behind closed doors and we didn't with it. If a particular member stopped posting certain information on their website, or to the constituents.

One of the things you may see in the supporting text that I wanted to point out is that a large number of states do include some portion of their legislative and judicial branches in their open records laws and require requests. Sometimes those are limited to administrative records only. How they're spending money, things like that. But, they do have those branches covered. I think that we can craft, and this may not be it, but we can craft the way to have similar requirements for those two branches. I will leave that open to conversation. I think Tom and Kevin, who are my foils in the subcommittee, will probably step up first and give a counterargument.

Tom Susman: I'm ready to.

Kevin M. Goldberg: I am too. Tom, you are going to say it better I know it.

Tom Susman: Tom Susman. Let's start by saying we'd have to reconsider recommendation 3C because I think it would be very awkward to have oversight on its own activities in this area. I thought that the last comment was really good because the way this reads is looking at non-FOIA statutory requirements for transparency.

The recommendation recognizes that expand FOIA law to include new statutory requirements. I think if you look at the states as was mentioned, the states and other countries that have adopted information laws for the legislature. Many of them are granted specifically for the legislature. We are after all the FOIA Advisory Committee. I'm not sure that we ought to

be going there, but frankly we need to, I think we need to look at history going back to 1965.

I told the tale many times about how the members of the House asked John Moss whether Congress was included before they would consider this. This is one of the few statutes that does specifically exclude Congress. I don't know if the subcommittee looked at, I don't believe so, but the years there have been legislative proposals and hearings in the seventies and eighties on proposals and OSHA, labor laws, the equal employment laws and FOIA to Congress, and there's a lot of good material in there, I think suggesting that it's not necessarily a good idea.

Finally, I think, we have to live with the potential consequences. I would say unintended consequences in those jurisdictions that do apply FOIA to the legislature. A few that I've looked at, the legislatures are mighty hostile to transparency in FOIA because they have to comply.

I don't think that's a good place to be. Congress has always been very supportive of transparency of the executive branch and I'd hate to lose that congressional support for oversight and strengthening of FOIA from time to time just because we think that Congress ought to be more transparent. I wouldn't mind looking more specifically if Congress and what is public and not. I think that the issue of more administrative, transparency, and budget transparency for the courts is absolutely useful. I'm just not sure that's our bailiwick for this committee. That's all I have to say.

Kevin M. Goldberg: That's a great place for me to pick up, Tom. This is Kevin, because I have less of a problem with the legislative side than the judicial side of things. My problem is that while not perfect, I do think that the right of access to judicial records, that is case records, is not impeded by things that would be fixed under this recommendation.

There are kind of, not categories, but there are standards for covered and excluded records. They are ideas of what's exempted for withholding by pretty well-established law. There's the appeals process and the right to judicial review and frankly the standard is arguably prior for access to a judicial record and that is constitutional rather than statutory.

I do see what you're saying about the budget and administrative records perhaps. If we limit it to that in a FOIA-like process, I would be more amenable, but I don't think we really have the time to parse that now.

What I'm saying is I don't see how this recommendation improves access to judicial records. The only thing that I think everybody might be able to agree on and it's easily stated is some kind of recommendations that we can't make that PACER be free because I think that's a really big impediment to people getting access to court records.

James R. Stocker: This is James Stocker if I can talk for a sec. I just want to applaud Sean and the committee for thinking very broadly about freedom of information. I do think that this is within the realm of this committee. We are to think about the freedom of broadly not necessarily how the Freedom of Information Act is currently structured, but it's acceptable for us to kind of push the limits of what is being done right now. But Tom and Kevin have raised really valid concerns here. I don't think that this recommendation, at least in my view, is something that I could not support because those reservations are very valid.

I encourage Sean and everybody else to think specifically about what the problem is that this recommendation is trying to solve. What are the specific types of documents or information that the public does not have access to right now and it needs access to?

Kevin, for instance, mentioned a variety of ways in which access to judicial documents is already possible. What are we not getting that we need access to? If there is really something that is not available now, either from the legislature or from the judicial branch, maybe there is a way to modify the FOIA or to come up with some new set of rules that we could recommend. I would love to see that in the future term of this committee.

Lee Steven: This is Lee. I have a comment.

Alina M. Semo: I'm sorry. I know Jason also wants to pipe in but Lee, go ahead.

Lee Steven: Yeah, just responding to the last comment. Right now, first of all, I'm in favor of this one at least to maybe modify it, but I'm in favor of this recommendation. For instance, a lot of the agency records are excluded from FOIA, simply by virtue of the fact that they're designated a congressional record. If for instance, the Joint Committee on Taxation writes to the IRS for some documents, even if those documents are agency documents in the first instance, the JCT is now making a claim that those documents have become congressional records and therefore have been taken out of the FOIA.

I do think there is an issue with legislative documents, congressional documents that the agencies and Congress use the exemptions in existing FOIA law to actually reach out and take certain records that would otherwise be available under FOIA now and take them out of the FOIA context. That type of thing I think is problematically from the requester side of things. The amendment to FOIA that expanded to congressional records or at least certain types of congressional records would actually be a help in my view.

Alina M. Semo: Jason, I believe you wanted to chime in.

Jason R. Baron: This is Jason Baron. You can hear me, Alina?

Alina M. Semo: Yes.

Jason R. Baron: I applaud the sort of the visionary aspect of this like it's been said and it's certainly within the scope of our advisory committee to be discussing this recommendation. My initial reaction was that it was a complete non-starter with respect to the Senate and the House of Representatives. We do need to think through whether we would want to ever put this before Congress because I have a feeling that it would, in its current form, it would undermine the good work that we're trying to do on the other legislative proposals and all the proposals generally.

However, in taking a second look at the recommendation, what I do want to say is that I have always found it anomalous that the definition of what a federal record is or really what a federal agency is, is different for federal recordkeeping purposes than for FOIA. And if one looks at 44, USC 2901 sub-part 14, the definition of a federal agency is any executive agency or any establishment of the legislative and judicial branch of the government except for the Supreme Court, the Senate, the House, and the Architect of the Capitol.

With that in mind, there is something to be said for further consideration, maybe during the next term of this committee or otherwise, to crafting a proposal that attempts to harmonize the FOIA with the Federal Records Act in a way that would allow for other legislative entities that exist, like the Government Accountability Office or the Library of Congress or whatever, as being within the scope of the FOIA rather than out. That is to make consistent FOIA and federal recordkeeping.

I think there's merit in having further conversations all around and I would very much support this proposal being essentially sent over, tabled for now, but sent over to the next advisory committee to have a very full vetting where you'd have speakers come in and have a full discussion and maybe iron out the nuances.

Alina M. Semo: Jason, appreciate that. Anyone else want to comment?

Suzanne Piotrowski: This is Suzanne. Can you hear me?

Alina M. Semo: Yes. Hi, Suzanne?

Suzanne Piotrowski: In general, I'm also supportive of the big picture take and this committee having the ability to look big picture and I'm also acknowledging it would be premature to vote or to pass on this now, but maybe we could get to this later, but I'm looking at the outline that the subgroup is working on and I didn't know if it was possible to make suggestions for possible topics for the next committee.

I don't think you could let me know but I don't think we can bind the hands of the next Federal Advisory Committee, but possibly we can offer topics for them to consider. Just show we could have it on the record somehow.

Alina M. Semo: Yeah, I mean I think that's always possible. We can certainly include that in the end in the final report. I think that makes a lot of sense. How does the working group feel about that generally?

Sean Moulton: This is Sean. None of the previous terms have done that, but there's certainly nothing that prevents them from doing that. Certainly as part of the report. But as Suzanne said, the next term and its committee members would have the freedom to choose to pick something else to work on if they think it's more fruitful or more important than whatever this term suggested.

Alina M. Semo: I'm hearing general sentiment that the overall want to push this back and table of vote on this. Sean, is that what you're hearing?

Sean Moulton: Yes, I acknowledge that it's a very thorny issue. Even some of the stuff that has been raised here by Tom and Kevin. Some of it is new. I agree, it's worth considering carefully. I think Jason made a good pitch if the next term decides to explore the area, they would have more time to

unpack it, bring in speakers, figure out if there's some way to break it down into smaller compartments, maybe the administrative records, maybe the alignment with the Federal Records Act. Ways we could chip away at some of this in a more acceptable way that doesn't have some of the unintended consequences, I think that have been raised that I think we all agree we would want to avoid, but I'm fine with withdrawing it for now.

Alina M. Semo: Okay, all right. Do you have concurrence from Chris and Joan, your subcommittee co-chairs?

Joan Kaminer: Yes, I concur. This is Joan.

Alina M. Semo: Chris you are good.

Chris Knox: I do as well.

Alina M. Semo: We have one more Vision subcommittee recommendation. We want to go through its Vision recommendation number four. Jason is going to present to us on that, but I think we're all ready for a break. I would like to propose, is it possible to take a 10-minute break as opposed to 15 minutes? How do folks feel about that? I'm seeing nods. Can we all agree to come back here at 12:12 PM. That would be great and just a reminder, make sure you turn off your volume and turn off your camera if you don't want everyone to see what's going on in each one of your homes during a break. Let's take a break for the time being and we will return at 12:12 PM. Thanks, everyone.

[break]

Alina M. Semo: We still have a lot to cover. Jason Baron to present on Vision recommendation four which is literally very visionary and I'm going to turn the floor over to him because everyone is ready.

Jason R. Baron: Thanks, Alina. This recommendation says, "The Archivist of the United States should continue to take a leadership role in ensuring that ongoing and future federal data strategies incorporate existing FOIA access and federal recordkeeping policies." The word "continue" is there purposely, the way that I drafted it, because Archivist David Ferriero has been taking a leadership role ever since he came into office.

Certainly after the Managing Government Records Directive, the 2012 and the 2019 memorandum that sets a 2022 deadline for agencies managing their records electronically. There's a lot that's been happening. However, in my experience and in the experience of others, the elements of FOIA and federal recordkeeping are not necessarily always front and center considered when other parts of this administration and other administrations are talking about open government and federal data strategies.

The focus here is to make sure that the Archivist has an opportunity to play an important role in reminding members of the open government and the federal data strategy community that a substantial amount of data and information created or used by federal agencies also satisfies the definition of what constitutes agency records under FOIA and federal records under the Federal Records Act. There's always a challenge for NARA being at the table, having a seat at the table, in high level policy making discussions, including those about federal data.

But I think it is important for the Archivist to continue taking a leadership role in highlighting issues involved in managing and providing access to government records in the form of data because the data will, as we all know, will exponentially grow over time. It's being created throughout the executive branch in every way possible. This is a marker for this committee to say that the Archivist should continue what he has been doing and make sure in every opportunity bring up the subjects of FOIA and recordkeeping when federal data is being discussed.

Alina M. Semo: Okay, Jason. Thank you very much for that. Anyone want to comment on this or share your thoughts or ask questions about this? Jason, just so I'm clear, is it your intent that this is another one of the recommendations that would fall on the rubric of things as we're kind of tasked forward to the next committee?

Jason R. Baron: No, I actually had a different conception in mind. I never considered this to necessarily be a formal recommendation. I know for purposes here, there was some consensus of the Vision subcommittee to put it forth like that for a vote. My original conception was to have it as the part of a last section of our final report which would say "a look to the future" and it wouldn't necessarily be a formal recommendation, but it would be what this committee is stating to the world as what we think is appropriate. If

everyone thought that it could be a recommendation, we could put it in as such. It's something for us to do here to put in our final report.

Alina M. Semo: To be clear, you don't necessarily want everyone to vote on that as a committee?

Jason R. Baron: Well, it has been put forward as part of a Vision set of recommendations. I have no problem. I certainly, you all could consider it to be part of our votes today and to give it a thumbs up. I'm not sure it necessarily has to be in the form of a recommendation, but that's up to everyone else.

Alina M. Semo: Can I hear from other folks who have a reaction to that? James Jacobs has raised his hand very politely.

James R. Jacobs: Yeah. Hi, thanks, everyone. Thanks, Jason for putting this forward. I fully support this and wonder how you're going to jive this with the Records Management recommendation number nine, which talks about machine-readable information and FOIA records.

Jason R. Baron: Well, there are several recommendations that we had as a subcommittee that do tie into this, that's one. Certainly the one that we passed as a committee of the whole, on Chief Data Officers being liaisons to the greater CDO community also, ties in given recent legislation. I think this is a stand-alone and say it's a step up from any of our other recommendations as a subcommittee. It's just a sort of a general statement for the Archivist to take forward in everything that NARA is involved with. It should be considered as such.

James R. Stocker: I fully agree. Thank you.

Alina M. Semo: Anyone else want to chime in?

Tom Susman: This is Tom Susman. I like it as a recommendation actually. We're making recommendations to the Archivist and this is general and high level, but it's still our view.

Sean Moulton: This is Sean from POGO. We've discussed it. Jason as he mentioned, came up with a kind of later in the process, but we discussed it in the Vision subcommittee and it seemed to go over well there. I certainly thought of it as a recommendation. If there's a reason not to put it as a recommendation, I'm amenable to it, but I don't see any reason we shouldn't just keep it in the same structure.

Alina M. Semo: Joan and Chris, you guys agree you were intending for it to be a recommendation we would vote on?

Joan Kaminer: Yes.

Chris Knox: Yes, that was my intention. Sorry.

Alina M. Semo: All right. Well, it sounds like we want to vote on it. Do I have anyone else? Anyone else want to chime in? Any other comments? I just want to make sure we've heard from everyone that wants to weigh in. Like the nods, everyone's weighed in. Can I have a motion to move Vision recommendation number four forward?

Tom Susman: I'll move. Tom Susman.

Alina M. Semo: Thank you. Do I have a second?

James R. Jacobs: I'll second. James Jacobs.

Alina M. Semo: Seconding, all right. All those in favor of recommendation four for Vision subcommittee, please say aye.

All: Aye.

Alina M. Semo: For the record, James Jacobs raised his hand. He didn't say aye, but I think that he was an aye.

James R. Jacobs: I did say aye.

Alina M. Semo: Anyone opposed, please say nay. I don't hear any nays. Any abstentions?

Bobby Talebian: Bobby, I'm abstaining.

Alina M. Semo: This is Alina. I think I'm also going to abstain because it involves OGIS and the Archivist and continuing in this role so I abstain. Kirsten, you want to read us out?

Kirsten Mitchell: Yes. Vision recommendation number four has passed. Bobby and Alina are abstaining, and I'll note that Sarah Kotler had to leave the meeting.

Alina M. Semo: Yes, she has not returned. Although she is on, at least her camera mode is going, but I have not heard from her. So, okay, I would like to ask

everyone to turn their attention back to Vision recommendations 2B. Suzanne and Patricia had an opportunity to wordsmith a little bit and they would like to try to get it back in front of everyone today to see whether we could pass it with amended language. Patricia circulated it to everyone. Kirsten is about to chat it to all attendees, which also means I believe that all participants will be able to see it. Can everyone see that?

Patricia Weth: Yeah, I see it now.

Alina M. Semo: I see it too. Kirsten, I see that you sent it to all panelists. Can you also send it to all attendees, or you did that separately? She is giving me a thumbs up. I just want to make sure all the attendees are seeing it. Patricia and Suzanne, do you want to address anything, or do you think it speaks for itself?

Patricia Weth: Well, this is Patricia West from NLRB. I can just point out the changes. And Suzanne was good enough to tweak it, but basically in the first sentence, we added the language “to encourage agencies to include FOIA in their performance plans.” In the second sentence, we changed the word “subcommittee” to “committee.” I think the changes here incorporate a lot of the suggestions that we received earlier. With these changes my goal was the hope that we could, and I know we voted on it, but it passed in spirit, but I’d like to vote again to see that the language is approved. Just so that we can have this done by the end of this meeting.

Alina M. Semo: Patricia, do you want to move?

Patricia Weth: I move to vote on this recommendation with the revised language.

Tom Susman: Can I ask a question? This is Tom. Is it intended that OGIS and OIP do this jointly or independently?

Patricia Weth: The way that we drafted it is that OGIS would review the actual information and make the assessment. Our hope was that OIP could assist them in the process.

Tom Susman: Okay.

Alina M. Semo: This is Alina and Bobby, if perhaps you could chime in as well. I think I view this as just a collaborative effort between OGIS and OIP.

Bobby Talebian: Yes, this is Bobby. And we talked a little bit about it. We did something, I appreciate the flexibility there in how we're going to accomplish this, but something that we're looking forward to working with OGIS with.

Alina M. Semo: Any other questions? I think we're ready to take a vote. I have a motion. I have a second. All those in favor of passing the amended language as displayed on your chat function or in your email, please say aye.

All: Aye.

Alina M. Semo: Those opposed, please say nay. Any abstentions?

Bobby Talebian: Bobby, abstaining.

Alina M. Semo: Alina Semo is abstaining. Okay, Kirsten, can you read us out on 2C please?

Kirsten Mitchell: Sure, Vision recommended 2C as amended. The language is in the chat box and via email to committee members passes. Bobby and Alina abstaining.

Alina M. Semo: Okay. Thank you very much. I'm going to keep moving. I actually, I think we're ready to go to Time/Volume recommendations. And I know Kirsten in the PowerPoint slide deck had included a recommendation one, but I believe we have consensus that it is going to become a best practice. So, I think we could skip over that slide with everyone's permission and flip over the recommendation two for Time/Volume. I believe this would have been presented by Bradley, but Emily has graciously agreed to step in to talk to us a little bit about two.

Patricia Weth: Alina Semo, this is Patricia Weth. I think Emily, did you want me to talk about this?

Alina M. Semo: Okay. I'm sorry. I didn't realize that. Patricia over to you.

Patricia Weth: We had voted on this at our last committee meeting and it passed in spirit. But there were some great comments and suggestions. We revised the language in accordance with that. That's what you see on your screen here right now. The rationale for drafting this was two things. It came from the survey that we conducted, and we found that a good deal of requesters did not have an understanding of the FOIA process.

We felt that the agencies could do better with drafting an SOP as well as beefing up their FOIA webpage. Also, from the results of the survey, it came back that many FOIA professionals wished to have an SOP. That's how this recommendation came to be. If anyone has any questions on the new language, I'm happy to discuss it or if you have any other suggestions.

Alina M. Semo: Any comments, questions? Meeting fatigue. Okay. All right, well I think we're ready to move on the language. Unless I hear any other objections? Can I have a motion on the proposed language recommendation two from Time/Volume subcommittee?

Patricia Weth: I so move.

Alina M. Semo: Do I have a second?

Sean Moulton: Second, this is Sean.

Alina M. Semo: Let's all vote. All in favor of recommendation two as written, please say aye.

All: Aye.

Alina M. Semo: Any opposed, please say nay. Any abstentions?

Bobby Talebian: Bobby, abstaining.

Alina M. Semo: Kirsten, you can mark me down as an aye on that. I'm not abstaining from this one. Alina.

Kirsten Mitchell: Okay. The recommendation Time/Volume two passes with one abstention. And that is Bobby. Thanks, Alina.

Alina M. Semo: Thank you very much. Thanks, Patricia. Okay, moving right along Time/Volume recommendation three is Joan. Joan, you are going to present on this?

Joan Kaminer: Yes. Hi, everyone. We discussed this recommendation at our last meeting but as a result of that conversation and subsequent conversations, we made a few revisions. It's a little long so I'm not going to read through the whole thing, but I am going to highlight, one, we are requesting that agencies provide annual mandatory FOIA training for all agency employees. That includes on-boarding and, where applicable, program-specific training. In

addition, and this is the portion that we discussed at the last meeting, we're recommending that the Archivist direct OGIS and request OIP to undertake the study of agency's current FOIA training. And that would encompass beyond the annual training but may include evaluation of varying agency requirements for mandatory training, onboarding, supplemental, first line supervisors training and program-specific training for subject matter experts and technology professionals.

Lastly, we are requesting OGIS ask Congress to support this recommendation by providing appropriations for agencies FOIA training costs. Acknowledging that training is very important but also can be a strain on resources and can be very expensive. By showing support through appropriations for training, we believe we can further the goals of the committee as a whole I'll say with individual recommendations. I can answer any questions or if anybody has any comments.

Alina M. Semo: Joan, thank you. This is Alina. I actually had a question about the bracket. Do you want to propose the recommendation? Do you want the study may include that bracket portion to be part of the recommendation?

Joan Kaminer: Yes. I thought that was just an accidental holdover with the main sentence bracketed, "the study may include." And I personally would like to include that. This second section with brackets, which is a line item, is up for discussion on whether or not we wanted to, I mean it's all up for discussion, whether or not it should be a recommendation by providing appropriations or be a line item appropriation.

Jason R. Baron: Well, it's Jason Baron. If I could weigh in, I'm responsible for the brackets and in making my suggestions to the subcommittee. The reason for the first set of brackets is simply because I have, as a general rule, I think for drafting purposes we should make these recommendations pithy and as short as possible and confined to one sentence. That material could be moved to the text of whatever final report we do. And as for the line item, yes, that was up for further conversation.

Tom Susman: This is Tom Susman. Can I talk?

Alina M. Semo: Yes, please.

Tom Susman: I would delete the line item reference. I think it's kind of dangerous because then if Congress doesn't provide a line item and the agency says,

“Well no, that's why we're not doing training.” That goes back to the earlier discussion about providing resources. I didn't mention at the time, but I think it's really important to be careful about being so specific about how Congress and agencies direct resources in the FOIA area because since it's not likely to feel worth its while to single out line items for training in FOIA. Then when it doesn't, the agency says, “Well, we tried before our training starts.” I would suggest deleting that.

Alina M. Semo: Joan, any reaction to that?

Joan Kaminer: I have no concerns with deleting the line item. I think that's a very legitimate concern with including it.

Alina M. Semo: Anyone want to speak on whether to include it or not? Anyone else other than Tom?

Suzanne Piotrowski: This is Suzanne. I think we should exclude it.

Kevin M. Goldberg: I was going to say the same thing.

Alina M. Semo: Kevin, thank you.

Ryan Law: Hi, this is Ryan. I think it might make sense to, of course, move it to the narrative below, as opposed to including the recommendation.

Alina M. Semo: Sounds like general consensus. We're going to not include the bracketed line item, kind of what I'm hearing. What about the earlier sentence that Jason is solely responsible for? Or partially responsible for? What is the sentiment on that should we move that to the rationale section of the report? Or do we leave it in the recommendation? Anyone want to weigh in one way or the other? Is everyone agnostic?

Joan Kaminer: This is Joan. As long as it's included and the underlying explanation, I think it's important to keep because I think it was some varying areas of training that might not be considered, and I think are important to acknowledge. I understand the need to keep the actual recommendation succinct. As long as we are confirming that we're keeping that language even if it's in the section below, I have no concerns with that.

Alina M. Semo: Joan, just to clarify, I was proposing that we would take our bracket language and put it into the rationale section that would follow this

particular recommendation. That was what Jason was recommending. Anyone else feel one way or the other about this? Feel like I cut Joan off.

James R. Jacobs: James Jacobs, I would agree to just move it into the explanatory part. In the interest of succinctness.

Alina M. Semo: Okay. James Stocker?

James R. Stocker: I agree with that.

Alina M. Semo: Okay. Thank you. Michael, you are good?

Michael Morisy: Good.

Patricia Weth: This is Patricia. I agree with it being moved to the rationale.

Alina M. Semo: Seems like that's the consensus. What I would vote, I'll propose that we vote on rather, is we vote on the language as is before us without the bracket information and an agreement that the sentence that's bracketed in bold be put in rationale along with a line item discussion, if you will, and the value of a line item in the rationale as well. Does that sound good to you, Joan? Okay. Can I have a motion to vote on recommendation number three for Time/Volume?

Joan Kaminer: This is Joan. I move.

James R. Stocker: Motion to vote.

Alina M. Semo: I have two motions to vote. From James Stocker and Joan, can I have a second?

Patricia Weth: This is Patricia. I second the motion.

James R. Jacobs: I second.

Alina M. Semo: Patricia, thank you. James Jacobs has also seconded, everyone is seconding. All right. All those in favor, please say aye.

All: Aye.

Alina M. Semo: Those opposed, nay. Is there a nay? I didn't hear a nay. Anyone abstaining?

Bobby Talebian: I abstain.

Alina M. Semo: Alina Semo abstains. Kirsten, would you mind reading this out please?

Kirsten Mitchell: Sure. The Time/Volume recommendation number three passes with the first bracketed language moved to the explanatory text and the second bracketed text removed. The passes with just two abstentions, Alina, and Bobby.

Alina M. Semo: Thank you very much. I think we're ready to move on to Time/Volume recommendation number four. I believe James Stoker is going to present to us and I think what we're trying to do here, James you'll talk about this but we're just trying to ensure clarification that the committee knows exactly what language we're voting on, correct?

James R. Stocker: That's correct. This is James Stoker. Thanks very much, Alina. Time/Volume subcommittee's recommendation number four language changed a little bit in the last meeting as a result of concerns that the recommendation would be too burdensome for some agencies to implement in a very timely manner, but the current language reads as follows, "Recommend that the Archivist request that OGIS and OIP request that agencies identify common categories of documents requested frequently under the FOIA and/or Privacy Act by or on behalf of individuals seeking records about themselves, and seek to establish alternative processes for providing access to these documents to requesters in a more efficient manner than the FOIA."

The goal of this recommendation, as everyone will recall, is to help ensure that the Freedom of Information Act is meeting its original legislative intent of enhancing the transparency of government operations for the public.

Currently, as we know, many FOIA requests are for information to be used by an individual, say information about their tax records or information about their immigration file. While these are important goals that require the government to produce information and documents, they don't necessarily serve the original legislative intent of the FOIA of enhancing government transparency. This can distort a little bit of our understanding of what the FOIA is doing.

Annual employer reports, for instance, although they show a steady increase in the number of FOIA requests may not actually reflect whether or not the government is becoming more transparent. The hope is that this recommendation will encourage agencies to establish alternative ways of getting access to this information, whether through online portals or through a separate request processes, and that this will resolve in Freedom of Information Act operations, but more closely reflect that original legislative intent.

It's my hope that the changes that were made in this recommendation are still satisfactory to everyone that they've met all concerns. I would be glad to take any questions or comments.

Alina M. Semo: Have any questions, comments, ideas, thoughts? This might be an easy one for all of us. Can I have a motion to go ahead and vote on Time/Volume recommendation number four?

Ryan Law: Alina Semo, this is Ryan. I will motion to vote.

Alina M. Semo: Thank you. Do I have a second?

Sean Moulton: This is Sean. I will second.

Alina M. Semo: Thank you, Sean. I'll take the second. All those in favor of Time/Volume recommendation number four as James has just read it, please say aye.

All: Aye.

Alina M. Semo: I think I heard everyone say aye. Anyone is against this recommendation, please say nay. Okay. I didn't hear any nays. Any abstention?

Bobby Talebian: I abstain.

Alina M. Semo: Bobby is abstaining, and Alina Semo is abstaining.

Kirsten Mitchell: Okay. This is Kirsten. Time/Volume recommendations four passes with Bobby and Alina abstaining.

Alina M. Semo: Thank you very much. Thanks, James. And we're now moving on to Time/Volume recommendation number five. Kirsten has flipped our slides for us, and I believe this is Abi who is presenting on this.

Abi Mosheim: Yeah. Yes, this is Abi. We went over this recommendation in our last meeting and the one comment I got, I think from Jason Baron, was that in part B, it wasn't entirely accurate that it was consistent with M-19-21. I changed that language to stay in support of the National Archives and Records Administration M-19-21 memorandum and then also deleted an extra "that" in part B.

The purpose of recommendation five is really to encourage agencies to provide information that should already be made available that perhaps is not online to put that online so that people can readily access it, in a nutshell.

Alina M. Semo: Okay. Thank you, Abi. Anyone have any questions, comments? Michael, you were just stretching? That wasn't a, "I want to raise my hand to say something." Okay. Just checking. All right. I'm not hearing anyone jump up. This one's also not terribly controversial. Anyone? Going once, going twice. Anyone else want to say anything? Do I have a motion to pass recommendation number five from the Time/Volume subcommittee?

Tom Susman: So moved.

Alina M. Semo: Thanks, Tom Susman is moving for the recommendation number five. Can I have a second?

Abi Mosheim: This is Abi. I second.

Alina M. Semo: Thank you, Abi. All those in favor are passing Time/Volume recommendation number five, please say aye.

All: Aye.

Alina M. Semo: Against recommendation number five, please say nay. Any abstentions?

Bobby Talebian: I abstain.

Alina M. Semo: Alina Semo abstains as well along with Bobby Talebian.

Kirsten Mitchell: Okay. This is Kirsten. Time/Volume recommendation five passes with Bobby and Alina abstaining.

Alina M. Semo: Okay. All right, well thank you very much to the Time/Volume subcommittee. Anyone else have any thoughts at this point or do we move

on to the last part of our agenda? I thought I heard someone want to chime in with something. No? Okay

Before we get to the public comments section of our meeting, I thought it would be great if we could spend a few minutes discussing the working group's proposed outline for the final report. By popular vote, I believe we have nominated Sean Moulton to discuss the outline and the rest of the working group can take questions and address any concerns. Sean, can I turn it over to you?

Sean Moulton:

Yes. I'm not sure there was a vote so much as a Shanghai, but it's been a terrific group to work with. I'm happy to present the outline and I will say there's a lot of work underneath the outline that we've really already tried to accomplish with a lot of the recommendations still not finalized. We didn't want to give you a Swiss cheese kind of product where it was just a lot of big gaps. We thought the outline really does stand alone.

We've taken some of the early structure from the previous term's report, the idea executive summary, introduction, things like that and are adapting that language. Then what we did is we tried to group recommendations rather than by subcommittee, but by the audience to whom the recommendations are directed.

We did at first try to put them into buckets around things and things like that, but which we've tried to maintain as you'll see color coded in here as well. It seemed to flow better from our perspective by grouping everything together that OGIS and OIP would first do. Obviously, they're our biggest audience. Then also to the agencies, Chief FOIA the Officer's Council, there's one for CIGIE and then the possibility of recommendations with Congress and we have approved two there.

We haven't also, I should say, wrestled with the merger of all the recommendations yet because again, we had some that hadn't been fully approved. I do think there'll be some work on that in the future. Just because they're listed here in the outline doesn't necessarily mean they'll all remain separate. There is that possibility that some of them overlap enough that we may put them together.

Then finally it finishes up as you see with some sort of basic stuff. The methodology from the subcommittee, which I believe have all been

drafted, committee members, things like that, appendices, which is pretty standard stuff now. Happy to take any questions.

Alina M. Semo: We would also love to get everyone's reactions to all of this. Do you think this is a smart way to bucket things if you will? Would you have done it in another way? Because if you would have done it another way, you should have been on the working group. Just kidding. We're happy to take adjustments.

Suzanne Piotrowski: This is Suzanne Piotrowski. I think substantively it makes sense to me.

Alina M. Semo: Great. Thank you. I appreciate it. Jason, do you have anything you wanted to add?

Jason R. Baron: No.

Alina M. Semo: Okay, Patricia?

Patricia Weth: No, I don't have anything to add.

Alina M. Semo: Abi, anything to add?

Abi Mosheim: No, I don't have anything to add.

Alina M. Semo: All right. We either have meeting fatigue or everyone just loves our presentation of the order it was put in. I'm going to take it as a positive sign though. The concept that I floated by the working group yesterday that I'm just going to put out there. I can't tell you that it's a hundred percent a sealed deal, but it is certainly my intent and the direction I want to move towards is once you do have a draft pulled together we would like, we, the working group would like to put it up on GitHub and that way we can honor the spirit and the content of the FOIA, sorry, the Federal Advisory Committee Act, the FACA and it would allow both the committee members and members of the public to provide comments and hopefully, that worked very smoothly.

Our goal was to try to get it up there by the middle of May. I believe that's what we tentatively discussed. Don't hold me to that, but that's certainly what we're aiming for. That would give us, all of us on the committee approximately two weeks to review and comment. Of course, it can be a site and we'll be happy to listen to any comments we would get from the public as well. How does that sound to everyone?

Also, Kirsten and I will be working on some kind of cheat sheet to help those of you who've never been on GitHub before. I know enough about it to make me dangerous. I do have an account though, so I feel like I'm making some progress. It is not exactly the most intuitive tool to use, but once you get on there and you start navigating, I think it becomes a little more understandable.

Hopefully, we can all manage that, and we'll be happy to try to help folks individually on the committee who were having trouble technically, so I'll put that promise out there. We do have someone at the National Archives who actually knows a lot about GitHub. If we run into technical issues, we can reach out to that person.

James R. Jacobs: This is James. Thank you, Alina Semo, for doing that.

Alina M. Semo: Absolutely. Anything else before we wrap up our business here? Any public comments you need for chat or on the phone? People are shaking their heads no. No one's raising their hand. At this time, I would like to turn to members of the public for any comments. For the next six or so minutes, we'll be happy to take comments from those of you who have hopefully joined us and stayed with us for this entire committee meeting either via telephone or web. Lauren, if I could turn it over to you just to give instructions again for how folks can send their questions or comments.

Lauren: Reminder, if you would like to make a verbal comment over the phone, you may dial #2 on your telephone keypad to indicate that you wish to ask a question and your line will be unmuted. If you wish to send in a written comment, please select all panelists in the send to drop down menu and enter your chat in the message box provided. We do have a caller on the phone.

Alina M. Semo: Okay. If you could please state your name and your affiliation if it's appropriate.

Michael Binder: This is Michael Binder with the Air Force Declassification Office. We are not formally a FOIA organization and therefore I am not permitted to speak on behalf of the Air Force. I am speaking as a member of the public but based upon my experience, I've done FOIA review for about 14 years. The Air Force is a very large organization. For example, during our

biweekly FOIA teleconferences at the last one, we had 362 names on the distribution list.

Now that's not all individual FOIA offices but it does give you some idea of the order of magnitude of how many FOIA offices we have. I exclusively look at classified documents. A lot of our FOIAs deal with classified information, Air Force as well as other agency information and one of the overriding conclusions I have from what I have seen today is that there's very little that has a positive impact on Air Force FOIA processing.

I just wanted to throw that out and I have a recommendation. There is a lot of talk about the application of technology, so we have been doing some work with the application of technology to FOIA review. There are other government organizations that do the same and yet there is no way for the individual agencies to know what each other is doing because there is no central coordinating office.

If NARA is very eager for agencies to apply technology, it would seem to me incumbent upon NARA to serve the function of being that central coordinating office for that technology development.

Alina M. Semo: Okay, Michael. Thank you very much for those comments. We really appreciate it. Anything else or you are good?

Lauren: We have no further comments on the phone.

Alina M. Semo: Let me go over to Jessie Kratz to see whether we have any chatted questions or comments.

Jessie Kratz: Okay. Can you hear me?

Alina M. Semo: Yes.

Jessie Kratz: Okay, good. We just had one chat earlier, so take us back to 10:46 AM and it's from Michael Heiss and he says, "Good morning, everyone. Regarding Vision recommendation 2A, is there a sample memo?" and he apologizes if this was covered in a previous meeting. That's the only comment.

Kirsten Mitchell: Thank you, Jessie. This is Kirsten Mitchell and I would say stay tuned to the OGIS blog. And also to the final report and recommendations, which

will be shared publicly, and we'll be sure that referenced that and get that language out there.

Alina M. Semo: Kirsten, thank you. Sean, did you want to comment?

Sean Moulton: Yeah, I actually wanted to respond to Michael Binder's earlier comment. Just say, I do think that the coordination that Michael brought up is something that maybe isn't as directly addressed as he might like in these recommendations. I do feel it was a theme in a lot of conversations that and it's one of the reasons I think that we looked to the, for us on some of the subcommittees, I think it was the FOIA Chief Officer's Council that we're hoping to step in and play a bit of that role and centralizing and to solving some of the and we'll have to see if they play that part to our satisfaction. It's certainly something to keep an eye on and weigh in again down the road. I just wanted to acknowledge that.

Alina M. Semo: I believe Jason Baron would like to also make a comment in response to Michael Binder's comment.

Jason R. Baron: I just want to say that while it wasn't covered in today's public meeting, we have addressed technology in the Records Management subcommittee and the recommendations that were approved in the last public meeting. We're very cognizant as a committee as a whole that there needs to be a step up in understanding what kinds of technology can be applied to FOIA.

We are recommending in several ways that the Archivist and OGIS and DOJ/OIP agencies to adopt new technologies that are available, especially in the discovery space, but also to look to the AI future. I would recommend looking to our final report when it's in a form that is publicly available for those kinds of recommendations.

Alina M. Semo: Jason, I appreciate that. Okay, Jessie, back to you. Do we have any other chats, questions, or comments?

Jessie Kratz: Nope, that was it.

Alina M. Semo: All right. Any other callers that want to weigh in?

Lauren: We have no callers on the phone at this time.

Alina M. Semo: I think we lost everyone to lunch and if that's the case, I wouldn't necessarily blame them. Okay, before we wrap up, any other last comments or items that we need to discuss or share with everyone while we're all together.

Tom Susman: This was a seriously productive meeting.

Alina M. Semo: Thank you. I think, Tom, is that you? You said something?

Tom Susman: Yeah. As I said, it's a seriously productive meeting.

Alina M. Semo: Thank you. I appreciate that. I think we can all thank each other. We did a lot of great work today. We should all applaud ourselves. I want to invite everyone to visit our website and social media for more information about everything we're doing. I want to remind everyone the next committee meeting and our final one, it's a little sad. It's been a great group of people, so I really enjoyed working with everyone. It's going to be Thursday, not Friday. Thursday, June 4 at 10 AM.

Again, we're going to plug in virtually. Please check our website for Eventbrite registration and note that we do try to close a couple days ahead of time so we can make sure we get RSVPs in and get link registrations out to everyone. I want to thank again everyone for joining us today under these unprecedented circumstances. I hope that everyone and their families remain safe, healthy, resilient. And we will meet again in a month.

Okay, any questions or concerns? Okay, no? All right. Well then we stand adjourned. Thank you very much, everyone. Bye everyone.

Adjourned 1:00 PM (EDT)