



OFFICE OF GOVERNMENT INFORMATION SERVICES

ADVISORY OPINION

AGENCY COMMUNICATIONS with REQUESTERS

Summary

OGIS has a robust mediation program that provides valuable assistance to both FOIA requesters and agencies. The FOIA Improvement Act's mandate that Federal agencies alert FOIA requesters to OGIS's dispute resolution services at various points throughout the administrative process increased our visibility in the FOIA process and increased demand for our services. We have since handled a number of cases in which the dispute occurred because of requester confusion about who to contact within agencies for FOIA questions, and/or confusion about the appropriate next steps in the FOIA process. We have also received many submissions intended for agencies, such as FOIA requests and appeals, and identity certifications; materials intended for an agency's FOIA Public Liaison, such as requests for assistance; and materials that confirm FOIA requesters' belief that requests for OGIS assistance stop the 90-day clock to submit administrative appeals to the agencies.

To help reduce the number of such disputes going forward, OGIS recommends that agencies:

- Provide, at a minimum, a contact name along with email and mailing addresses, and telephone and fax numbers of the agency, set off in a block that is clearly separated from OGIS's contact information. If the contact address is in the letterhead, then a reference to that letterhead should be included in the body of the response letter.
- Include information regarding the FOIA Public Liaison's duties, so that requesters can decide whether to contact the agency FOIA Public Liaisons, or OGIS, with subsequent questions.
- When notifying requesters of their right to request assistance from the FOIA Public Liaison and/or OGIS—as well as their appeal rights—in initial determination letters, clearly state that contacting the FOIA Public Liaison or OGIS does not stop the 90-day appeal clock and is not a substitute for filing an administrative appeal.

Background

Through handling disputes of this nature, OGIS identified the primary sources of confusion for requesters to be agency letters that do not include clear contact information and/or do not articulate the proper FOIA process for the requester to follow. To that end, OGIS worked with the U.S. Department of Justice's Office of Information Policy (OIP) and with agencies through the Chief FOIA Officers Council to update model language for agency response letters. We also contacted individual agencies through informal calls, emails, and formal letters to agency FOIA Officers; modified OGIS dispute resolution skills training to include these topics; widely distributed a flyer explaining the differences between the role of an agency FOIA Public Liaison and OGIS; and continue to ensure that we notify individuals seeking OGIS assistance about the importance of preserving their appeal rights.

While these efforts have had a positive impact, we continue to handle enough cases to warrant an advisory opinion to provide recommendations on how to help prevent similar disputes in the future. An OGIS issue assessment, "Agency Compliance with Required Dispute Resolution Notices," shows that while many agencies are providing required notices of dispute resolution services, changes in correspondence can improve requester understanding. Clearly telling a requester where to send materials, noting the proper point of contact for assistance (including providing multiple contact options), and explaining how to preserve appeal rights, can clarify points of confusion and improves the FOIA process overall.

The FOIA Improvement Act of 2016 amended the law to require that when notifying a requester of an adverse determination, agencies must include information about dispute resolution services provided by the agency and OGIS. 5 U.S.C. 552 § (a)(6)(A)(i). Agencies must also make information regarding their FOIA Public Liaison (FPL) available, and inform the requester of the right to seek the services of OGIS when notifying a requester that the agency seeks an extension of response time of more than 10 working days due to "unusual circumstances." 5 U.S.C. § 552(a)(6)(B)(ii).

While many agencies provide contact information for both the agency FOIA Public Liaison and OGIS in their response letters, we continue to handle cases where agencies have provided incomplete contact information (such as where the agency has not provided the name of the FOIA Public Liaison or multiple contact options—including email, telephone number, fax number and mailing address). We have also handled cases where the agency has provided contact information in such a way that the requester has concluded that the agency FOIA Public Liaison may be reached by contacting OGIS.

Recommendations

It is important that agencies provide the full names of appropriate agency personnel—not just a position. It is easier for requesters to have the name of an individual whom they can contact. It is also easier for OGIS to assist requesters if agency letters provide specific information regarding who at the agency was involved with a particular request.

It is also critical that agencies provide multiple ways to contact agency staff. For instance, we have observed that when agencies do not provide an email address, requests for assistance intended for the agency are sent instead to our general mailbox—ogis@nara.gov.

We also recommend that agencies include information regarding the FOIA Public Liaison’s duties, so that a requester can decide whether—and when—to contact the agency FOIA Public Liaison, or OGIS, with subsequent questions.

When notifying requesters of their right to request assistance from the FOIA Public Liaison and/or OGIS—as well as their appeal rights—in initial determination letters, we recommend agencies clearly state that contacting the FOIA Public Liaison or OGIS does not stop the 90-day appeal clock and is not a substitute for filing an administrative appeal. OGIS continues to hear from confused requesters who believe that by coming to OGIS they have stopped the 90-day appeal clock.

Examples

Below are specific examples of language and format that OGIS believes will address requester confusion.

Example of Language to Include in Agency Letters to Requesters

*You may contact **FOIA Government Information Specialist Joan Smith** [analyst who processed your request] and/or the FOIA Requester Service Center for the **National Board of Tea Appeals [NBTA]** [name of agency], as well as our FOIA Public Liaison, **John Dunn**, for any further assistance; to discuss any aspect of your request; to discuss reformulation of your request; and/or to discuss an alternative time frame for the processing of your request] at:*

National Board of Tea Appeals [NBTA] [Name of agency]

1234 Calming Lane [Mailing address]

Washington, D.C. 20000

john.dunn@nbta.gov [Email address]

(703) 555-1212 [Telephone number]

(703) 555-1210 [Fax number]

Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA dispute resolution services it offers. The contact information for OGIS is:

Office of Government Information Services

National Archives and Records Administration

8601 Adelphi Road-OGIS

College Park, Maryland 20740-6001

Email: ogis@nara.gov

Telephone: 202-741-5770

Toll free: 1-877-684-6448

Fax: 202-741-5769

Example of Definition of FOIA Public Liaisons

A FOIA Public Liaison is a supervisory official to whom FOIA requesters can raise questions or concerns about the agency's FOIA process. FOIA Public Liaisons can explain agency records, suggest agency offices that may have responsive records, provide an estimated date of completion, and discuss how to reformulate and/or reduce the scope of requests in order to minimize fees and expedite processing time.

Example of Appeal Language to Include in Letters to Requesters

*If you are not satisfied with the **National Board of Tea Appeal's [NBTA]'s** [insert your agency's name] determination in response to this request, you may administratively appeal by writing to:*

John Hill, Deputy Director of the National Board of Tea Appeals [Title - Agency Official or Office Responsible for Processing FOIA Appeals and name of agency]

9876 Tea Taster Road

Washington, D.C. 20000 [Mailing address]

john.hill@nbta.gov [Email address]

(202) 555-1111 [Telephone number]

(202) 555-1234 [Fax number]

*If you submit your appeal by mail, clearly mark the letter and the envelope with the words "Freedom of Information Act Appeal." Your appeal must be postmarked or electronically transmitted within **90 days** from the date of this letter.*

Important: Please note that contacting any agency official (including the FOIA analyst, FOIA Requester Service Center, FOIA Public Liaison) and/or OGIS **is not** an alternative to filing an administrative appeal and **does not** stop the 90-day appeal clock.

Conclusion

Clearly communicating the requesters' next steps and providing clear and complete contact information can help reduce FOIA disputes, makes it easier for requesters to understand their options, reduces confusion and increases efficiencies for requesters, agencies, OGIS and the FOIA process overall.