

OGIS

OFFICE *of* GOVERNMENT
INFORMATION SERVICES

The Freedom of Information Act Ombudsman
2021 REPORT FOR FISCAL YEAR 2020

Office of Government Information Services
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2021 Report for Fiscal Year 2020

Message from the Director

I am pleased to present the 2021 Office of Government Information Services (OGIS) Annual Report to Congress and the President of the United States. This report, which covers fiscal year (FY) 2020, fulfills the Freedom of Information Act (FOIA) mandate that we report on our activities and any recommendations we have to improve the FOIA process.

In our last report — posted on March 16, 2020, as the COVID-19 pandemic forced maximum telework across the government — I noted that FY 2019 had challenged OGIS in unexpected ways. Weathering the longest shutdown in federal government history and facing budget constraints that prevented us from filling vacancies built our resilience for FY 2020, which tested us in even more unforeseen ways. Although the fiscal year was nearly half over by the time the pandemic forced us and more than 5,500 FOIA personnel across the government to begin working from home, the pandemic is *the* narrative of FY 2020.

I am proud to report that OGIS made a seamless move from in-person to virtual work, continuing to provide excellent ombuds services to requesters and agency FOIA professionals in an extraordinarily challenging time. I am very grateful to my terrific OGIS team, whose work facilitating greater access and transparency to federal records and assisting anyone with the FOIA process has continued to further two of NARA's strategic goals: *Making Access Happen* and *Connecting with Customers*.

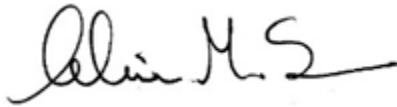
We shepherded the 2018–2020 term of the FOIA Advisory Committee (Committee) to completion and delivered its 22 recommendations to the Archivist of the United States. We progressed on fulfilling prior Committee recommendations with a series of assessments and other activities throughout the year. We assisted more than 4,100 FOIA requesters who contacted us with disputes or concerns. And while the pandemic forced cancellation of several in-person events, including Sunshine Week 2020 at the National Archives, we held our Annual Open Meeting and teamed up with other agencies on outreach events and on efforts to provide excellent customer service.

OGIS's success in an unprecedented and challenging year could not have happened without the continued leadership and support of Archivist of the United States **David S. Ferriero**. Thanks also to Deputy Archivist **Debra Steidel Wall**, Chief Operating Officer **William J. Bosanko**, Executive for Agency Services **Jay A. Trainer**, General Counsel (and Chief FOIA Officer) **Gary M. Stern** and his staff, and Chief of Management and Administration **Micah Cheatham**. And in recognition of the critical link between FOIA and records management, we are grateful for our continued partnership with the Chief Records Officer for the U.S. Government, **Laurence Brewer**, and his staff, a partnership that continued to strengthen in FY 2020. We also want to thank NARA's information technology staff, who helped us transition to — and remain viable in — a virtual working environment.

OGIS's accomplishments in FY 2020 are due in no small part to National Archives and Records Administration (NARA) colleagues who assisted our team in tackling a range of work — from responding to requests for OGIS assistance to assessing various FOIA issues to helping manage the FOIA Advisory Committee and other critical administrative functions. Special thanks to **Robert Bennett, Meredith Doviak, Jennifer Dryer, David Fort, Annette Green, Jessie Kratz, John Hyrum Martinez, David Mengel, Brittany Parris, Oliver Potts, and Kimberlee Ried.**

Finally, I am grateful to agency FOIA professionals and FOIA requesters who work tirelessly to build a process that works for all, and look forward to continuing to address the challenges of a new post-pandemic normal.

Sincerely,

A handwritten signature in black ink, appearing to read "Alina M. Semo". The signature is fluid and cursive, with a long horizontal stroke at the end.

Alina M. Semo, Director
Office of Government Information Services

(The views expressed in this report are those of the OGIS Director and do not necessarily represent the views of the President. 5 U.S.C. § 552(h)(4)(C).)

Executive Summary

The COVID-19 pandemic challenged the Office of Government Information Services (OGIS) — and indeed Freedom of Information Act (FOIA) requesters and agency professionals government-wide — in unimagined ways. The shift to full-time telework separated many FOIA professionals from paper records, subject matter experts, and in several instances, agency FOIA processing systems. Through it all, OGIS worked to provide excellent ombudsman services while strongly advocating for a fair process for all.

Among our activities in FY 2020:

- Handling 4,169 requests for assistance — from both FOIA requesters and agencies.
- Shrinking our backlog of requests for assistance by 83 percent between the end of FY 2019 and the end of FY 2020.
- Responding to the COVID-19 pandemic by assisting requesters and agencies both individually through our ombudsman services and systemically through events such as the forum for FOIA requesters that we co-hosted with the Centers for Disease Control and Prevention.
- Publishing an assessment on how federal FOIA websites alerted requesters to the pandemic's effect on FOIA processing.
- Publishing a package on FOIA's estimated date of completion (EDC) requirement that included an assessment and an advisory opinion.
- Publishing our 14th assessment of an agency FOIA program (the U.S. Nuclear Regulatory Commission).
- Publishing two assessments to fulfill recommendations made by the 2016–2018 term of the FOIA Advisory Committee pertaining to FOIA performance standards for non-FOIA professionals and preparing documents for posting on agency websites. (With the publication of this annual report, one of seven recommendations from the 2016–2018 term remains to be addressed.)
- Leading and managing the FOIA Advisory Committee to the successful completion of the 2018–2020 term and delivering an unprecedented 22 recommendations to the Archivist of the United States.
- Managing the appointment of the 2020–2022 term of the FOIA Advisory Committee and hosting the inaugural meeting.
- Teaching two in-person sessions of FOIA Dispute Resolution Skills for FOIA Professionals (one agency-specific and one interagency).
- Continuing our partnership with the National Archives and Records Administration's Office of the Chief Records Officer (CRO) for the U.S. Government to ask all federal agencies questions about preparing documents for posting on agency FOIA websites and FOIA performance measures for non-FOIA professionals.

Customer Service in the Time of COVID-19

Customer service became more important than ever during the pandemic for both OGIS and FOIA programs across the government, which had to reengineer their processes to provide optimal customer service during the pandemic. We spent the latter half of FY 2020 working with agencies to help set requesters' expectations regarding their FOIA requests.

Weeks into the pandemic, we published an issue assessment, an advisory opinion and a *FOIA Ombuds Observer* about FOIA's estimated date of completion (EDC) requirement. FOIA mandates that agencies provide an estimated date by which the agency expects to provide a response to the requester. *OGIS Issue Assessment: Agency Compliance with the Estimated Date of Completion Requirement of the Freedom of Information Act* reflected months of research and review of hundreds of OGIS cases. We found that agency responses to requests for EDCs are mixed as are online tools agencies use to provide requesters with EDCs and status information. We also found that agencies face difficulty when trying to calculate EDCs, and some use data to provide status information but not EDCs.

The accompanying advisory opinion, *No. 2020-01: Agencies Must Provide Estimated Dates of Completion Upon Request*, stated that if a FOIA requester is able to establish that an agency has a pattern or practice of failing to provide EDCs, a court may find that the agency has violated the FOIA. And the accompanying *FOIA Ombuds Observer, No. 2020-01: Estimated Dates of Completion: Best Practices for Requesters*, provided tips for requesters who seek estimates on when agencies will complete processing of their requests.

We published the EDC package at a time when the pandemic was turning FOIA processing on its head across the government because we strongly believed that its core message was more relevant than ever: that it is essential for agencies to communicate with requesters about the status of requests.

The assessment, advisory opinion, and *FOIA Ombuds Observer* were the result of OGIS fulfilling a quintessential ombudsman function. In our role as the FOIA Ombudsman, OGIS serves as the listening ear and advocate for the FOIA process; the EDC package illustrates that role.

We followed the EDC package with an assessment of how agency FOIA websites were communicating the pandemic's effect on FOIA processing. Our report, *OGIS Issue Assessment: Agency Freedom of Information Act (FOIA) Website Communications on COVID-19*, found that two months into the pandemic, nearly 40 percent of FOIA websites alerted requesters to changes in their FOIA processing due to the pandemic. The majority — nearly 63 percent — did not alert requesters to the pandemic's effect on FOIA processing.

Dispute Resolution Skills Training

The move to full-time telework in the middle of FY 2020 profoundly affected OGIS's long-standing Dispute Resolution Skills for FOIA Professionals training program. OGIS staff taught two in-person sessions in the first half of the fiscal year. We were forced to cancel other sessions planned for the remainder of the fiscal year.

The first training session taught in FY 2020 was relatively unusual because the participating agency is part of the Intelligence Community (IC). Requesters often tell us that IC agencies are less likely to engage directly with requesters and are far more likely to issue "Glomar" responses, refusing to confirm or deny the existence of responsive records. However, a successful IC FOIA program relies on productive communication between the agency's FOIA office and its program offices. While many of the training session's participants noted that their roles do not include negotiation or direct communication with requesters, others commented that the skills taught in our class will assist them in communicating with colleagues.

The move to telework in the second half of FY 2020 underscored the importance of virtual training opportunities. While OGIS's in-person training program has thrived over the last decade, we look forward to connecting with more agency FOIA professionals — particularly those who live outside the capital region — through our planned virtual training program. We look forward to rolling out a virtual training program that is highly interactive and meets our high standards for training.

Dispute Resolution Work

The FOIA statute mandates that OGIS "offer mediation services to resolve disputes between persons making [FOIA] requests ... and administrative agencies," 5 U.S.C. § 552(h)(3). While FY 2020 presented a host of challenges, OGIS's mediation team rose to the occasion. Demand for our services remained very strong; we received 4,062 requests for assistance in FY 2020, a slight decrease from the previous year. Despite our move to fully remote work in mid-March 2020, we closed 4,169 cases by the end of the fiscal year and decreased our backlog by 83 percent from the end of FY 2019.

OGIS's dispute resolution work provides us with a unique window into the FOIA process at agencies across the government. We observed a number of ways that the pandemic impacted the FOIA process, beginning with a sharp increase in delay cases. Specifically, the number of submissions related to delayed FOIA requests increased approximately 50 percent in the second half of FY 2020. Further, we observed how the pandemic created very different challenges for agencies as they processed a variety of records.

Intelligence Community Records

Processing classified records in response to FOIA requests requires working with records that are stored in and retrieved from classified systems of records or from secure physical space within an agency. As IC agencies adjusted their processes in response to the pandemic, they were forced to prioritize mission-critical functions over non-mission-critical work such as FOIA.

Compounding the challenge faced by the IC is the fact that most (if not all) process FOIA requests on classified computer systems. Agency FOIA staff generally do not have access to classified systems in a telework environment. Even with the maximum telework requirement imposed by the Office of Personnel Management in March 2020, the IC deployed limited staff to their on-site FOIA offices. We learned that these factors significantly limited the ability of intelligence agencies to log in and acknowledge new requests, process pending requests, and provide the status of delayed requests.

Born-Analog Records

Digital records receive a lot of attention; however, the federal government retains a staggering amount of paper records. This was brought into focus as the pandemic response limited the ability of teleworking agency FOIA professionals to access and review paper records that are housed in government sites, including in NARA's Federal Records Centers (FRCs). OGIS staff observed this challenge in requests for a variety of records, including immigration and veterans' files and historical records.

This problem was further exacerbated by the fact that agencies transfer older records they no longer need on a daily basis to off-site storage facilities. We noticed processing delays for requests for analog records as agencies employed social-distancing measures to protect staff. Processing delays also occurred because of the coordination of transferring records potentially responsive to FOIA requests from the physical custodian — be it an FRC, a records storage vendor, or a court facility — to the agency's FOIA staff.

Public Health Records

While the move to remote work limited access to paper records and social distancing in the workplace created challenges for every federal FOIA program, agencies that create and control records related to the pandemic faced the added burden of an increase in FOIA requests in FY 2020. For example, the Centers for Disease Control and Prevention (CDC) reported that by May 2020, the agency had received more records requests than it received in all of FY 2019. Not surprisingly, many of these requests were for records related to the government's COVID-19 response and, in a normal year, may have been eligible for expedited processing.

Compliance Work

The FOIA statute mandates that OGIS review FOIA policies, procedures, and compliance and “identify procedures and methods for improving compliance,” 5 U.S.C. § 552(h)(2). We do so in a variety of ways, including assessing individual agency FOIA programs, examining systemic FOIA issues, connecting with virtually every agency subject to FOIA through the CRO’s annual self-assessment survey, and leading and supporting the FOIA Advisory Committee.

For the fourth consecutive year, we partnered with the CRO on the Records Management Self-Assessment (RMSA), an annual survey to determine whether federal agencies are complying with statutory and regulatory records management requirements. Our partnership with the CRO has allowed us to expand our review of agency FOIA policies and procedures by asking targeted questions that help us identify potential compliance issues that merit further exploration. Results from several RMSA surveys have provided us with the foundation for additional OGIS assessments.

We published our 14th assessment of an agency FOIA program in FY 2020. Our assessment of the U.S. Nuclear Regulatory Commission resulted in 10 recommendations that the agency can implement in order to improve FOIA compliance administration. These included reform of its administrative appeals process to conform with DOJ guidance, providing requesters with appeal rights even for full release responses, and updating its FOIA regulations, FOIA Management Directive, and FOIA Desk Guide to ensure that they are plainly written and reflect current processes and statutory requirements. OGIS will check back with the NRC to determine what progress it has made in response to our 10 recommendations.

The U.S. Department of Education, whose FOIA program we assessed in FY 2019, informed us in FY 2020 that it had implemented three of seven recommendations OGIS had made: the Department updated its FOIA regulations, ensured that requests for estimated dates of completion are addressed, and analyzed the costs and benefits of using Department-wide FOIA technology. The Department agreed with and was implementing the other four OGIS recommendations, including establishing performance standards and protocols for handling overdue search responses based on tracking the time it takes program offices to respond to search requests.

The FOIA Advisory Committee — 20 FOIA experts from inside and outside the government who are appointed by the Archivist of the United States — studies the FOIA landscape government-wide and advises on improvements to the administration of the statute by the 15 Cabinet-level agencies and 103 independent agencies.

The 2018–2020 term of the Committee held four public meetings in FY 2020, including two meetings convened online, the first-ever such meetings since the Committee’s establishment in 2014. The Committee’s three subcommittees — Records Management, Time/Volume, and Vision — met between full Committee meetings and drafted proposed recommendations to the Archivist. Despite the move to a full-time virtual environment in March 2020, the Committee in June 2020 approved an extensive written report that contains an unprecedented 22 recommendations,

outlined below, for improving the FOIA process. OGIS delivered the recommendations to the Archivist in July 2020.

OGIS addressed the three outstanding recommendations from the 2016–2018 Committee term during FY 2020, including one recommendation pertaining to FOIA performance standards for non-FOIA professionals. This annual report formally relays the results, below, to Congress and the President in accordance with the FOIA Advisory Committee’s recommendation. OGIS’s work in FY 2020 leaves one recommendation from the 2016–2018 term that pertains to 508 compliance still in progress.

The Archivist renewed the charter for a fourth term of the FOIA Advisory Committee and worked closely with OGIS to appoint members to the 2020–2022 term. The Committee held its first meeting and organized itself into four subcommittees: Classification, Legislation, Process, and Technology.

Please see [appendix B](#) for a complete list of the 30 recommendations made by the FOIA Advisory Committee from 2014 to 2020. For the latest status of all of the FOIA Advisory Committee recommendations please visit the FOIA Advisory Committee Recommendations Dashboard: <https://www.archives.gov/ogis/foia-advisory-committee/dashboard>.

Recommendations to the President and Agencies

The 2016–2018 term of the FOIA Advisory Committee recommended that OGIS examine the use of FOIA performance standards for non-FOIA professionals to ensure compliance with FOIA. Responses to the 2018 RMSA showed that nearly half of agencies (47 percent) do not have FOIA performance measures for non-FOIA professionals. OGIS used the RMSA results as a baseline and further assessed the issue, publishing a final report in September 2020 titled “Freedom of Information Act (FOIA) Performance Measures for Non-FOIA Professionals.”

The Committee further recommended that OGIS submit the results of the assessment and any recommendations to Congress and the President. Through this report, OGIS formally submits to Congress and the President three findings and four recommendations in accordance with the Committee’s recommendation. Our recommendations are specifically directed to executive branch agencies.

FOIA Performance Measures for Non FOIA Professionals

What OGIS Found	What OGIS Recommends
<p>1. Agencies largely communicate FOIA responsibilities to employees, including non-FOIA professionals. (<i>Recommendation 1</i>)</p>	<p>1. Agencies should continue to highlight efforts and successes surrounding efforts to inform non-FOIA professionals of their obligations under FOIA.</p>
<p>2. Agency implementation of FOIA performance measures for non-FOIA professionals varies. Barriers include competing priorities and limited resources. (<i>Recommendations 2 & 3</i>)</p>	<p>2. Agencies should involve all key stakeholders in implementing performance measures; keep communication open; evaluate steps taken; and encourage interagency sharing of lessons learned.</p> <p>3. Agencies should formally recognize that FOIA is everyone’s responsibility and create, implement, and/or refine performance measures that address the FOIA responsibilities of employees who have no explicit FOIA duties.</p>
<p>3. There is no one-size-fits-all approach to implementation. Agencies that have implemented some degree of performance measures for non-FOIA professionals have used model performance standards and example appraisal elements, created new measures, and/or used a blended approach. (<i>Recommendation 4</i>)</p>	<p>4. Agencies should be flexible, review existing examples for performance standards and appraisal elements, and modify as applicable.</p>

Recommendations to Congress

The FOIA statute authorizes OGIS to submit “[l]egislative and regulatory recommendations, if any, to improve the administration of FOIA.” 5 U.S.C. § 552(h)(4)(A)(iii).

OGIS submits the following two categories of recommendations to Congress: (1) FOIA and Section 508 of the Rehabilitation Act; and (2) Congressional FOIA Oversight.

FOIA and Section 508 of the Rehabilitation Act

OGIS recommends that Congress pass legislation to provide agencies with sufficient resources to comply with the requirements of both FOIA and Section 508 of the Rehabilitation Act of 1973, as amended, especially as they relate to proactive posting of large numbers of records.

Explanation: In our 2019 OGIS Annual Report on FY 2018, we made this specific recommendation to Congress and included three possible legislative options. We continue to observe agencies struggling with balancing the requirements of both statutes — and we renew our recommendation in this report.

As we noted in our 2019 Annual Report, the FOIA Improvement Act of 2016 amended FOIA to require that agencies proactively release certain records, including any record that has been requested three or more times. 5 U.S.C. § 552 (a)(2)(D)(ii)(II). Section 508 of the Rehabilitation Act requires, among other things, that all records posted to agency websites be accessible to people with disabilities, unless doing so would pose an “undue burden” on the agency. 29 U.S.C. § 794d(a)(1)(A). In order for a document to be accessible, it must meet specific requirements. These requirements include that the text be machine-readable and that any charts, graphs, pictures, or tables in the document are tagged and described in a way that enables the screen reader to accurately describe a document to a visually impaired individual.

The procedures and tools often used by agencies to process records for public release under FOIA strip away metadata and other features that make those records accessible and Section 508 compliant. Agencies often lack the resources to remediate these records to meet Section 508 requirements. This conflict between current FOIA processing technology and Section 508 compliance prevents a number of agencies from proactively disclosing records.

Some agencies rely on their IT staff to ensure 508 compliance; other agencies leave that task to FOIA professionals who are already fully occupied reviewing and releasing records responsive to other requests; and some agencies contract out these services. Currently, we know of no software solutions that can fully automate the process of making records 508 compliant.

Both the first term (2014–2016) and the second term (2016–2018) of the FOIA Advisory Committee identified the potential conflict between proactive disclosure requirements and Section 508 compliance as a major technological, logistical, and resource challenge that needs to be

addressed. During the Committee's first term, a subcommittee studied the issue. The second term produced a specific recommendation to the Archivist of the United States — that legislation is needed to clarify agencies' Section 508 requirements, especially as they relate to proactive posting of large numbers of records, by ensuring "that agencies have sufficient resources to meet both accessibility and proactive disclosure requirements."

In connection with that recommendation, we provided three possible, non-mutually exclusive, legislative options in our report two years ago. We renew our recommendation that Congress look into the feasibility of the options below — or consider other viable solutions to this problem.

1. *Pass authorizing legislation and appropriations that specifically tasks and funds the U.S. Digital Service within the Executive Office of the President and/or the General Services Administration, to assemble and lead a team of individuals with requisite disciplines and knowledge to develop tools that will assist agencies to make their records Section 508 compliant and accessible. This could include, but not be limited to, writing a new source code that may be made available to agencies through www.code.gov.*
2. *Pass authorizing legislation and appropriations that tasks and funds a suitable federal entity or organization — such as the National Institute on Disability, Independent Living, and Rehabilitation Research (NIDILRR) within the U.S. Department of Health and Human Services (HHS) — with administering a grant program aimed at developing technologies or tools for public use that would automate the process of making agency documents 508 compliant.*
3. *Pass legislation providing that, in lieu of proactively posting 508-compliant FOIA documents, agencies may instead post a 508-compliant index of documents. Individuals could then request 508-compliant copies of documents listed in the index.*

Congressional FOIA Oversight

OGIS recommends that Congress ask the Government Accountability Office (GAO) to pinpoint systemic and/or specific compliance issues at agencies that Congress could then address in a targeted, surgical fashion, either through hearings or additional inquiries.

OGIS recommends that Congress ask GAO to conduct a study of the funding for agency FOIA programs to determine whether agencies have adequate funding to comply with FOIA and respond to requests in a timely manner, and what additional resources agencies need in order to improve the FOIA process overall.

The 2018-2020 term of the FOIA Advisory Committee recommends that Congress engage in regular and robust oversight of FOIA, hold more hearings, establish regular and coordinated communication with agencies, and strengthen OGIS with clearer authority and expanded resources (FOIA Advisory Committee Recommendation No. 2020-19); and

The 2018-2020 term of the FOIA Advisory Committee recommends that Congress address funding for agency FOIA programs and ensure that agencies have sufficient resources to comply with FOIA (FOIA Advisory Committee Recommendation No. 2020-20).

Explanation: The 2018–2020 term of the FOIA Advisory Committee recommended that the Archivist task OGIS with asking Congress to (1) engage in regular and robust oversight of FOIA, hold more hearings, establish regular and coordinated communication with agencies, and strengthen OGIS with clearer authority and expanded resources (*Recommendation No. 2020-19*); and (2) address funding for agency FOIA programs and ensure that agencies have sufficient resources to comply with FOIA (*Recommendation No. 2020-20*).

With regard to *Recommendation No. 2020-19*, as the Committee explained in its final report, “in the absence of oversight from Congress, FOIA otherwise lacks a sustaining enforcement mechanism. It is incumbent upon Congress to ensure that our country has a robust, well-funded, and carefully considered overall FOIA program to deliver the transparency and accountability that the American people deserve and expect.” The final report provides specific recommendations for ways that oversight could be achieved, including increased hearings and inquiries as to agency performance.

While we support regular and coordinated communication between Congress and federal agencies, having more hearings and formal inquiries may not necessarily achieve the intended result of robust, well-funded, and carefully considered FOIA programs. Oversight in the form of additional hearings and inquiries risks imposing additional burdens on agency FOIA programs that are already straining to respond to FOIA requests. We do believe that increased oversight should start with the U.S. Government Accountability Office (GAO), just as the FOIA statute specifically contemplates. 5 U.S.C. § 552(h). Congress should consider asking GAO to pinpoint either systemic or specific compliance issues that Congress could then address in a more targeted, surgical fashion, either through hearings or additional inquiries. Finally, with regard to strengthening OGIS with clearer authority and expanded resources, the Committee was unable to come up with a specific set of recommendations or a vision as to what a “new and improved” OGIS might look like. We heartily agree that “the office is understaffed, underfunded, and under-authorized to effectively oversee FOIA across the entire federal government.” And we appreciate the Committee’s urging “to significantly expand the funding and staffing for this important office.” How to precisely “strengthen the office’s authority on FOIA matters,” however, requires further delicate and careful contemplation.

With regard to *Recommendation No. 2020-20*, we fully support any efforts in Congress to increase funding for agency FOIA programs that demonstrate the need and can document how they will use increased funding to improve the FOIA process, including decreasing backlogs and increasing efficiency and effectiveness. We note, in particular, that the 2018–2020 term of the Committee recommended that agencies “conduct a comprehensive review of their technological and staffing capabilities within two years to identify the resources needed to respond to current and anticipated future FOIA demands.” (*Recommendation No. 2020-13*). Such a review, we believe, would put agency FOIA programs on a firm footing for asking their agency leadership and Congress for more resources.

On a parallel track, Congress should consider asking GAO to conduct a study of the funding for agency FOIA programs to determine whether agencies have adequate funding to comply with FOIA and respond to requests in a timely manner, and what additional resources agencies in fact need in order to improve the FOIA process overall. OGIS has gained a significant amount of experience in assessing agency FOIA programs and stands ready and available to assist GAO with these efforts.

We note that the 2020–2022 term of the FOIA Advisory Committee established a Legislation Subcommittee to focus on aspects of FOIA and government transparency that are most appropriate for action by Congress, whether through statutory changes, appropriations, or oversight, including the design and authority of OGIS. We expect the Subcommittee to make additional legislative recommendations to the full Committee that may then be presented to the Archivist in the Committee’s final report in 2022.

OGIS Staff

Director	Alina M. Semo
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Mediation Team	Carrie McGuire (Lead) Dwayne Bacon Jessica Hartman

Appendix A

FOIA requires OGIS to report “the number of times each agency engaged in dispute resolution with the assistance of [OGIS] or the FOIA Public Liaison,” 5 U.S.C. § 552(h)(4)(ii)(II). The chart below provides that information for FY 2020.

The total number of OGIS cases does not equal the total number of cases OGIS handled in FY 2020 because some cases involved multiple agencies or requests. In other cases, mostly Involving telephone calls, the name of the agency was not relevant to the issue and OGIS did Not note the agency name.

The number of times agencies sought assistance from the agency FOIA Public Liaison in FY 2020 comes from the 2021 Chief FOIA Officer Reports, <https://www.justice.gov/oip/chief-foia-officer-reports-2021>. N/A means that the agency processed 50 or fewer requests in FY 2019 and thus was not asked to report on requesters seeking assistance from the FOIA Public Liaison. (For guidelines for 2021 Chief FOIA Officer Reports see <https://www.justice.gov/oip/guidelines-2021-chief-foia-officer-reports>). Unknown means the agency had not reported at the time of this report’s publication.

Department/Agency	No. of OGIS cases	No. of times requesters sought assistance from agency FOIA Public Liaison
Department of Justice	830	>25,929
Department of Homeland Security	553	9,270
Department of Defense	185	2,500
Department of Health and Human Services	164	2,600
Social Security Administration	145	8,817
Department of Veterans Affairs	122	158
Department of State	72	1,200
Department of Labor	71	563
Central Intelligence Agency	59	Unknown
Department of the Treasury	57	1,000
Department of the Interior	52	16
Equal Employment Opportunity Commission	45	619
U.S. Postal Service	39	1,040
Department of Transportation	37	280
National Archives and Records Administration	37	485
Department of Agriculture	28	47
Environmental Protection Agency	23	25

Department/Agency	No. of OGIS cases	No. of times requesters sought assistance from agency FOIA Public Liaison
Department of Housing and Urban Development	21	4
Securities and Exchange Commission	20	10
Office of Personnel Management	18	900
Department of Commerce	14	30
Small Business Administration	12	600
Pension Benefit Guaranty Corporation	11	5
Department of Energy	7	23
Federal Housing Finance Agency	5	5
Federal Trade Commission	5	60
Office of Special Counsel	5	Unknown
Consumer Financial Protection Bureau	4	140
General Services Administration	4	130
Peace Corps	4	10
Commodity Futures Trading Commission	3	<10
Executive Office of the President: Office of Management and Budget	3	0
National Aeronautics and Space Administration	3	18
National Labor Relations Board	3	97
Tennessee Valley Authority	3	1
Board of Governors of the Federal Reserve System	2	20
Department of Education	2	100
Federal Deposit Insurance Corporation	2	6
Merit Systems Protection Board	2	2
National Transportation Safety Board	2	0
Nuclear Regulatory Commission	2	2
U.S. Consumer Product Safety Commission	2	120
Amtrak	1	5

Department/Agency	No. of OGIS cases	No. of times requesters sought assistance from agency FOIA Public Liaison
Council of Inspectors General on Integrity and Efficiency ¹	1	10
Executive Office of the President: Office of Science and Technology Policy	1	0
Federal Communications Commission	1	24
Federal Labor Relations Authority	1	1
Federal Retirement Thrift Investment Board	1	N/A
National Credit Union Administration	1	5
National Endowment for the Humanities	1	2
National Science Foundation	1	0
Occupational Safety and Health Review Commission	1	3
Office of the Director of National Intelligence	1	20
U.S. Agency for Global Media ²	1	N/A
Administrative Conference of the United States	0	N/A
Advisory Council on Historic Preservation	0	N/A
American Battle Monuments Commission	0	N/A
Appraisal Subcommittee	0	N/A
Armed Forces Retirement Home	0	N/A
Chemical Safety and Hazard Investigation Board	0	N/A
Commission of Fine Arts	0	N/A
Committee for Purchase from People Who Are Blind or Severely Disabled	0	N/A
Corporation for National and Community Service	0	5
Court Services and Offender Supervision Agency	0	4
Defense Nuclear Facilities Safety Board	0	N/A

¹ The Council of the Inspectors General on Integrity and Efficiency (CIGIE) has an agreement for its FOIA requests to be processed by the U.S. Department of Justice Office of Inspector General.

² Formerly the Broadcasting Board of Governors.

Department/Agency	No. of OGIS cases	No. of times requesters sought assistance from agency FOIA Public Liaison
Denali Commission	0	N/A
Executive Office of the President: Council on Environmental Quality	0	15
Executive Office of the President: Office of National Drug Control Policy	0	3
Executive Office of the President: Office of the U.S. Trade Representative	0	110
Export-Import Bank	0	5
Farm Credit Administration	0	N/A
Farm Credit System Insurance Corporation	0	N/A
Federal Election Commission	0	2
Federal Energy Regulatory Commission	0	Unknown
Federal Financial Institutions Examination Council	0	N/A
Federal Maritime Commission	0	N/A
Federal Mediation and Conciliation Service	0	N/A
Federal Mine Safety and Health Review Commission	0	N/A
Federal Open Market Committee	0	N/A
Gulf Coast Ecosystem Restoration Council	0	N/A
Harry S. Truman Scholarship Foundation	0	N/A
Institute of Museum and Library Services	0	N/A
Inter-American Foundation	0	N/A
James Madison Memorial Fellowship Foundation	0	N/A
Legal Services Corporation	0	N/A
Marine Mammal Commission	0	N/A
Millennium Challenge Corporation	0	N/A
Morris K. Udall Foundation	0	N/A
National Capital Planning Commission	0	N/A
National Commission on Military, National, and Public Service	0	N/A
National Council on Disability	0	N/A

Department/Agency	No. of OGIS cases	No. of times requesters sought assistance from agency FOIA Public Liaison
National Endowment for the Arts	0	1
National Indian Gaming Commission	0	N/A
National Mediation Board	0	N/A
Neighborhood Reinvestment Corporation	0	N/A
Nuclear Waste Technical Review Board	0	N/A
Office of Government Ethics	0	24-36
Office of Navajo and Hopi Indian Relocation	0	N/A
U.S. International Development Finance Corporation ³	0	0
Postal Regulatory Commission	0	N/A
Presidio Trust	0	N/A
Privacy and Civil Liberties Oversight Board	0	N/A
Railroad Retirement Board	0	0
Selective Service System	0	0
Social Security Advisory Board	0	N/A
Special Inspector General for Afghanistan Reconstruction	0	N/A
Surface Transportation Board	0	N/A
U.S. Access Board	0	N/A
U.S. African Development Foundation	0	N/A
U.S. Agency for International Development	0	10
U.S. Commission on Civil Rights	0	N/A
U.S. Copyright Office	0	N/A
U.S. Election Assistance Commission	0	N/A
U.S. Institute of Peace	0	N/A
U.S. Interagency Council on Homelessness	0	N/A
U.S. International Boundary and Water Commission	0	0
U.S. International Trade Commission	0	N/A

³ The U.S. International Development Finance Corporation (DFC) was formerly known as the Overseas Private Investment Corporation (OPIC).

Department/Agency	No. of OGIS cases	No. of times requesters sought assistance from agency FOIA Public Liaison
U.S. Trade and Development Agency	0	N/A

Appendix B

FOIA Advisory Committee Recommendations to the Archivist 2016 2018 Term	
Recommendation	Status as of May 2021
<p>No. 2018-04 Launch an interagency effort to develop standard requirements for FOIA processing tools, to ensure that both the tools and their outputs are Section 508 compliant. [<i>Section 508 of the Rehabilitation Act requires, among other things, that all records posted to agency websites be accessible to people with disabilities unless doing so would pose an “undue burden” on the agency.</i>]</p>	<p>IN PROGRESS The Technology Committee of the Chief FOIA Officers (CFO) Council continued studying the FOIA technology landscape in FY 2020 and continues in FY 2021 in collaboration with the Technology Subcommittee of the 2020–2022 term of the FOIA Advisory Committee. The CFO Council Technology Committee also established a 508 Compliance and Collaborative Tools interagency working group.</p>
<p>No. 2018-05 Request that OGIS conduct an assessment of the methods undertaken by agencies to prepare documents for posting on agency FOIA reading rooms.</p>	<p>COMPLETED OGIS assessed agencies methods for preparing documents for posting on agency websites, completing the bulk of the work in FY 2020. In early FY 2021, OGIS published a report, <i>Methods Agencies Use to Prepare Documents for Posting on Agency Freedom of Information Act (FOIA) Websites</i>. The report provides 18 best practices for agencies, including incorporating federal data strategy.</p>
<p>No. 2018-07 Direct OGIS to examine the use of performance standards in federal employee appraisal records and work plans to ensure compliance with the requirements of FOIA and submit the results of its assessment and any recommendations to Congress and the President.</p>	<p>COMPLETED OGIS published a report, <i>Freedom of Information Act (FOIA) Performance Measures for Non-FOIA Professionals</i>, in September 2020. The assessment’s three findings and four recommendations to agencies are detailed below. OGIS does not have any recommendations to Congress and the President regarding FOIA performance measures.</p>

FOIA Advisory Committee Recommendations to the Archivist 2018 2020 Term	
Recommendation	Status as of May 2021
No. 2020-01 OGIS will assess information about the FOIA filing process available on agency websites, with the goal of informing further the Department of Justice, Office of Information Policy (OIP) guidance on how agencies may improve online descriptions of the process.	IN PROGRESS The 2019 Records Management Self-Assessment Survey (RMSA), conducted in early 2020, included a question about the types of information that agencies make available on their FOIA websites to help requesters better understand the FOIA filing process and the records they maintain. The RMSA results are the foundation for an assessment that OGIS launched in January 2021 and will be shared with OIP to inform guidance.
No. 2020-02 The Department of Justice, Office of Information Policy (OIP), will issue guidance related to the inclusion of records management-related materials and FOIA handbooks on agency websites.	IN PROGRESS The 2019 Records Management Self-Assessment Survey (RMSA), conducted early in 2020, included a question about the types of information that agencies make available on their FOIA websites to help requesters better understand the records that agencies maintain. OGIS will share the results and the assessment related to Recommendation 2020-01 with OIP to help inform guidance.
No. 2020-03 Agencies will work toward the goal of collecting, describing, and giving access to FOIA-released records in one or more central repositories, and on agency websites.	IN PROGRESS 10X, a U.S. government program that funds, supports and develops ideas from federal employees about how technology can improve the public's experience with the government, is in the early discovery phase of looking into a centralized search capability that would allow the public to search across all agency FOIA libraries. The project, proposed by the Department of Justice, Office of Information Policy (OIP), would enhance the public's interaction with government by facilitating the discovery of records already in the public domain.
No. 2020-04 The National Archives and Records Administration (NARA) and the Department of Justice, Office of Information Policy (OIP), will offer records management training to FOIA officers and FOIA Public Liaisons in federal agencies, and include a FOIA module in records management training courses open to all federal employees.	IN PROGRESS OGIS and the Office of the Chief Records Officer for the U.S. Government began working in January 2021 to develop content for online training in federal records management for FOIA officers and all federal employees.
No. 2020-05 The Department of Justice, Office of Information Policy (OIP), will issue guidance requesting agencies to provide annual mandatory FOIA training to all current employees and contractors. OGIS and OIP will	PENDING As a first step, OIP asked agencies in their 2021 Chief FOIA Officer Reports to describe efforts to ensure proper FOIA training is made available and used by agency

FOIA Advisory Committee Recommendations to the Archivist 2018 2020 Term	
Recommendation	Status as of May 2021
review agencies' current FOIA training requirements and content.	personnel, and to inform non-FOIA professionals of their obligations under FOIA.
No. 2020-06 OGIS and the Department of Justice, Office of Information Policy (OIP), will assist agencies in developing FOIA and records management briefings for incoming senior leaders following changes in administration or leadership.	IN PROGRESS OGIS and the Office of the Chief Records Officer for the U.S. Government began working in January 2021 to develop briefing material for new senior leaders.
No. 2020-07 OGIS and the Department of Justice, Office of Information Policy (OIP), will review the FOIA performance measures used in Agency Performance Plans and Reports, encourage agencies to include FOIA in their performance plans and submit the results of their review and any recommendations to Congress and the President.	IN PROGRESS OGIS launched this assessment in January 2021.
No. 2020-08 The Department of Justice, Office of Information Policy (OIP), will collect information as part of Chief FOIA Officer Reports regarding standard operating procedures (SOPs) for FOIA processing.	IN PROGRESS OIP asked agencies in their 2021 Chief FOIA Officer Reports several questions regarding SOPs for the FOIA process. OGIS reported in <i>Assessing Freedom of Information Act (FOIA) Compliance through the 2016 National Archives and Records Administration's Records Management Self-Assessment</i> that 77% of respondents to the survey reported having SOPs for FOIA processing, while 12% reported having SOPs for some parts of the process.
No. 2020-09 NARA will incorporate and further develop the idea of public access to federal records, including through FOIA, as part of its Initiative (FERMI).	IN PROGRESS NARA updated its Universal Electronic Records Management (ERM) Requirements in April 2020 to include FOIA. The ERM now requires agencies to manage records in ways that support proactive release records management should support sufficiency of FOIA search.
No. 2020-10 NARA and the Department of Justice, Office of Information Policy (OIP), will establish liaisons with the Chief Data Officers (CDO) Council to ensure that Council officials understand the importance of federal recordkeeping and FOIA requirements.	IN PROGRESS The Directors of OGIS and OIP and the Chief Records Officer for the U.S. Government will serve as liaisons to the CDO Council.
No. 2020-11 The Department of Justice, Office of Information Policy (OIP), will provide	PENDING

FOIA Advisory Committee Recommendations to the Archivist 2018-2020 Term

Recommendation	Status as of May 2021
guidance to agencies on the use of e-discovery tools to assist agencies in their searches of electronic records in response to FOIA requests.	
No. 2020-12 Agencies will publicly release FOIA documents on their FOIA websites and portals in open, legible, machine-readable and machine-actionable formats, to the extent feasible.	IN PROGRESS As a first step, the Department of Justice, Office of Information Policy (OIP), asked agencies in their 2021 Chief FOIA Officer Reports to provide examples of steps taken to post information in open, machine-readable and machine-actionable formats, to the extent feasible.
No. 2020-13 Agencies will review their FOIA-related technological and staffing capabilities within two years to identify the resources needed to respond to current and anticipated future FOIA demands.	PENDING
No. 2020-14 OGIS and the Department of Justice, Office of Information Policy (OIP), will help agencies explore and consider alternative, more efficient ways for requesters to access records about	IN PROGRESS OIP asked agencies in their 2021 Chief FOIA Officer Reports to describe any common categories of first-party requests and whether the agencies have explored establishing non-FOIA access to those records. OGIS launched a review of the issue in January 2021, and the 2020–2022 term of the FOIA Advisory Committee continues to study the issue.
No. 2020-15 Agencies will make commonly requested documents available outside of the FOIA process, including in publicly accessible online databases.	PENDING
No. 2020-16 The Chief FOIA Officers (CFO) Council will create a committee to research and propose cross-agency grant programs and other FOIA funding sources, create career paths for FOIA professionals, and promote models to align agency resources with agency transparency.	IN PROGRESS The CFO Council’s Committee on Cross-Agency Collaboration and Innovation (COCACI) began meeting in February 2021, and is focusing on three topic areas: virtual FOIA office administration, Government Information Specialist (GIS) job series, and technology standardization.
No. 2020-17 The Chief FOIA Officers (CFO) Council will work with agency leadership to issue an annual memorandum on the importance of FOIA.	PENDING
No. 2020-18 The Archivist of the United States will ask the Council of the Inspectors General on Integrity and Efficiency (CIGIE) to consider a cross-cutting project examining how successful agency FOIA programs are in providing access to agency records in electronic and digital form.	PENDING

FOIA Advisory Committee Recommendations to the Archivist 2018-2020 Term

Recommendation	Status as of May 2021
No. 2020-19 OGIS will ask Congress to engage in regular and robust oversight of FOIA, hold more hearings, establish regular and coordinated communication with agencies around FOIA issues, and strengthen OGIS with clearer authority and expanded	IN PROGRESS The Legislation Subcommittee of the 2020–2022 term of the FOIA Advisory Committee expects to continue studying these ideas.
No. 2020-20 OGIS will ask Congress to address funding for agency FOIA programs and ensure that agencies have sufficient resources to comply with the FOIA.	IN PROGRESS The Legislation Subcommittee of the 2020-2022 term of the FOIA Advisory Committee expects to continue studying these ideas.
No. 2020-21 The Archivist of the United States will actively guide ongoing and future federal data strategies to include FOIA and federal recordkeeping policies.	IN PROGRESS
No. 2020-22 The Archivist of the United States will promote research into the use of artificial intelligence and machine learning to improve FOIA searches and efficiently process FOIA requests.	IN PROGRESS The Chief Records Officer for the U.S. Government issued a white paper, <i>Cognitive Technologies: Records Management Implications for Internet of Things, Robotic Process Automation, Machine Learning, and Artificial Intelligence</i> , in October 2020. Although the paper does not reference FOIA, there is a crucial relationship between records management and FOIA.



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