

Freedom of Information Act (FOIA) Advisory Committee

(overlapping dialogue; inaudible)

SEMO: We're missing Melanie, who I know is here. Michael, who's supposed to sit next to you? (inaudible) OK. (inaudible). Sorry. Good morning. Everyone please be seated, and welcome to the National Archives. This is -- we're waiting for one more person to come sit down. It's my delight to be chairing the FOIA advisory committee meeting. This is my first advisory committee chairing as the new director of OGIS. I'm very happy to be here. I very much look forward to working with all of you to help improve FOIA and the process. And I understand this is the third committee meeting. So, hopefully we'll launch right in. Before we get started, I very much want to thank Nikki Gramian, our deputy director of OGIS, who held everything together for about seven months, and chaired the committee while there was no director. And her leadership and guidance is invaluable. And thank you very much, Nikki. As you all know, the committee brings together government and nongovernment FOIA experts with vast and diverse experience to advise on and make recommendations to improve FOIA administration throughout the executive branch. And the Archivist has appointed each of you in recognition of

your FOIA expertise, and with the belief that you'll be able to contribute to important work. So, I know the committee has an important role to play in improving FOIA, and I'm very excited to serve as the new chair. Just -- Tom Susman actually reminded me during the 2014-2016 term of the committee, the FOIA advisory committee produced a final report that went over to OMB. And we have checked in with them recently, they're -- it's still sitting there unfortunately, but we hope that there will be some progress made soon. We very much look forward to continued collaboration between requestors and federal employees serving on this committee, and certainly it is our intent at OGIS to provide as much leadership and support, administrative support, as possible, to ensure that we actually deliver a meaningful result at the end of the committee term. Now, it is my absolute pleasure and honor to introduce to you the Archivist of the United States, Mr. David Ferriero.

FERRIERO: Thank you, Alina. And good morning. Welcome to the third meeting of the Freedom of Information Act Advisory Committee for the 2016-2018 term. All right, bringing together a federal government staff and US citizens attacking some of the greatest challenges facing this committee, this truly embodies the spirit of open

government. This committee's previous meetings, I shared updates on our search for a new director of OGIS. Today, I'm happy to see OGIS's recently installed director, Alina Semo, sitting at the committee table. About three years ago, we wooed her away from the FBI to be the National Archives director of litigation. She's a dedicated public servant with extensive FOIA experience at both the administrative stage and federal court litigation. She has a vast knowledge of this agency, and a commitment to open government, qualities I know will help her succeed as the OGIS director. I also want to thank Nikki, deputy director Nikki Gramian, for wearing multiple hats, not just once, but twice, while we continue to search for new directors at the OGIS. So thank you, Nikki. Turning to this committee, I announced the appointment of a new committee member, Miss Sarah Kotler. Sarah, welcome. She's the direct-- Sarah is the director of the Food and Drug Administration's division of freedom of information. Since joining the division, Sarah has overseen a 70% reduction FDA's FOIA backlog. Come and help me with mine, please. Improved processing efficiencies across the agency, vastly increased the number of records hosted proactively, and worked directly with the requestor community to improve the FDA's FOIA program. Prior to joining the division of freedom of information,

Sarah was an attorney with the FDA's office of chief counsel, and an attorney in private practice. She holds a bachelor of arts degree from the University of Pennsylvania, and a juris doctor degree from Harvard Law School, where she was an editor of the *Harvard Law Review*. We're excited to have you with us. Thank you for joining us. We appreciate your willingness to volunteer also, as a new co-chair of the subcommittee on accessibility. Today, I look forward to hearing about the progress of the subcommittee -- the subcommittees have made since our last meeting, and listening to the presentations of the guests joining us. And before I turn the program over to Alina, I wanted to point out that we will host another very exciting open government event in less than two months here in the William G. McGowan Theater. I hope you'll mark your calendars for Monday, March 13<sup>th</sup>, from 1:00 to 4:30, and join us here for Sunshine Week 2017 at the National Archives. Thanks for all of you for coming today, and now, it's yours, Alina.

SEMO: Thank you, David. As a reminder, information about the committee, including members' biographies, committee documents, public comments, are all available on OGIS's website. We are livestreaming this meeting. We will make video transcript of meeting materials available on the

committee's webpage, so please check it out after this meeting. And we expect to have all of our meeting material available within the next 30 days. Hopefully sooner. And thank you in advance for your patience and understanding. So, I want to go through some housekeeping rules before we get started. Go over our agenda and set some expectations for today's meeting. As we begin our introductions, again, Sarah, thank you so much for joining us, and for stepping right up to be the co-chair of the proactive disclosure subcommittee, we really appreciate that. I also want to note that committee member Logan Perel, who was co-chairing or is co-chairing the searches subcommittee, he was previously at DHS, recently left to go to Treasury Department, and he was unable to attend today, because he is waiting for approval to continue to participate, but we hope he'll be able to resume his functions, and join us at the next meeting. Next, I'm going to spend a few minutes introducing the committee members, both by phone and in person. And I'm going to get started with the folks who are on the phone first. If you could please introduce yourselves, and remind everyone please of your profession and your affiliation. And I was told initially Jill Eggleston was on the phone, but she's here.

KWOKA: I can start, this is -- oh, sorry.

SEMO: No, that's OK. Margaret?

KWOKA: Yes, this is Margaret Kwoka, I am an associate professor at the University of Denver Sturm College of Law.

SEMO: OK. And Sean, are you with us?

HERSHBERG: James Hershberg, I'm professor of history and international affairs at George Washington University.

SEMO: And Sean? Are you on the phone with us?

MOULTON: Yes. This is Sean Moulton, I'm the open government program manager at the Project On Government Oversight.

SEMO: OK, is there anyone else on the phone that we missed?  
OK. Can we hear from everyone in the room, please? I'm going to start with the end, the Siberia end, as I like to call it, at the end of the table. To my left, please.

KNOX: Chris Knox, I'm a managing director at Deloitte, in the forensics investigations division, and I'm not quite sure what I did to get banished to the end of the table, so.

MCCALL: Ginger McCall, I'm an attorney advisor at the Department of Labor.

KOTLER: Sarah Kotler, I'm the FOIA officer at the Food and Drug Administration.

VALVO: James Valvo, counsel, senior policy advisor, Cause of Action Institute.

WALSH: Lynn Walsh, I'm the president of the Society of Professional Journalists.

LAZIER: Hi, I'm Raynell Lazier; I'm the FOIA manager at CFPB, Consumer Financial Protection Bureau.

EGGLESTON: And I'm Jill Eggleston, I'm the FOIA officer at US Citizenship and Immigration Services.

SUSMAN: Tom Susman, director of governmental affairs for the American Bar Association.

PUSTAY: Melanie Pustay, the director of Office of Information Policy at Justice.

PRITZER: David Pritzker, deputy general counsel at the Administrative Conference of the United States.

BEKESHA: Michael Bekesha, an attorney at Judicial Watch.

CARR: Stephanie Carr, the FOIA Officer at the Office of Secretary of Defense Joint Staff.

JONES: Nate Jones, director of the FOIA Project at the National Security Archive.

SEMO: OK. Thanks very much, everyone. I just want to remind everyone, since we're live streaming, and for purposes of minutes of the meeting, it's important to, every time you speak, just remind everyone who you are, in case we forgot. And there's also going to be a slight delay, I am told, for those members who are on the phone. And when the microphones in the room are turned back on.

So we have to remember as we're dialoguing. I have just a few administrative comments, and then we'll get started. Again, just stating the obvious, this is a forum for public discussion of FOIA issues. And we offer members of the public who are here today to join us, and share their ideas. We will have a public comment period at the very end. We also encourage the public to share their written comments with us, and any suggestions by submitting them to our website at [ogis.archives.gov](http://ogis.archives.gov). And to promote openness, transparency, and public engagement, we do post committee updates on our website, and on Twitter. So I have to give a Twitter shout-out. I am actually very excited to report that we've reached over 1,000 followers, so we're making progress, please continue to join us. All the URLs are on our website. We will take a 15-minute break halfway through. If we end up moving ahead a little bit earlier in our program, we'll take it a little bit earlier. If anyone needs a comfort break, let me know that as well. You know, pass me a note. There is food and drink available at the Charters Café, which is located on this level. And as a reminder, no food or drink is allowed in the theater. There are restrooms directly outside the theater, and another set near the café. OK. So we're going to get started. The first matter of business is to turn our



attention to the approval of the October 25<sup>th</sup>, 2016 committee meeting minutes. I am advised that the committee members have all had a chance to review them. And there have been comments that we have received, and we have incorporated all of them. And I have certified the minutes. So, if I could have a motion to approve the minutes.

M: (inaudible).

SEMO: Thank you. Do we have a second?

F: Second that.

SEMO: Thank you. All in favor?

GROUP: Aye.

SEMO: Anyone opposed? All right, the minutes have been approved. They will be available for public inspection on our website. OK. We're moving right along. We will hear from each of our three subcommittees today. Proactive disclosures, efficiencies and resources, and the searches subcommittees. Just a reminder, and this is my pitch, it's never too late to sign up for another subcommittee. There are three members who have signed up for two, so if you want to join them, please feel free to do that. We are going to be happy to have anyone join any of the three subcommittees. So that was my plug. We will have two presentations today, then we'll open the floor up for

discussions. And our first item on the agenda is an update from the proactive disclosures and accessibility subcommittee. And at this point I'm going to turn our meeting over to Sarah Kotler and Margaret Kwoka, who are going to provide us with any updates, and introduce our speaker today.

KOTLER: Well Margaret's going to start on the phone.

SEMO: Great.

KOTLER: Discuss the updates, and then I'll be introducing (inaudible).

SEMO: OK, so Margaret, you're up.

KWOKA: Thanks so much. I'm sorry that I have to join you remotely this time. So I'll just be very brief in our update. For some administrative reasons, it took us a little while to get the ball rolling, but we have had our first proactive disclosure subcommittee meeting, or conference call, and we have done, I think, quite a good amount of organizational work to get our work started. We based our kind of plan off of an idea that we should continue the work that was being done in the proactive disclosure subcommittee, in the last term of this advisory committee, because they really managed to advance (inaudible) significantly, and we want to be able to build on that work. And so, there are kind of two areas in which

that iteration of the subcommittee and ours will focus. And one of those is the question of how agencies should identify records for proactive disclosure, how they should identify what records they should be targeting for those efforts. And second, the logistics of proactive disclosure, and in particular any barriers posed by section 508, which of course we had a presentation on in the last committee meeting. And to that end, we decided that one thing that we could do that would be beneficial would be to kind of do a little bit of investigative work, or case studies for agencies where we have reason to believe that there's some really good, or creative, or strong efforts in the area of proactive disclosure, to find out how agencies are currently identifying targets for these kinds of efforts, what records they identify as important, and how they make those priorities. And also, how it is they handle technology and 508 compliance. And so, we've actually identified five agencies that we plan to speak to someone in their FOIA office, and try to have an in-depth conversation about what they're doing, and then come back to the subcommittee and maybe the idea would be to form a set of best practices and recommendations, and some affirmative steps that we think we could take out of that information gathering. And so, we currently have drafted a

long list of kind of questions we have for these agencies, kind of templates, interview questions, and we plan to get going contacting these agencies, and hope to have, you know, at least a couple, if not more of these discussions completed by our next committee meeting, so that we can report out to you on what we are finding. And in our end goal, we hope to come up with kind of a more concrete action out of this version of the subcommittee than last term, by kind of continuing the work that they were doing. So, if Sarah has anything else to add to that summary, or anyone has any questions, I'm happy to answer them. But that's the work that we've done so far.

KOTLER: I think Margaret covered it, thank you.

SEMO: Anyone have any questions?

JONES: This is Nate Jones from the subcommittee. I would just add that my hope is that at the end of our work here, we have something that when an agency says we want to post documents online, but we're worried about 508, we can say here's our best advice, and here's what other agencies are doing to comply with 508. So don't let that scare you away from posting documents.

SEMO: OK, anyone else on the phone have any comments?

HERSHBERG: I just wanted to pass along that for one agency that we plan to contact, the State Department, I've already

circulated a proposal for proactive disclosure of materials that were deleted from published materials in the foreign relations of the United States series. And I just wanted to let you know that I've already informally circulated this idea to the chairs of the historical advisory committees of both the State Department and the CIA, and they responded positively, and have already said that they will investigate this possibility.

SEMO: Great. Sarah, over to you.

KOTLER: I'm going to introduce our guest speaker, Phil Ashlock, who's a technologist based in Washington, D.C., building digital civic infrastructure to support open government, civic engagement, and economic development. Currently, he is the chief architect at data.gov, where he manages a federated platform for publishing open data, and APIs across government. Mr. Ashlock lead the development of the Open 311 standard for interacting with government through an open feedback channel, and served as a presidential innovation fellow, working with the GSA and the White House office of digital strategy on My USA. He is also an alum of Open Plans, a New York City-based civic technology organization.

ASHLOCK: I have slides (inaudible). (pause) Sorry about that. So, I'm just going to give an overview of data.gov, and the

policies that we work to help agencies implement around open data. And the -- so the history of data.gov is, we initially launched in 2009, but we've in many ways been the implementation arm of a number of subsequent open data and open government policies. The most recent one, the most sort of extensive one, is from 2013, the open -- the executive order on open data. Which is often referred to as M-1313, and implemented through our implementation guidance, which is referred to as Project Open Data. And that policy really changed things pretty substantially from how things were operating when we first launched in 2009, in the sense that initially we were just kind of a front facing portal for the public to access, you know, whatever data sets the agencies may have provided.

F: (inaudible).

ASHLOCK: OK. So, initially from 2009 to 2013, agencies would have their data sets at data.gov, the first policy was really just asking for higher priority data sets. But that sort of made us in some ways a bottleneck for publishing data, and for people finding the data. In a sense, the agencies had to go through data.gov to make it available through and discoverable there. The executive order in 2013 really changed things to much more of a federated, decentralized model, where agencies took responsibility for

not only inventorying all their public data sets, but actually all their data assets, including nonpublic data sets, through a common metadata schema. Which we call the Project Open Data metadata schema. Which is actually based on an international standard from the W3C called DCAT. And so, that really meant that data.gov was then going to each agency's website to pull that metadata, and because it was following a standard, we could do that in a very scalable systematic way, going to each agency, and agencies could really take responsibility and sort of be more proactive, and act on their own schedule to make sure that those data sets were included in that inventory. And thus, you know, got aggregated and syndicated to display. And be discoverable through data.gov, and search engines as well. And while, you know, that did sort of give them, you know, more autonomy, there was, there has still been this regular quarterly review process, so the policy also goes in line with a cross-agency priority goal on open data. So there have been quarterly assessments, and we also help manage a dashboard that's publicly visible to track the status of how agencies are implementing that -- the policy and the metadata. And the metadata quality associated with that. So, also including things like broken links, or things that may be out -- not being updated regularly. And we've also

been working to help provide feedback mechanisms. So because we act as the public facing (inaudible) for so much of the public to finally discover data sets, they often come to us, you know, through our contact page, and through some other feedback channels that we have, either looking for a data set, or reporting a problem with a data set. And so, we've tried to have a more systematic way to handle that, as well, and to get agencies more access and control of participating in that from the very beginning. So we have what we just referred to as our data.gov help desk. Which as I said before, can be used both to request data sets, but also to report problems with existing data sets. To report problems, there's actually a button that shows up on every data set page on data.gov. On the top-right corner, and then just from our contact page, there's the form to request data sets as well. And that goes into sort of a CRM system to track those requests. And then we take it upon ourselves to help route those to agencies, if it's not sort of obvious enough, and it takes a little bit of work sometimes to make sure that goes to the right person. But we're also working on updating that system so that agencies have direct access to that. And can get notifications and in many cases, respond to those, or have those requests routed to their own systems automatically



without necessarily having us sort of act in the delegation role. But that's something that's still kind of a beta.

So I'm probably like, halfway through this slide deck right now. (laughter) So, I don't know if you just want to -- next slide? This is data.gov. Next slide? Next slide? This is what I was saying about the bottleneck, before or after, agencies are -- it's more of an agency-centric publishing approach now, where they manage the metadata, and data.gov is just a consumer. In fact, the way that the architecture works currently, there's really, it's actually very easy for anyone to -- oh, thank you. For anyone else, including someone from the private sector, to actually do almost exactly the same thing that data.gov is doing. Because we're simply pulling public metadata that each agency is publishing, and providing a common place to discover that. We also do other things to help agencies along. But as far as the actual public website, there's a lot of ways that that could actually be duplicated out in the private sector. And so, as I mentioned before, the implementation guidance for the policy is mostly found on the Project Open Data site. Which you can Google, and [projectopendata.cio.gov](http://projectopendata.cio.gov). And that includes the metadata schema, which I said before is based on an international

standard called DCAT, which also builds on common things like doubling core. The whole implementation guidance website is built as an open source project on GitHub. So throughout the years, with updates to the metadata schema and things like that, we've invited public participation and feedback on that guidance. As I mentioned before, the inventorying process for metadata includes not only public data sets, but also nonpublic data sets. And we even, next slide here, we even actually display those nonpublic data sets publicly on data.gov. We just include a disclaimer that we're only listing the metadata to let the public know these data sets exist. As opposed to actually making them available for download. And there are some exemptions to that, following FOIA exemptions. Where you know, if there's an argument to be made that even some of the information in the metadata falls under a FOIA exemption, then that part of the metadata would be redacted, would not be public. So this is an example of a nonpublic data set, it's an internal API that we use with GSA. And with a disclaimer at the top that says it's not public, and lower at the bottom it says it's not available for download or access, because it's not public. We also syndicate non-federal data sets using the same metadata schema, and the same architecture. So city, state, county governments

follow the same metadata schema sort of voluntarily, and then we work with them to incorporate them just like a federal agency. So this is sort of a breakdown of, this is actually almost a year old, but I don't think the proportions have changed too much. As I said before, we also have a public dashboard to help track sort of the implementation guidance, or the implementation of this metadata and this architecture by agencies, which is tied to quarterly milestones. This also includes some automated analysis to look for things like broken links, and things like that. Which gets very granular and technical, but there's a lot of detail there. And then I said before, you know, we have feedback mechanisms, so reporting a problem with the data set, follow that orange link on every data set page. Or request a new data set from our contact page. And those requests are actually publicly visible, as long as they go through a moderation queue on our side. The status of those requests are actually publicly visible. This is just sort of our workflow, and this actually isn't something we follow as completely or strictly as we'd like to quite yet. But the top is sort of how the public user would make a request, and sort of see it through to resolution, the middle is data.gov's kind of role as intermediary there. And the bottom is agencies, and we're

trying to sort of help agencies have more involvement and more control of that from the very beginning. It's something we're still working on.

I should also mention projects from HHS. It's called demand-driven open data. Which is really looking at sort of creating I think a more robust strategy for sort of the supply side. Or I'm sorry, the demand side of data requests. Which is a little bit more robust than what we're facilitating in a sense that it really has focused developed use cases for a new data release, or an improvement to a data set, as opposed to just saying give me this, and saying like give me this because this is all the amazing things that I will do with it. Which sort of, I think, creates a little bit more engagement with the data users. Just a little technical detail, we're also working on better sort of recommendations on sort of deeper, richer metadata, as far as data dictionaries. So, this is a request that we've had for a while. But, there's some other section, the government of British Columbia in Canada that's been doing an example of this where they're including (inaudible) sort of data dictionaries as part of that metadata, we don't really have good guidance for that. And it's not done very well currently, but that's something

we're working on. And there's some existing working groups in government looking at this as well, and some international standards that are in development. And then we also follow a lot of the metadata standards and sort of approaches being developed in the private sector, particularly with search engines, and schema.org. So schema.org is a consortium of search engines helping to provide standards to improve the sort of discoverability and utility of information on the web. That includes developing schemas for common types of information, so that when people publish that information on a website, search engines or anyone else can consume that and do more sophisticated things with it, like provide richer search results with that structured information. And so they've recently -- so there's actually been a schema for data sets, that's been out for a while, that follows the same metadata standard that we use. And just recently, actually yesterday or two days ago, Google announced that they are treating that as one of their like half a dozen special content types. Which they basically are incorporating additional functionality into the way they would, you know, potentially provide searches, or some things like that. So, this is something we've been coordinating with Google and others, following the same schema.org standard, but you

know, we implement this on data.gov, Google is not yet doing anything interesting necessarily with how that results -- how search engine results, but I think we're getting there. And this is their documentation for that. And that's I think a broad overview of where we are with data.gov. I don't know if we have time for questions, or...

SEMO: Sure.

JONES: Thank you very much. So my question, I've asked this before, but I think you're probably the right guy to answer it. Would it be possible for an agency, if they wanted to, to do a data set of all of their FOIA responses for one year? Does that make sense?

ASHLOCK: So a single data set that's just the metadata of requests?

JONES: Put it on data.gov, yeah. So you probably know, but a lot -- most of the time, a response is piece of paper, or a PDF document. Sometimes an Excel document. Would it be possible to post all of those for one year on data.gov as a data set?

ASHLOCK: I don't see any reason why not. I mean, I think different agencies have different sort of approaches to how they do that. I should mention the caveat that we're a metadata catalog. So we are a place where people can, you

know, find the metadata which then points to the data sets. We don't actually host the data. So agencies would still need to host the data somewhere. We are looking to help provide better sort of solutions, and answers to that as well. But yeah, I mean just from a technical capability, or from our standpoint, I don't see any reason why that couldn't be something an agency would do.

JONES: Well you don't, you haven't -- I guess I should have asked first, sorry, are any agencies doing that already, that you know of?

ASHLOCK: So I know I've seen data sets that are just sort of a spreadsheet listing requests and I think as status responses, but I don't know that I've seen something that clearly ties the data that's made available as being responses to FOIA requests. That's not to say it's not there, I just, I'm not aware of good examples of that.

HOWARD: Question here.

ASHLOCK: Yes?

HOWARD: (inaudible). The enterprise data (inaudible) in 2013 mandated? Thank you. If you go to the Project Open Data dashboard, which crawls all of the different government websites that are subject to, I believe that's only CFO act agencies?

ASHLOCK: Correct.

HOWARD: Yeah. It has not been updated the last two periods. Currently, if you go online, it ends at August of last year. Is the GSA or OMB not updating the last two instances because of capacity and staffing? Or is there some other reason that we don't have updates?

ASHLOCK: So I think there should be an update for the last one ending in November.

HOWARD: If you go to the website right now, it is not there.

ASHLOCK: OK. We'll have to check on that, I don't think that's the case. But, I don't think there's any good explanation I have other than capacity, I know that has been a challenge. But it -- I mean I think it is also, there are some technical hurdles that we also continue to deal with, which are also partly our responsibility, like since we help manage the platform, that as far as the quarterly reviews, I mean I think the best effort has been to complete those within the first few weeks after the quarter ends. And in my years, I think that timeline has always really been driven by staff availability to do those reviews.

HOWARD: To that point, do you still have colleagues in the White House office and management and budget who are doing this work?

ASHLOCK: Absolutely.



HOWARD: You do? OK. And lastly, with respect to the completeness and accuracy of the enterprise data inventory sets, of the CFO act agencies, how many of them have posted what they would describe as a complete inventory of their assets? Including metadata about nonpublic data sets, on this dashboard. Or I should say, in a place where this dashboard can measure it.

ASHLOCK: So that is, I think that is one of the measures that's not something that's super automatable to cover. It depends on a combination of assessment from the agency, and assessment from OMB. And I believe that there are -- that is a field in the review, so that is something that we should be able to list, but I'd have to go through the dashboard and see what that is. But, I think often it's a difficult question to answer. And it's, there are a couple different methodologies for looking to sort of spot check that, which potentially could be more robust than they are, looking at you know, things including FOIA responses, (inaudible) all these different other systematic ways for looking at things that would help identify what the whole universe is. But I think it still is a challenge, but there isn't necessarily one rigorous test that all agencies are all using for their own assessments.

HOWARD: Yeah, I mean in full disclosure, Sunlight in 2014 and '15 tried to do an assessment of how complete these things were, it took a lot of effort, I inherited that responsibility last year, and I still haven't completed it from the civil society side.

ASHLOCK: Yeah, I will mention that there are some agencies who I think have developed a very good, and very robust strategies to do that. I would point out the Department of Transportation, how they published their strategy, and their sort of way of looking at sort of other ways to check the completeness. But it has been a challenge.

HOWARD: Last question. As you know, the US government's developing this release to one, release to all FOIA policy. We expect that requests that are made, that create -- that show demand. It will result in more publication of those requests. The default is that we'd imagine they'd be in FOIA reading rooms. Has there been any preparation for the prospect of agencies publishing machine readable data sets that are requested through FOIA on data.gov and connecting the requests through a redesigned FOIA.gov, so that people can understand the arc of the records request from the incoming requestor to where the data set actually ended up on the internet.

ASHLOCK: So there definitely have been conversations about that. I mean, the idea has been brought up a number of times. I don't know that we have any kind of formal arrangement in place to make that happen. It's certainly something I would like to see. But, I think so far those kind of conversations have still been a little bit more informal.

HOWARD: Thank you, Phil.

SEMO: OK, anyone else have any questions?

SUSMAN: I'm just curious if you can identify the greatest obstacles that you've confronted when you see opportunities at agencies, and are unable to realize an objective of getting data sets posted.

ASHLOCK: Sure. I mean I actually think in some ways that two of the biggest obstacles we've seen are surprisingly, things that you wouldn't think are that big of a challenge. One is, I think for agencies that actually have a long history of doing a good job of publishing data, this is in many ways the first time that there's been a kind of a mandate to have a consistent comprehensive way of managing that across all the whole enterprise. So I think there's been just a challenge for some of the really big data publishing agencies to adapt this really rich, long history where they have all these different websites and systems,

to align to a common metadata standard, and things like that. So, sort of in many ways the challenge of what has already been a success, sort of, but now transitioning into a more consistent, comprehensive strategy across local government has been a challenge for some agencies. And I would say, you know, to counter that, some of the agencies that are maybe doing this for the first time, starting from scratch, in some ways it's a little bit easier. Sort of providing some tools, and systems that they can start from the beginning in a consistent way. And another I think very simple bottleneck is just sort of technical or hosting challenges, as far as, you know, just having hosting resources easily available without necessarily a huge amount of contracting burden, or other bureaucratic burden to go through to put a new file online. So, in some cases they're agencies that already have a good place to host files. In other cases, they might have to go through a whole new contracting action, or some other long process just to post a simple file online. So, we're looking at ways to help provide some solutions to that. But I mean, we've noticed lots of instances where there are agencies who are very interested and excited to put some new data online. But, just the common challenges of hosting a website interrupt that.

SUSMAN: (inaudible). A related question is, do you determine when you, I guess review what goes up through data.gov, as to whether or not it's 528 compliant, 508 compliant?

ASHLOCK: No, I mean the actual underlying data sets, whether it's a CSE file, or a geospatial file, you know, we certainly don't review, we don't play a role in reviewing each of those. I mean, the basic concept that those files are machine readable should sort of almost by definition mean that they have accessibility capabilities behind them, through software that reads those file formats. But, that's not something we certainly -- we don't play an active role in reviewing that, from our perspective at data.gov, at GSA. I mean there are other things that we do, as far as doing our best to make our own website 508-compliant. And yeah, I think there's probably still ways that we can improve that.

SEMO: OK, anyone else have any other questions? How about folks on the phone? I want to give you an opportunity to ask any questions you might have. OK. Nate?

JONES: I have one just last one. Can you -- if we still have time. Can you just, if an agency said, we've got money, we've got power, we want to use data.gov to put all of our FOIA releases from 2010 online, could you just, in a couple sentences, walk through how they would do it?

ASHLOCK: So --

JONES: Indexed on data.gov, and we host them.

ASHLOCK: Yeah, right. So if they're already hosting it. So, the arrangement that each agency used to manage their enterprise data inventory varies. So ultimately, it's meant to come out in the same common metadata schema, and this [data.json?] file. But the actual management process can vary. And so, we don't try and know what that is in each agency. So, if someone comes from a particular office and agency, we basically do our best to make sure that they immediately get in touch with the main data lead, open data lead for that agency, to fit them into the process. And make sure that it gets listed in whatever enterprise data inventory system that they're using to manage that metadata. There are a few instances where we actually help provide the systems that agencies are using. So there's about 10 agencies actually that are using tools that we provide. So we have a little bit more familiarity with how they're -- what tools they're using. Because we're hosting the tools. But that's not always a --

JONES: Yeah, FOIA people should be talking to the data people if they want to do that. At their own agency.

ASHLOCK: Yeah.

JONES: OK. Thank you.

SEMO: OK.

ASHLOCK: Thank you.

SEMO: Thank you very much, we really appreciate it.

(applause)

SEMO: OK. If there are no more questions on -- for this subcommittee, Sarah or Margaret, any other wrap-up thoughts before we move on?

KOTLER: Not from me.

SEMO: OK. Margaret?

KWOKA: Thanks.

SEMO: OK.

PRITZKER: (inaudible).

SEMO: Yes, please.

PRITZKER: I'm just wondering if the slides will be posted (inaudible).

SEMO: Yes. I am told there probably will be a slight delay, but yes, they'll be posted. I know, I apologize for the technical difficulties. Can't control everything. OK. Next we're going to turn, and we're running ahead of schedule, so this is good. We're going to turn our attention now to the subcommittee on efficiencies and resources. As everyone here probably already knows, resources, or unfortunately the lack thereof, is commonly cited as a primary factor in FOIA processing delays. And I

know this subcommittee has expressed an interest in identifying and promoting best practices to overcome systemic issues in the administration of FOIA. So, this is a very complex topic. And we thought it would be very helpful to hear from different folks who are dealing with these issues. But I'm going to turn the floor over now to Ginger McCall, who's the co-chair of the subcommittee. And she and Chris Knox, her co-chair, are going to provide us any updates regarding what the subcommittee has been doing up until now, and introduce our next speaker.

KNOX: Great. Thank you, Alina. This is Chris Knox, and I'll provide the update, and Ginger will introduce the speaker. We too experienced some delays in having our kickoff meeting with the election, holidays, and etc. But we have had our first meeting, and we've established a goal of providing recommendations for the best, most efficient use of resources. And we're going to start by identifying what success looks like in the various agencies. What are the various elements of a successful agency? For example, backlog remediation, and other elements. How we know success when we see it. We're going to use a combination of qualitative and quantitative data points. What elements also contribute to a lack of success, or some challenges in various agencies. We plan to utilize multiple data sources



to do this. We'll start with the annual reports for quantitative or metric information. We're also going to leverage the privacy officer reports for anecdotal or qualitative information. Of course, we'll leverage the OGIS review reports. And other data sources. We'll not only take into account the metric-driven data, but we'll also consider variables such as complexity of requests, number of resources available, the budget, and accessibility of technology. We plan to meet again in the next two weeks, and over that period, the various subcommittee members will be reviewing these reports to come prepared to discuss, in our own opinions, what success looks like, and some various identification of what we believe to be the North Star agencies. And that's about it. (laughter)

MCCALL: And I'm going to introduce our speaker for today, who is Michael Marquis. Michael joined the Department of Health and Human Services office of assistant secretary for public affairs in April 2014 as the departmental Freedom of Information Act director. He has served for 29 years in the federal government. From 2004 to 2014, he served as the director of HHS Centers for Medicare and Medicaid Services FOIA Office. For the past 13 years, he's provided day to day leadership, management, and oversight within HHS

FOIA community. Michael has been instrumental in implementing process improvements, ranging from staffing, request workflow, and technology enhancements that have resulted in significant backlog reductions that exceeded the 10% goal for each staff managed for seven consecutive fiscal years, from 2010 to 2016. Prior to joining the HHS FOIA community, Michael was the FOIA officer at the USDA animal and plant health inspection service for eight years. Michael has a master of science in applied management from the University of Maryland, and a bachelor of science in business administration and health services management from Towson State University.

MARQUIS: Thank you very much. So, I just want to let everyone know, I came into FOIA from a management perspective. I did not come up from a FOIA analyst perspective. So, it was almost 21 years ago, I was playing Mr. Mom, I was on an extended absence from work, and I got a call from a senior director at the animal plant health inspection service, notifying me that I was going to be getting a call later that afternoon, at that time the agency administrator requested that I come into a FOIA position to act as the FOIA officer. And it was very interesting, I didn't know - - I didn't have a clue about what FOIA was all about. So, when I got the call that afternoon, why me? That was my

first response. And the response was, "Well you're a problem solver." I had been working in human resources, and facilities management, I had just come off of a huge project with the agency, and so I had built up comp time, because I was working crazy hours. And so, I was able to take a break and so, I said well, what's the problem? And the one word response was, "Backlog." So, my FOIA journey began, and I came back to work. So over the past 20 years, I've managed three FOIA units. And you know, as all of you know, backlogs are systematically linked to many issues. It's not as simple as oh, it's just a backlog. Hence, managing FOIA operations is tantamount to solving a complicated puzzle. There are days where you or your predecessor, if you've taken over a less effective FOIA operation, force the wrong piece into empty spaces, where they look like they should fit, as you continue administering to the FOIA function, it becomes clear that the pieces are not meant to be assembled in that fashion. Your backlog and response times are increasing, not decreasing. You and your customers are becoming very unhappy. Now what? Don't panic. Break it up, pull it apart. Blow it up, as I tell folks. Although the puzzle may be put together the wrong way, you may be on the right track. Change the direction of the pieces. Assemble them

in a new way. Envision what the finished puzzle, your FOIA program, is supposed to look like. Now, with strategic intent, begin to identify the critical pieces of your operation that need immediate attention. This is the foundation, or this approach is the foundation for my advocacy efforts. The four factors that have been critical to my accomplishments are accountability, leadership support, strategic intent, and sense of urgency. So let me repeat those. Accountability, leadership support, strategic intent, and sense of urgency. Before you can effectively advocate for your FOIA program, you must examine your workflow processes. Identify opportunities to enhance deficiencies of your FOIA processes. Review your key performance indicators. Next, develop goals to present to senior leadership, in order to obtain their support. Share your vision of your finished puzzle, how your FOIA program should function, work with your staff, when you're working with your staff, I cannot overemphasize the need to create a sense of urgency, to continuously implement improvements. Finally, celebrate accomplishments. Reinforce those improvements.

Now that you've taken these initial steps, begin to advocate for your program. By advocate, I mean the active

pursuit of influencing outcomes that directly affect how the FOIA program is administered to the benefit of our customers, the public we serve. Our customers, the public we serve, interesting concept. Since we serve them, we should view them as our bosses. Let's not forget them in our advocacy efforts. Advocacy begins with a succinct message that conveys strategic intent to develop and frame that message for your organization. You must be able to clearly communicate this message with senior leadership, your FOIA staff members, and your customers. Develop a strategic plan to present to senior leadership. Identify key objectives, and corresponding short and long-term goals. For example, objective one of the HHS FOIA strategic plan is quote unquote, "Making information access easier for FOIA requestors." Objective two is improve the efficiency of HHS processing of FOIA requests. These objectives require active management, with a constant focus on key performance metrics. Workflow, operations management, management of FOIA personnel. They're all critical, how you handle those. Create a workplace culture of accountability throughout the lifecycle of FOIA requests, appeals, and litigation. Inform senior leadership of your accomplishments, advocate for their support to promote the mission of the FOIA program. Engage

them in being part of the solution. Request that they communicate the importance of the FOIA program by establishing performance targets that can be cascaded down and across organizational components. Involve FOIA office staff in creating efficient and effective workflows. So if you're managing a program, it's not just your workflow that you want to implement. Get staff involved. Get feedback from them. See if there are any issues or concerns they have regarding the workflow. Eliminate redundancies in the process. Utilize tracking systems to track processing times, backlog reduction efforts, etc. So, to give you an example, when I was the FOIA director at the Centers for Medicare and Medicaid Services, I implemented a complete process overhaul. And when I say, I'm talking across the board improvements, which ultimately resulted in across the board improvements in processing times, backlog reductions over many consecutive years. Always instill a sense of urgency. Every day, I come into the office, there's a sense of urgency to get things done. OK? And communicate that with the staff, let them see that that's critical to success. So, as a result of that, and some of you may have heard this before, but I have been known to ask my staff members why some of the oldest cases in their queue, in their individual queues, are getting so old. I basically

go up to them and ask them, have they fallen in love with those cases? So, my guidance to them is break up with them, and set them free. Let's get them out.

So, finally, communicate with your customers. Work with them to succinctly identify the FOIA priorities. Ease the burden, and the workflow drag associated with overly burdensome requests. Pick up the phone, have conference calls. Bring in program experts that know what the contents of the records look like. Have a conference call with the requestors. Let's see if we can identify succinct records that are responsive to their requests. So, to the requestor community, we want to serve you. But we ask that you be part of the solution. Let's talk about how we can provide you access to the records by identifying key search terms, specific timeframes. So, for many years, I've been managing for 20 years, my bottom line to all of my staffs has been, if it doesn't get measured, it doesn't get done. The same for advocacy. If you're not actively advocating for your FOIA program improvements, by involving senior leadership, FOIA personnel, and your customers, your objectives won't be accomplished. Your puzzle will remain incomplete.

So I thought I'd talk to you briefly about the current, my current company's efforts within HHS. Annual reports are great. Chief FOIA officer reports are great. But I've developed a new report for HHS processing, for an entire department that doesn't measure what's currently being measured in the annual report. And I'm -- we plan to post this online within the next couple of weeks. This report is a quarterly report of all open, pending initial FOIA requests. And the report is tracking both the simple track, complex track, and the expedited track. And our public, I believe, deserves to understand what's pending. It's one thing to report on an annual basis what we've accomplished. It's another thing to report what's pending on a quarterly basis. So that not only the public can see what's going on, agency leadership understands where the burdens are. And so, hopefully that will assist when it comes to addressing resource issues, addressing performance issues, etc. This will also, by posting this information, I hope, maintain that sense of urgency throughout the entire department. So I can open it up now if you have any questions or concerns. Yes?

PRITZKER: When you approached your staff to find out about the oldest cases, what did you typically find as the reasons for them sitting around so long?



MARQUIS: So, I think just because they're just voluminous, they had the staffs, so usually this happens when I come into a staff, OK? It's not on a continuous basis, because I have, with my staffs, I have weekly staff meetings. And I provide a lot of data. I displayed the terms of the data for which the oldest cases, and I give them the year that the case was received, and I give them numbers, and typically after I approach the staff the first time, I start to see cases being closed. And so, you know, the staff understands that I rely heavily on tracking systems, that I'm actively engaged and overseeing the process. So, my staffs have been good. I tell them that because what has -- what I have found over the years is that we tend to reward our highest performers with more work. And so, I've made it very clear to the entire staff that the expectations are across the board. And that they are -- everyone is to pick up the pace. That we're not going to burn our most productive staff by transferring work to them. So, accountability is the bottom line. And so, that's how I approach the staff on a daily basis.

PRITZKER: If I'm hearing correctly, it's what I didn't hear, the problem typically is not that it's difficult to respond to the particular requests.

MARQUIS: So, well the question is, if there are difficulties, they should be bringing them to our attention. But, the issue has been that when I come onboard on these various staffs, the staffs have never been actively held accountable. So that's the approach I take. So, I have -- we've never -- all of the cases that have existed when I come onboard, that I press to get closed, eventually get closed. I had -- as I said, I conduct these weekly staff meetings, and I provide a lot of data to the staff. And one piece of the data is, I start the, in my charts, I -- it's basically the date that I started on that staff. And I had a staff member come to me one day and said why is that date on the graph? And I said, because that's the date I started, so I assume responsibility for those numbers. And so, I need to make sure that we get these cases closed and complete while I'm here.

CARR: (inaudible)

MARQUIS: Well, so we give instructions, at HHS, we have a decentralized FOIA program. I am the FOIA director, the departmental director, but I'm also the director in the office of the secretary. So, we transfer the requests via tracking system to the program offices, or to the data offices that we believe would have responsive records. And they typically will use a coordinator to put the call out,

to get responsive records together. Now, it's a whole different thing if it's an email issue, where we have to go to our IT folks, and ask them to conduct the search. So, but that's typically how we do it. So, we -- my goal is to get a request in, get it logged in, and get it sent out for search within 24 hours of receipt.

BEKESHA: For the three different tracks, what is the average processing time for each, and what's the goal you have with your current resources, and current staff, what those processing times should be?

MARQUIS: Well ideally, OK, ideally, it should be 20 days or less. OK? I wish I could tell you, I've got so many statistics going on in here right now that I don't have the actual average processing time. But ideally, we're trying to drive it down. I am not -- I use these data points to occasionally intervene with operating divisions within HHS. And I spent a lot of time in the past year working with the Centers for Disease Control, because they had a lot of cases that were backed up. And I know in 2015, our average processing time for simple requests was somewhere in the neighborhood of 15 days. And I spent time with that staff trying to teach them what I call intelligent case management. And of course, that -- once you start closing cases that are old, those tend to bump up the average

processing times. And although CDC had a backlog reduction in FY '16 of about 44% due to the sense of urgency and the exertion of effort on my part to that staff, and bringing in a new FOIA officer, that in turn brought up the average processing time, for the simple track, for the entire department. But, so that, you're going to have this blip on the screen for this one fiscal year. But fiscal year '17 should be a completely different number. So for '15, from FY '15, it was about 15 days for FY '16, it's probably going to be up around 25, 26, 27 days.

BEKESHA: What about for complex?

MARQUIS: Complex, again --

BEKESHA: Which probably cannot be done in 20 days. So what, you know, when you get some of those requests in, what's the goal when --

MARQUIS: Well again, we try to push as hard as possible to get those things out. And when we post this data, I think, you know, you'll see in terms of what's pending. So, I'm hoping that using the data that we're about to post, that's going to be a good predictor for these operating divisions in terms of what their numbers are going to look like, in terms of average processing times during the next annual report. So I'm hoping to use that to try to drive those processing times down.

SUSMAN: Your comment, if it doesn't get measured it doesn't get done, requires the measurements to have some reliability. And after our last meeting, Melanie and I had an exchange about, on the number of the overall government number of releases, was it 90%, 71%, 50%? Because partial releases can mean a few words redacted, or it can mean 200 pages redacted. So I guess my question is, I think it's still quantitative, but there's also a qualitative sense of, you've got to measure more than the number of cases closed. Have you looked at that? I mean it seems to me that that's something that you probably thought about, I wonder whether there's some ability to say, you know, yes it was a partial release but the only thing redacted was names and Social Security numbers that they didn't want anyway. As opposed to yes, it was a partial release, but all we left was the headers on hundreds of pages of documents.

MARQUIS: So I mean, that is, I've thought about it, I don't know how to solve that one. But that's not to say it can't be solved eventually. I mean I can tell you, when I was at CMS, Central Medicare Medicaid Services, in order to keep our processes going, I was dealing personally with a request that it involved a billion pieces of data. And within that, there were 300 million redactions. And I

didn't tie up my staff or a staff member to help get that processed. I worked personally with someone in -- who was an IT expert, to get that done. And of course, you know, that counted as one request. So I'm readily aware of that issue. So, and I wish I had a way of solving that. But the way I addressed that from an operational perspective is this process that I've called intelligent case management that I set up. As I've got the workflow broken up, I've got an intake team, I've got a processing team, and I've got an appeals and litigation team. And the mission of the intake team is to keep cases from going to the processing team. So that in terms of improving response times, the intake team is responsible for handling what I call the simple requests, OK? No records responses, full releases, full denials. Immediately we get those out of the processing queue. And processors, on the processing team, they focus on complex cases, and getting those out there. So they've got no basis why they can't be continuously just processing those complex cases, and moving them through. And so, over the years, we've seen the average processing time on all the tracks improve. At least in my office. That's my approach to this. So.

MCCALL: In -- sorry, go ahead.

EGGLESTON:       What tools do you use to hold your program offices accountable for providing responsive records?

MARQUIS:   So we, in our office, I wish we had better tools. But what we do is, we set up notifications, automatic notifications that if they go beyond what we gave them, in terms of timeframes to respond, they get notified. But I stay in constant contact with my intake team to find out who or which programs are not responding. And then I usually make a phone call or two, and we try to free up those records. You know, it's -- fortunately, OK, the -- I have been successful in meeting with senior leadership. And when I talk to senior leadership, up to this month, I've met monthly with the deputy secretary to talk about the FOIA program. And where we're making achievements, where we're struggling, and was given a tremendous amount of support.

MCCALL:   In your work, have you encountered any resource issues with staff or technology, etc.? If so, how has that affected processing, and what have you done to address it?

MARQUIS:   So, my approach to this, coming into the FOIA process from a management perspective, has always been, you've got to make sure your processes are as efficient as you can possibly make them before you ask for staffing and resources. So again, it goes back to staffs that I've, you

know, in coming onboard into a couple staffs, I've had individuals who have been reassigned to the FOIA office because they were not working out in other areas. And so, my background was in employee and labor relations. And so, I can address performance and misconduct issues, you know, without any problem. And so my -- what I try to do is I try to get the employees trained if they haven't been trained. I set up the expectations, and we proceed from there. So, but before I will ask for resources, I want to make sure we're functioning as efficiently as possible.

MCALL: Have you needed to ask for resources at any point? And if so, how did you advocate for that?

MARQUIS: So, when I was at the Centers for Medicare and Medicaid Services, after going through all these steps to improve the processes, and backlog reduction, I was the only management official over that entire staff. And we were handling upwards of 40,000 requests a year. And I put forward a request to even further refine our processes. But I would need additional support. And unfortunately, I didn't get it. I mean, we were giving them good numbers, everything was moving in the right direction. But it wasn't until I left that they actually filled behind me and then added three management positions to (inaudible).



SUSMAN: I'm curious, and Alina did not put me up to this, have you had any experience with OGIS and has it been helpful through either the training, or through going for ADR or whatever, in terms of assisting you in your objectives of improving efficiencies and the process, and resolving individual difficult cases?

MARQUIS: Yes. So, one of the -- I have monthly meetings with our FOIA directors, I have weekly meetings with my staff, fortunately we don't get a lot of inquiries from OGIS. We're in HHS, so things tend to be moving in the right direction. We do occasionally get some. But, we've asked -- I've had folks go to the OGIS ADR training, especially, my -- I heavily emphasize the need to communicate with requestors. Pick up the phone. I mean I have found, especially coming into these offices, when we get there, you know, and I'm looking at the case files, I mean I'm getting into the work, I'm like where are the notes? Do you have an administrative record, have you contacted the requestor? Do they know what you're dealing with? They're probably waiting for a response and wondering what's going on. And typically the answer is no, and that's not acceptable in my offices. You've got to make the phone calls, you've got to get connected with the requestors. So. So yes, I do utilize OGIS. I've contacted OGIS and

have asked for assistance in certain areas, and so it's always been a very good response, so.

PRITZKER: In cases for which a decision whether or how much to release, must be made by someone outside of your staff, how do you avoid having these cases languish somewhere else?

MARQUIS: So explain to me exactly what you mean, because are you talking about our operating division?

PRITZKER: Someone requests a particular record.

MARQUIS: Right.

PRITZKER: And for whatever reason, it's determined that someone has to decide how much of that, or whether the record should be released. I presume there must be instances in which someone outside of your staff has to make that decision.

MARQUIS: So when we work with our staffs, we ask for their disclosure concerns. We don't ask that they redact the information, and I want my staff that I consider to be disclosure analysts to review the records. They don't -- I tell them, because occasionally this was one of the problems that I've encountered over the years, that staffs don't want to provide us records. They don't want to even give us records. So I have to start making some phone calls, setting up meetings with senior leadership. Eventually we will get the records. But I've gained more

cooperation over the years as -- because they've had to turn the records over, and we will analyze them and with surgical precision, redact information. I am -- I mean we, I can say in HHS, our rate of appeals is extremely low. And that's because we are very precise with our redactions when we need to apply them. So, in my office, the redactions are applied by my staff, and presented to management for review before a disclosure determination is made. And when I see that there are redactions that don't appear to be appropriate, and I look at the background information in the file, and talk with the analysts, I talk with the program personnel, and there are occasions where we turn the case back, and we un-redact information, so that we can release it. Because there's really no basis for withholding, so that's done in our office.

WALSH: Lynn Walsh. You mentioned the -- that sometimes the employees don't want to call the requestor. Did you find out like, why that is? Or what some of those reasons were?

MARQUIS: I think they're afraid of the confrontation. It wouldn't be confrontational if we provided better customer service. That's my approach. So.

WALSH: But nothing like coming down from, through offices like, you know, not to communicate or to keep everything via email? Just curious.

MARQUIS: Not that I'm aware of. Not that -- I mean, the success of the FOIA office, OK, and the accomplishments of the FOIA office reside with me. So, I make sure that folks stay in touch with the requestors. And we -- I push, a lot of times I push our intake team to make the initial contact. And occasionally, once the case is out for search, and components have concerns, at that point, sometimes I actually set up a conference call between the FOIA office requestor, and a program official, because the program official has an expert knowledge of the particular records, the requestor may or may not know the types of records that are being maintained. Sometimes when you put the two together, they can identify the specific record that they're seeking, and the issue is, you know, we speed up the response, so. So that's usually at the intake phase. So.

KNOX: You mentioned earlier breaking out the linear workflow puzzle pieces into more dynamic workflow. I'm interested, curious, are you doing that manually, or you have technologies enabling that? How are you tracking that workflow? Because many of the FOIA technologies that are out there, the case management technologies, really want a linear workflow when you blow it out it starts to create issues.

MARQUIS: So, excellent question. So, when we were obtaining this new tracking system, we met with the vendor and told the vendor we would like to specify how, you know, the case workflow would work in their system. And so we actually coded things based on, so it's an intake, if it's step one, we designate it I-1. And then the next step, I-2. So that as this case is moving electronically, it goes through, and then ultimately it goes to process, and P-1, P-2, and once I sign, I coded it as P-4, going back to the -- I signed it, so proof of release, goes back to the analysts, so that they can package it up electronically and send it out.

KNOX: So at any given time, you not only know what's in process or what's in your quote, "backlog," but you know where it is in that process?

MARQUIS: Exactly. We can always run that (inaudible).

KNOX: When you report, when you're going to be reporting the data to the website, or you're reporting just in process, or are you going to the granular level of exactly kind of where it is in the process?

MARQUIS: No, we're not there yet, because -- so the department being decentralized, we are just reporting statistics, in terms of the number of pending cases. I'm using the annual reporting format, in terms of the number of days that cases are pending, 1 to 20, all the way up to 400-plus.

KNOX: Thank you.

MCCALL: Just to clarify, Ginger McCall, if I understood what you just said correctly, you actually were part of the process of obtaining that new technology and were able to work with the vendor to customize it to your needs?

MARQUIS: So they were in the process of obtaining it when I came onboard. And so, I met with them, I said look, I don't -- my workflow, my FOIA workflow that I'd like to put in place is different than a lot of other offices. So, do we have the opportunity to program the status fields? And their answer was yes. So, they worked with us to help create that.

MCCALL: And just a quick follow-up. Are there other technologies or tools that you've identified that would help to improve the efficiency or effectiveness of your office?

MARQUIS: That, I'm always looking -- I'm always searching for.

KOTLER: Hi, Sarah Kotler. And full disclosure, Michael's office hears my appeals. So, do you use the same process for tracking your appeals, and making sure that appeals are being processed in the most efficient way?

MARQUIS: So we use the technology to track the appeals, that is correct. So recently we've merged, we brought another staff into our office that also serves the public health

service related organizations within HHS. And so those appeals are being tracked in one system. I've got two parallel tracking systems right now. And so, one of the things that we're looking at is whether we can merge the two systems into one. But being that it just came onboard on October 1<sup>st</sup>, I've got two tracking systems to manage that workflow. So yeah, we use it to track it. But, you know. It can be improved.

SUSMAN: Back before proactive disclosure sort of became a generic independent goal of its own, I recall, I mean FDA was the first and maybe the only agency that was not only doing a lot to put things proactively up on the web, but also was able to say that the result was cutting down on individual FOIA requests. And I always thought that that was, you know, we almost don't talk about that anymore. It's sort of, we talked product disclosure as an objective, but not as impact ripple effect down the system. And I always wondered why other agencies didn't sort of say, you know, eureka, what a great idea, maybe if we find more things that are commonly requested to put out there, we can actually, in the end, save time and money. So, I guess I'm putting it back on your plate, it seems to me that that's something that with your interest in metrics and efficiencies, that maybe you can bring us back to have some

empirical support for the notion that the government can save money in its FOIA operations by proactively disclosing.

MARQUIS: And so that's one of the things that we're looking into. When we do proactively disclose on the web, I worked with our web folks to see if we can get some statistical data to see how many hits are made on that particular -- on those records. To help support that. (inaudible).

SUSMAN: One other observation as probably the oldest person in the room. You stand in very large shoes. Russ Roberts, who was probably the greatest FOIA officer that government has seen in the early days, when the legislation, '76, '74 amendments came into effect, and he really lead the way at HEW and HHS. So, I'm delighted to see that tradition sustained.

MARQUIS: Thank you.

PUSTAY: I just -- Melanie Pustay, I just wanted to thank you Michael, for your whole presentation and just to let folks on the committee know that Michael is sort of a star in the FOIA community, because of his real focus on metrics-driven FOIA administration, and the fact that he comes at it from the management perspective. And so he's been a featured speaker at our best practices workshops on backlog reduction, and has shared his -- all these really good



ideas pretty widely across the government. So thanks, I wanted to personally thank you.

SEMO: I just want to make sure, anyone on the phone have any questions before we wrap up?

MOULTON: Yeah, this is Sean Moulton, with the project on government oversight. One of the things I was curious about was, you know, you had talked about some of the different metrics you tracked. And one of the things I've heard from I believe it's, I think it was DHS some time ago, was that they, as part of their management overhaul, were looking at the number of pages that particular FOIA processors were doing. Particular day, or a week, because some cases, you know, it might be one case and thousands of pages, versus, you know, you can have some cases that are just one page for the whole case. And so, they're running through case after case, but not processing as much. Is that something that you guys have done, or considered? Or have experience in?

MARQUIS: So Sean, thanks for that question. It's an excellent question. Based on my experience, I can relate to that concept, in terms of trying to make sure that cases are being equitably assigned, in terms of volume. But also, based on my experience, I can tell you that doesn't work well. At least in practice for me. We truly, I have seen

staff get so tied up with the volume, and use that as a justification for not getting cases closed, that I don't pay attention to that anymore. I just wish for case closures. Yes, we do have voluminous cases, and I set performance goals for the staff, in terms of how many cases they should be closing per year. But I also take into consideration when I'm evaluating my staff, those individuals that have those large cases. It does not jeopardize their rating. I assess them on the quality of their review, and the quality of their disclosure analysis. But I truly focus on getting the cases closed. I think that's the most effective way to manage the office and the workflow.

MOULTON: OK, good. So my other question is, I don't know, you know, you come into some different FOIA offices, and I don't know if you've done this, but I know other agencies when they've had big backlog problems, they've brought in temporary staff. You know, for different experiences, either program staff who come in, and help do some processing, or even again I think it was DHS at one point was using maybe some sort of, some interns or fellows, or something like that to process the really simple ones, and get that down. And I just didn't know if that was anything you've experienced, or you know of other agencies, and

whether or not that's a mechanism that agencies should look towards, or if it's a dead end of sorts that, you know, might help show some -- an artificial decrease. But if you don't manage it properly with the given staff you have, you're going to get behind again.

MARQUIS: Another excellent question. Yes, I do have experience with that. So back in 2010, when I was the FOIA director for CMS, and the mandate came down for the 10% backlog reduction, it came out, I think it was the end of December of 2009, and so budgets were fixed, and I immediately went down to my director's office, and we started talking about how we're going to tackle that. And we talked about the use of a contractor, but I, in discussions, indicated that the best thing we could do in terms of if we could use a contract workforce, we would use a workforce, a contract workforce composed of retired FOIA specialists. Disclosure analysts. I would feel a lot more comfortable if that's how it was handled, because number one, they could start, they're familiar with the records. And we could start to get production almost immediately. And so, that's what we did. I -- but I also told my director, I said when we get a contract workforce together, my boss wanted to call them a task force, I said, I have no problem with that, I said, but the term task force means that the -- it's a limited

duration. And that it would be better if we actually had resources, permanent resources on staff, to help facilitate the workflow. And my argument didn't go too far, that task force is still in place seven years later. But it is helping, so again, you know, we did employ contract staff, they were former disclosure analysts, so they were able to review and close out cases. Or work to close cases for us, so they didn't (overlapping dialogue; inaudible) the oversight was minimal, the quality of the work was there, so.

MOULTON: (inaudible) task force, do they participate in all the -- like you were talking about the weekly meetings, and they get evaluated the same way you're talking about evaluating your program staff?

MARQUIS: So the -- and I can't speak to how the contractor would evaluate its employees, but we did invite the individual who was managing that task force into some staff meetings to discuss, you know, performance, production, any disclosure, any concerns that we had regarding that process.

MOULTON: OK, thank you.

MARQUIS: You're welcome.

SEMO: Anyone else on the phone have any questions? Ginger?

MCCALL: One final question.

HERSHBERG: I don't really require a detailed answer, but just to have in our minds, you know, when there are excessive backloads, just to keep open the possibility that part of the problem is over-classification in the first place. You know, as a systemic problem, and obviously it's different from case to case in different agencies, but certainly, you know, sometimes I've received FOIA responses and it's pretty clear that part of the problem was that materials didn't need to be classified in the first place. So, it'd be good just to keep an open mind in circumstances when finding the reasons for backlog, there are many, including insufficient staff, and excessive requesting. But sometimes over-secrecy can also be part of the problem.

SEMO: Thank you. Ginger?

MCCALL: What do you believe would be the most valuable recommendation that this committee can make to help you and others like you do your job?

MARQUIS: My number one priority, or the number one item on my wish list would, in terms of the Department of Health and Human Services, would be an enterprise-wide tracking system. So --

MCCALL: Within your agency?

MARQUIS: Yeah, yeah. Actually within the entire department. So each -- we've got, you know, decentralized operating

divisions, and occasionally requests come in that involve multiple operating divisions, occasionally the office of secretary, Food and Drug Administration, CDC may be involved in an issue, or NIH, bringing them in. You know, because there are cross-cutting components. It's like Zika or Ebola, any of those issues, they deal with more than one operating division. And we all have distinct tracking systems. So, from a management perspective to help even create more efficiencies, I think if we had an enterprise-wide tracking system, we could quickly and easily pull data, monitor processing information, and it wouldn't require me communicating with Sarah, let's say Sarah can you tell me, you know, can you give me a listing of, you know, these requests, and we could just pull it from the system? And you know, she'd continue managing the FDA operations. I wouldn't have to bother.

MCCALL: Do you know of any agencies that have a tracking system like that?

MARQUIS: I don't. So, I don't.

BEKESHA: What's number two and three on your wish list?

(laughter)

MARQUIS: Let's shoot for one first. Let's try one. So, I like to work from the top down. So.

SEMO: All right, Michael, thank you so much for your time today, we very much appreciate it.

MARQUIS: Thank you.

SEMO: Thanks.

(applause)

SEMO: Ginger and Chris, any other thoughts about your subcommittee work?

MCCALL: Just additionally to thank Michael for his time, and to all of the people on the subcommittee, to thank them for their time on the phone call yesterday.

SEMO: OK, any other comments from anyone else on this particular subcommittee? All right. Well we're actually a little ahead of schedule, but I am happy to give everyone a 15-minute break. Feel free to use the restrooms, the café as I mentioned also on this floor. And we'll come back at 11:50. Thank you.

(pause)

(talking off-mic; inaudible)

M: Not too bad. Do you know if there's a phone around here somewhere?

F: You mean like one attached to a cord?

M: Yeah.

F: Yeah. There's one in that control booth. There should be people, but you'd have to knock on the door.

M: OK, yeah I just --

F: If not, you can go to (inaudible). Does your ID work?

M: Yeah, my badge works here.

F: Oh yeah. So you could just pop over to B-4, which is where we have --

M: (inaudible) I just want to see if I should stay here or go back to -- Cheryl's got a meeting at 1:00, and I don't know which one I need to be at. Ask the boss, that's always a good idea.

(overlapping dialogue; inaudible)

M: OK. OK.

(overlapping dialogue; inaudible)

(pause)

F: So, I don't want to be presumptuous, but (inaudible). I wanted to come introduce myself, I saw you were busy; I was like oh, wait until she has a moment. (overlapping dialogue; inaudible).

F: I'm good, I'm good. (inaudible)?

(overlapping dialogue; inaudible)

F: That was the idea, it's in the leadership program.

(overlapping dialogue; inaudible). Exactly. So I was like, (inaudible) brand new. (inaudible).

F: That's really good though. I mean, it's interesting, it's definitely another animal in terms of what (inaudible).



(overlapping dialogue; inaudible)

F: But also, how long have you been here?

F: I've only started this week, so this is like my fourth day.

(overlapping dialogue; inaudible)

F: That's awesome though, yeah.

(overlapping dialogue; inaudible)

M: Are we back now, or?

(overlapping dialogue; inaudible)

M: (inaudible). A transcript of an interview with [Netta?] that happened like, two days later, where he said this was a covert action under whatever the statute is, it was mine, I can do it. And they came back and said, well a covert action, he didn't mean a covert...

(overlapping dialogue; inaudible)

SEMO: OK, I want to call everyone back to our meeting. If everyone can please finish up your conversations and join us again, that would be great. And we still have folks on the phone? Are you still with us?

(overlapping dialogue; inaudible)

SEMO: OK great, thank you. So we're back, hopefully everyone had a good break. We're now going to turn it over to our subcommittee on searches. We are -- do not have a speaker today, so Nate Jones, the co-chair of the searches

subcommittee, will be our speaker. And unfortunately as I said, Logan is TBD for the time being. So --

JONES: Sure.

SEMO: -- take it over.

JONES: Sure. So, I'll make some comments, and then I'll allow the subcommittee and everybody else to expand on things, or say things I missed, or disagree with me. But we had our first meeting, and think I'd like to start it by making out a larger point. I think one of the accolades that Michael, an excellent last speaker that was a bit buried, was his success in actually following President Obama's instruction to reduce FOIA backlogs 10% every year. And he successfully did that for seven years in a row, eight years in a row. And I guess I'd just like to say what if every agency had done that? What a better position we had been in, had they listened to the president's mandate, as Michael said. So with that segue, why didn't agencies listen to the president's mandate and reduce their backlog 10% every year? I think after our first meeting in the subcommittee on searches, I came away thinking that inefficient search techniques is one very big reason for that. So, I'll just briefly say some of the conclusions and problems, and possible solutions that we talked about, and then I'll talk about what we as a subcommittee and

ultimate committee are tentatively, pretty roughly tentatively, planning to do with our time here, to work to improve searches, so that they're not such a problem in FOIA delays. So, I think the consensus is that inefficient searches are a huge problem, a huge bottleneck. Me personally, I probably would say the number one bottleneck. And it's demoralizing. If you have a good FOIA shop, and good FOIA officers that are trying to do the good work, and love openness, and other people in the agency that you tell them to do searches, are not doing it. And I understand, some agencies are fighting wars, every agency has important missions. There's competing priorities. But the point is that there must be ways to improve and it's a huge problem from a FOIA perspective. So, some of the solutions are ultimate things that we talked about, that we're going to strive towards. One is first of all, finding out what's happening, for a requestor, when someone does a search, it goes into a black hole. We don't have the data that Michael was talking about. We don't have the data that oh, it's being searched for in four different components, usually. Or we don't have the data that is stuck on this person's desk for months, a year, years. Even if there was a way, FOIA Online has a pretty good tracking system, FOIA Online has a tracking system. But it says out for search.

If there was a way to allow the public to see where exactly, or I would ask for the name of the person that's taking years for the search, that would be a big step forward. Transparency in how searches are conducted. Related to that, another aspirational goal we talked about is evaluation of the program officer's performance. OGIS, I think still says, I know used to say, FOIA is everyone's responsibility.

SEMO: That was the attorney general said. Just --

JONES: And OGIS as well, and the AG, thank you. So the Department of Justice, attorney general, pretty high up, and OGIS, also pretty high up, says FOIA is everyone's responsibility. And that means that it's everyone's responsibility to conduct FOIA searches. From the opinion of our subcommittee and myself, and open it up after, that's not happening. We need to re-instill that. One possible way is if there is a way to include FOIA performance for people outside of the FOIA officers' job evaluations or performance evaluations. I know we've brought this up before, I know there's big pushback, but speaking as a FOIA advocate, that's the best way forward. FOIA won't really work if people ignore the FOIA officers telling them do a search for this. Other ways around it, as we heard from Michael, is buy-in from senior agency

officials, and get them to tell them to do the search. So, thoughts that we've had. One more larger aspirational idea, and then I'll go onto next steps, and we can discuss. The issue of e-discovery, a powerful, powerful, powerful tool that law firms use it for the lawsuits, and government for FOIA requests, in my opinion, is largely lagging behind. Though it's not unheard of. There are two issues that I'll bring up. James can elaborate. But one is that often, we know that agencies have these e-discovery tools, because they use them for other things. But they often don't or can't, or won't use them for FOIA. One issue is money. I know that e-discovery, people aren't doing it out of the kindness of their heart, they're doing it for money, and doing it for many per term, or per volume search. OK? But on the other hand, that leads the troubling issue, that the US government has the tools to do much better searches than they're actually doing. And so, for searching, for another office, something outside of FOIA, they can do a bang up, awesome, fast, very comprehensive job, but for FOIA, we're often asking people to search their own documents, and often, they don't even return the calls from the FOIA officers. So that's an issue. One next step we're going to do hopefully is bring someone in next meeting that has had success using e-discovery for FOIA, to

talk about one, the power, maybe the drawbacks, two, and how to be able to use e-discovery, not just for other issues, but for student FOIA searches.

And the last issue that I forgot to mention, the broader picture, is expanding -- another possible aspirational solution is expanding the ability of FOIA offices to search electronic records. You know, some offices already have this. Others don't. But a key example is searching emails. Right now, I know that some FOIA offices have to go to the IT person and ask them to search emails. Others have to go computer by computer by computer. No longer after December 2016 are we any longer, I hope, if we're following the law, printing and filing and searching boxes. But until last month, some people did. But the possible solution is finding ways and finding -- so that all FOIA offices have access to search email on their phone. It also leads to the question of impropriety. If someone does a FOIA request for a government official and the FOIA officer says, "Search your emails for these words," and the person themselves searches and replies the documents to themselves, it leaves open the chance that they are not providing the FOIA office with all the relevant emails. I don't have to elaborate.

So, our next steps. For the next meeting, we hope to work to get to looking to e-discovery, and see how they can expand the use of that. Learning strengths and weaknesses. Between that, doing something that we had done in the last committee, the National Security Archive, my work, independently, is going to do an electronic, I guess I'll say the word survey. Essentially, asking FOIA officials and members of the public, tell us all you know about searches in whatever agency. So maybe someone did litigation, and for litigation, they had to split -- the agency had to explain, here's how we did the search. OK, hopefully people will respond, tell us that. Hopefully FOIA officers will say I work at agency X, and here's how we do the search. Agency Y, agency Z. And then the hope is, by the next meeting, to compile those answers, and publish a lay of the land, because right now, maybe I'm in -- maybe I'm missing something, there's not really a public description of the different varieties and efficiencies and inefficiencies of how FOIA searches work throughout the government. So that's our next step. And then our final, or a goal that we have beyond that, after compiling the data for viewing, coming to conclusions together as a subcommittee that we all agree on, is to issue a set of

best practices that if you want to have a gold star agency, this is how you should be doing your searches. And if you're not, you should be striving more towards doing this. So, that's all I have. I'm sure that maybe we can open it up for members of the subcommittee, and then the full committee.

SEMO: Sure.

JONES: Thanks Alina.

SEMO: Sounds great, thank you. Jill?

EGGLESTON: I think Nate did a great job. So I don't have anything else to add, thank you.

VALVO: The only point that I would add about e-discovery is that it's not that it's unavailable to FOIA requestors, it's that it becomes available to you once you're in litigation. And so, the incentives we have now are for the agency to not conduct the search, and for me as a requestor, to get in court as fast as I can, so that I can access that tool.

PUSTAY: I'd just -- Melanie Pustay, I just wanted to probably reinforce and echo in particular Nate, the point you made about I think that the best sort of path forward, in terms of efficiency on the issue of search, is to have the most possible control in the FOIA officer's hand. Because obviously like you said, agencies have their missions,



which of course we all benefit from, and we want them to do their missions. But the FOIA officers, our mission is FOIA. So, we are motivated to do the searches, because it's our mission. So to the extent that it can be in our control, the greater proportion of it that can be in our control as FOIA officers, the better for FOIA all together.

BEKESHA: I have a question, just about that from the FOIA requestor side. I mean, is it possible, and are FOIA officers authorized to be able to have access to the entire agency's electronic files? I mean, because you're talking about email, but you could also be talking about drives that have documents on them, and you know, what's the ability for the FOIA offices to have full access to an entire agency's electronic files?

PUSTAY: I mean it is different, the way every agency is set up differently, as Nate said. And they -- and obviously there were -- God, there's privacy concerns, there's national security concerns, there's law enforcement concerns, so there's lots of different issues. As we keep finding with all these things, there's -- nothing is like, sort of like, oh, here's the simple thing we could just do. But we definitely have agencies that have greater ability to search records themselves. So, I think it sounds to me like it's a very valuable thing, to sort of try to, sort of

chart out kind of some of the ways agencies are able to do that. And certainly with the e-discovery tools, I mean we've been talking about that now for years, because once the FOIA professionals see them, it's just, it's fantastic what they can do. So, and it doesn't make your search so much more efficient. And it's just unfortunate that those tools -- using the tools, using the discovery tools takes time which costs money. And that's why some agencies just don't have as much bandwidth for it.

SUSMAN: Tom Susman. Nate, you started by sort of talking about tracking the search. That's one of the important elements. And I just want to sort of add an element to that, that it needn't be mechanical and sort of done in a black hole. That is, the concept of OK, here's a request, here it goes to someone, and the search begins. And the requestor's sitting there, you know, not knowing quite what's going on. At best, maybe we'd see a little dial going, you know, moving forward in terms of days spent, but you're not going to be able to track where they're looking. That's where communications back to the requestor comes in. And Melanie knows, because I make this point at her best practices every time, that I mean I had an experience a number of years ago with the FBI. I knew the document. I had seen the document. I knew the memorandum, and you

know, I made a request, a FOIA request, and they couldn't find it. And it took a long time. But I was getting a call back every few weeks, saying we think we now have a new place, and we're going to, you know, I'll let you know what happens. And I mean, what a comfort to know that they were still looking, and trying new ways of looking, new search terms, new, you know, that could be in storage, it could be -- things like that. So I think that's, as a best practice, as part of the search process, to keep the requestor informed, I think you cut down on some litigation that way.

PUSTAY: I think too, obviously the -- oh, Melanie again. But the advantage, and of course we've talked about this kind of thing before, to the extent agencies can work with the requestor to sort of prioritize where the search will be conducted, what kind of search terms, that can help too, and that maybe a requestor -- when a requestor's told, these -- to search these officials' files, we have to do all these different steps, they're in session, the records are out in [Suitland?], do you really want us to do that? Or should we focus on the current employees, things like that. The dialogue then helps frame the search, which makes it more efficient. They really work hand in hand.

PRITZKER: Could you clarify a bit how you're going to conduct this survey? I thought you said that it's going to be done by your organization. Is it going to be represented as an activity of this committee, or a subcommittee? Where I'm really going with this --

JONES: Sure.

PRITZKER: -- is that in one direction, you would need to get some internal approvals. In the other direction, how are you going to get the agencies to respond without a FOIA request?

JONES: Sure. Let me choose my words carefully, but that being said, we did this same exact thing last time. It's going to be the National Security Archive independent of the subcommittee. So it's going to be the other direction of hopefully, agencies will respond, and the way we're going to do it, the National Security Archive is going to do it, is hopefully by the goodwill that we've built up, and agencies, and employees of agencies desire to help improve FOIA. And using media and word of mouth to tell people to respond. And it's going to be National Security Archive only publish the data on the website, and then anyone that wants to can use that data to do anything they want.

MCCALL: Ginger McCall, I wanted to say something related to what Melanie said, and also to highlight a point that Michael Marquis made in the last segment. One of the things that he said that was striking to me was that he essentially got buy-in on the technological system the agency was acquiring with the vendor, as the system was being acquired and designed. I think one of the things that's happening here is that agencies are designing and acquiring systems like cloud email systems. And there's not necessarily buy-in from the FOIA officer. So it would be helpful to have that person at the table as agencies are acquiring these systems.

JONES: Sounds like a good best practice.

LAZIER: This is Raynell Lazier. So I just want to speak to the issue of what Melanie talked about, where she said probably it'd be a great idea if the FOIA officers had more access to the records throughout the bureau. And I think that while on its face, that's a really great idea, I just wanted to throw the caveat out there that sometimes they were very, very complex requests, and we consult with our subject matter experts quite frequently. And while it may seem like we know what we're looking for, we'd be able to interpret a request and be able to satisfy that request without having to bother the programs, or take them away

from their primary mission. I found that it's extremely helpful to rely on our programs to narrow the scope of requests, to focus us where we would have conducted a very inefficient search, they can say, no, no, no, that's not what they want at all. And they explain requests in ways that we had, you know, better than we could have ever interpreted it, because they deal with these records on a day to day basis. So, I think for emails, maybe that's something where you can do a quick keyword search. But I think, and a lot of times I find that it's very helpful that the programs are responsible for their records. That's all I wanted to say.

PUSTAY: Yeah, it's Melanie, I mean oh, I couldn't agree more. And it's really true, like the program -- so really, you have to have both halves of it. Because the program, or your experts in your agencies, might be able to say oh well when they're using this term in their requests, they're meaning sort of this kind of record. And the FOIA person might be like oh, I didn't realize that that was some special thing that meant something, OK, now I know to search here. So you definitely need both, absolutely. And so the idea, ideally then, either the program office is able to just say here, well if they were able to just say here's the records, then it's no problem, but otherwise if

they could say FOIA office, now we've told you where to search, but you can do the search. While I go on to do my program work, then that would be a good option.

SEMO: Any other thoughts from the committee members? And let me also invite committee members on the phone, if anyone wants to chime in. OK, I think that was direct silence. Nate, anything else you want to talk about?

JONES: No, I'm looking forward to working with the subcommittee, the committee to make tangible progress to improve FOIA searches.

SEMO: OK, great. Thank you so much. Does any other committee member have anything to add to our discussion today, about any of the three subcommittees' work? Tom?

SUSMAN: Yeah, I had a thought that I just wanted to share, and perhaps get some feedback on. Having looked at the committee's activities from the previous session, the previous two years, there was a lot of work, a lot of energy, a lot of effort over a two-year period, reports issued, that were sort of large and covered, you know, a lot of areas. And out of all of that, only one recommendation, and a rather narrow fee issue, you know, emerged as a recommendation of the committee, and went forward. And it seemed to me that we might consider, since we're dealing again with really important issues, but

they're very big and complicated. We might consider whether some recommendations could be carved out, subject to many MINI reports, and put before the committee, and voted on as we go along the way. So that we don't have to wind up at the end, worrying about something giant and big, and where does it all fit. Or we have many pieces to one report, or how does all that work? But we can go ahead and get it out there, and then perhaps at the end of the process say, you know, what happened to the three recommendations we made last year. And begin to do our own implementation without assuming that there will be a renewal of the committee in a year and a half, or that any of us will still be around participating.

SEMO: Any comments or thoughts on that? OK, I think OGIS, again, stands very prepared to help you move things along administratively, and trying to make sure that there's a product at the end, I think that's of great interest to us. So whatever we can do to help facilitate that, please let us know. So thanks Tom for that comment. I think at this point, unless anyone else has any other comments, I am ready to turn over to the public comments section of our meeting. And we're running early, so that's great. Everyone can get a break for lunch a little bit earlier than anticipated. So, I want to invite anyone in the



audience to come up to the mics, and pose any thoughts or comments or questions. And if you could please identify yourself again for the record, and your affiliation.

HOWARD: My name is Alexander Howard; I am the deputy director of the Sunlight Foundation. Forgive me for arriving at the meeting tardily, if I missed any announcement or details about this, what is the status of the release to one, release to all Freedom Of Information Act policy that the last President of the United States directed to be available to the public at the beginning of this year? And when can we expect to have more information about the online FOIA request portal that Congress instructed the White House Office of Management and Budget to create?

PUSTAY: So on the release to all -- release to one, release to all policy, we had, as well people know, we had two chief FOIA officer council meetings on it, we've done a lot of prep work, and getting input from both requestors and agencies. We then put the -- a draft policy out for public comment, the comment period ended right before Christmas, December 23<sup>rd</sup>. We got 30 comments, which are all available on regs.gov, including one from Alex, a really good, very good comment from Alex. We have got really incredibly thoughtful comments, and actually going in all directions. And so, in some ways, so I guess it would have been far

easier if all the comments were all overwhelmingly going in one direction, and so I encourage those of you who are interested in this topic to take a look at the comments. Because there are really good arguments, especially on the issue of delay, which was the particular issue that we asked for comments. But we had comments in both directions on sort of other aspects of the policy as well. But we got a lot of very thoughtful comments, both for and against the idea of a required delay. So at this point, we're just absorbing all of that, thinking about all that within DOJ, to decide on the best path forward. Obviously, what will, you know, when we have our decision on how we want to go, it will be, you know, an issue as a policy guidance. But right now, we're really literally just trying to think and consider thoughtfully all the comments that we got. On the portal, the really, really good news for that is that we got money for the portal, which was a huge -- it was one thing to be told to build a portal, it was another thing to have money to build it. So we have an allocation of money and so, this past month we've been doing all sorts of internal paperwork with budget and things like that. And we're hoping, really literally within the next couple weeks, that we would be starting our launch of the first phase of the project, which we'll be working with 18-F.

And they do their -- they're going to do their kind of traditional, what they call their discovery period, which was going to be three months of working with both requestors and agencies who are future customers of the portal to get, you know, the whole way 18-F works is that agile development, and very user-focused. So, you'll be seeing things on our website soon, alerting people to its starting, we need -- we want people to come and look, and see what they're doing. We want people to feed back to 18-F. They'll do that discovery period for three months, come up with a plan for how we go forward, and then after that, we go forward, our money is for this fiscal year, so we're really moving -- we are very obviously highly motivated to get this thing done as far along as our money will take us this fiscal year.

HOWARD: So two questions. One, and forgive my ignorance, reading the fact sheet from the last administration, it would appear that the president directed that this policy be available on the first. Was that not a clear guidance? Is there a reason that the agency is not complying with the direction of the president?

PUSTAY: So I mean, I think it would be probably, I'm not really the person to answer that question, and clearly the way the policy, the timing of the policy, I think everyone

can understand the timing of it is very -- was very difficult with it (overlapping dialogue; inaudible).

HOWARD: If not you, whom should I direct this question to? Since it is the Department of Justice that is in charge of this policy.

PUSTAY: We're in charge of the policy, and I just gave you the answer about what we're doing.

HOWARD: What's --

PUSTAY: Is that we're considering the comments, the really thoughtful, good comments that we got from the public comment period.

HOWARD: When should the public expect the policy to be on the internet for us all to see?

PUSTAY: So as I said, when we're ready with the policy, obviously we'll make it available publicly. OK?

HOWARD: OK. The Sunlight Foundation understands the present directive of the Department of Justice to publish this by January 1<sup>st</sup>. You're now telling me three weeks in that you're still deliberating. I'll put a chit down here on the record, if we don't see this online by the end of the month, we're going to file a FOIA request for it. To the second question, our understanding --

PUSTAY: You don't need to file a FOIA request for the policy, because we put it out for public comment in a federal (overlapping dialogue; inaudible).

HOWARD: You put a draft of the policy out. You've not put the policy out as the president directed.

PUSTAY: You can see the draft policy on regs.gov. It's totally available. Alex, we don't -- I'm not going to keep answering questions that are just sort of designed to be adversarial. So I think --

HOWARD: It is our job to be adversarial. That is literally what I've been told by my board, and encouraged by the public to do.

PUSTAY: You can make a FOIA -- oh, never mind.

HOWARD: The second thing is that I understand that Congress directed the White House Office of Management and Budget to build the FOIA portal. How much money has been allotted to it, and are they actually heading up development or not?

PUSTAY: So what I'm going to do is I'm stopping my response to this line of questioning. So.

HOWARD: Should we request formally how much money has been budgeted for the FOIA portal from the Department of Justice then?

PUSTAY: It's just like this -- I'm just not going to -- it's just, it's so unnecessary to be adversarial, so I'm not going to participate in it.

HOWARD: OK.

PUSTAY: And I'm very disappointed Alex, that this is how you're asking questions.

HOWARD: Your spokespeople do not respond to our inquiries. Therefore it is up to me then to go to public forums to ask these questions, in public. I would prefer to get answers to our inquiries directly through the communications staff at the Department of Justice. If you respond to us, then we are able to get answers that way, and to share them with the public. That is how I would prefer to conduct public business. I don't think asking how much money has been budgeted is inappropriate in a public forum. I don't think asking which agency is in charge of doing it is inappropriate in a public forum. And I don't think asking for a deadline for when the policy will be available is inappropriate either, and I'm sorry that you take it in that form. Thank you for answering the question.

PUSTAY: The questions themselves are not inappropriate, it's the way you ask the questions, I gave the briefing on where those projects are, OK?

HOWARD: I'm --

PUSTAY: We're working on the portal.

HOWARD: We look forward to updates from the department on that context.

PUSTAY: There you go.

HOWARD: We also look forward to updates from the White House, given that they were the ones that Congress directed to build it. Thank you.

SEMO: Thank you. All right, any other comments or questions for the committee at this time? Anyone else want to have any other follow-up statements, or thoughts about our next meeting? Anyone on the phone? OK. I want to thank everyone for all their hard work today, I think we asked a lot of great questions, and spurred a lot of great dialogue. Again, we're going to invite everyone to visit our website and social media for more information about this meeting, and invite everyone to come to our next meeting, which is scheduled for Thursday, April 20<sup>th</sup>, 2017. After tax day. So, everyone should be able to come. We're going to begin again at 10:00 a.m., in the same location, and hopefully all of our AV difficulties will be resolved by then. And we stand adjourned. Thank you.

END OF AUDIO FILE