

TESTIMONY OF MIRIAM NISBET
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NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
BEFORE THE
HOUSE SUBCOMMITTEE ON TECHNOLOGY, INFORMATION POLICY,
INTERGOVERNMENTAL RELATIONS AND PROCUREMENT REFORM ON
“THE FREEDOM OF INFORMATION ACT AND INFORMATION TECHNOLOGY”
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Good afternoon, Chairman Lankford, Representative Connolly, and members of the subcommittee. I am Miriam Nisbet, Director of the Office of Government Information Services at the National Archives and Records Administration. Thank you for the opportunity to appear before you to discuss the administration of the Freedom of Information Act (FOIA) and information technology.

I hope to provide you with a sense of some of the challenges facing the 15 Cabinet-level departments and 84 agencies that administer FOIA and how information technology can help make the FOIA process more efficient, effective and transparent for both agencies and requesters. Congress created OGIS as part of the OPEN Government Act of 2007, which amended the FOIA. The Office was created to review agency FOIA policies, procedures and compliance; to recommend policy changes to Congress and the President to improve the administration of FOIA, and to resolve FOIA disputes between agencies and requesters. We opened in September 2009.

More than 1,200 FOIA requesters from nearly every state and points around the globe turned to OGIS for assistance in its first two years. Requests for help ranged from questions about how to file a FOIA request and how to appeal an agency release determination to more difficult inquiries about resolving disputes pertaining to specific exemption use or agency FOIA policy. OGIS opened 764 cases in response to those requests for assistance, 391 in its first year and 373 in its second year, ending September 30, 2011. Between June 2010, when OGIS began tracking phone and e-mail “quick assists,” and the end of Fiscal Year (FY) 2011, the Office helped nearly 500 callers and e-mailers. OGIS’s work has reached customers from 48 states, the District of Columbia, the Northern Mariana Islands, Puerto Rico and 13 foreign countries, including Australia, Cambodia, Canada, France, India, Iraq and Mexico. Individuals, including veterans, researchers, professors, journalists, attorneys and inmates, comprised more than three-quarters of OGIS’s FY 2011 caseload. OGIS cases in FY 2011 involved 42 Federal agencies, including all 15 cabinet-level departments.

OGIS spent FY 2011 preparing for a new website and permanent case management system, launched at the beginning of FY 2012. The new system allows customers to request assistance online and track their OGIS cases while helping OGIS staffers to better manage their caseloads. OGIS’s blog, *The FOIA Ombudsman: Information and Advice*, launched in March 2011 and is designed to stimulate conversation about all things FOIA.

In carrying out our mission, we see how agencies use technology to administer FOIA—tracking requests, searching for and reviewing records, posting frequently requested records online, and using agency websites to provide information about the FOIA process.

In 1996, Congress passed the Electronic Freedom of Information Act Amendments of 1996¹, or e-FOIA, to modernize the then 30-year-old FOIA by clarifying that the law applies to records maintained in electronic format as well as traditional paper records. Specifically, e-FOIA requires agencies to provide records in “any form or format requested if the record is readily reproducible by the agency in that form or format”² and to “make reasonable efforts to search for the records in electronic form or format, except when such efforts would significantly interfere with the operation of the agency’s automated information system.”³ The law also calls on agencies to expand the role of agency reading rooms by posting more material online, particularly records that have become or are likely to become the subject of subsequent records requests.⁴

Sixteen years later, agencies are still working to fully implement the e-FOIA requirements. While agencies continue to improve and modernize their FOIA processes, OGIS observes that obstacles still remain and improvements can still be made. Some obstacles we have observed are outdated technology and challenges posed by the need to properly manage electronic records. We believe addressing these obstacles will further assist both agencies and requesters to work within the FOIA process.

It was in that landscape that the Environmental Protection Agency (EPA) in 2010 began thinking about ways to address some of those challenges at its agency. One idea was a portal that would automate FOIA processing and reporting. EPA envisioned the eRulemaking

¹ Public Law No. 104-231, 110 Stat. 3048

² 5 U.S.C. § 552 (a)(3)(B)

³ 5 U.S.C. § 552 (a)(3)(C)

⁴ 5 U.S.C. § 552 (a)(2)(D)

Program's technology infrastructure could be used to accept FOIA requests, store them in a repository for processing by agency staff, and allow responsive documents to be uploaded into the system and posted for the public.

The portal, if successful, would allow requesters to track the status of their requests and find, view and download FOIA requests and agency responses from one site. For its part, the agency could have a secure web site to receive and store requests, assign and process requests, manage records electronically (including referrals to and consultations with other agencies), post responses online, and provide metrics to the Department of Justice for annual reporting.

Rather than build a FOIA portal from the ground up, the EPA envisioned adopting and adapting Regulations.gov, the Federal rulemaking portal launched in 2002, which allows people to comment on Federal regulations and other agency actions. We at OGIS believe strongly that lessons learned through Regulations.gov can be applied efficiently and cost-effectively to FOIA, revolutionizing the FOIA process as Regulations.gov did with rulemaking.

EPA began discussing the pilot portal, now called the FOIA Module, with OGIS and the Department of Commerce in 2010, and formed a partnership in September 2011 (EPA, Commerce and NARA). Other departments and agencies have expressed interest in the partnership and we hope others will join us. For example, the founding partners believe that harmonizing this FOIA Module with the Department of Justice's website FOIA.gov is an idea worth considering.

Representatives from the founding partners met early this year with both agency FOIA professionals and the requester community and will continue those meetings. Comments from both stakeholder groups at the meetings provided the portal's infrastructure team with direction

for coding and testing, which is slated for completion later this spring. The FOIA Module is scheduled to be launched for agencies this summer and unveiled to the public in October.

Another area in which FOIA and technology intersect is with proactive disclosure. The E-FOIA Amendments of 1996 require every agency's website to include information made public under FOIA which are likely to be subject to subsequent requests.⁵ Agencies are continuing to make additional information available on their websites. In fact, the amount of information is staggering. In order to ease the public's navigation across agencies websites, we are encouraging agencies to standardize FOIA websites to ensure that sites are a customer-friendly and efficient way for the public to find FOIA resources. Last week, in observance of Sunshine Week, a national initiative to promote open government, OGIS posted on its blog suggestions to improve the FOIA process administratively, such as top-down support for FOIA; developing, with stakeholder input, an easy-to-use design template for agencies to customize; standardizing and indexing online FOIA reading rooms; and providing full contact information for designated FOIA professionals.

Finally, OGIS has observed that collaboration is a cost-effective and beneficial tool for exploring ways to improve the administration of FOIA through existing technology. In August 2011, OGIS hosted a meeting of FOIA and IT professionals from the Departments of Defense, Homeland Security, and State, and the Federal Bureau of Investigation to discuss how technology can streamline the FOIA process. Several attendees of that meeting continued the discussion and the FOIA IT Working Group was born in October 2011. This group, one of several in the Executive Branch, is working on ways to

⁵ 5 U.S.C. § 552 (a)(2)(D).

- collect the IT requirements of FOIA professionals and communicate those to the companies that create products for this audience;
- identify technologies that agencies now use that can be re-purposed for FOIA (such as using the Interlink intranet to streamline consultations and referrals);
- share details about the FOIA Module project; and
- apply the group's unique knowledge to FOIA issues such as database requests and best practices to help agencies better handle such requests.

We share information about the group's efforts with the FOIA community through our blog, The FOIA Ombudsman: Information and Advice, available at:

<http://blogs.archives.gov/foiablog/>.

We are pleased to suggest several improvements to FOIA vis-à-vis information technology and to be a founding partner in the FOIA Module under development by EPA. We believe that the FOIA Module project has the potential to improve FOIA processing, particularly if it is appropriate to adopt broadly. As this project is developed, we believe we will be able to analyze the potential benefits of the system and consider whether the partnership can be expanded.

We appreciate the Subcommittee's efforts to examine ways in which FOIA can work more efficiently for all—agencies and requesters. OGIS stands ready to assist in any way. Thank you for the opportunity to testify; I look forward to answering any questions you may have.