

VIOLATIONS OF THE AMERICANS WITH DISABILITIES ACT IN FOIA REDACTIONS, SIMPLE SOLUTION

**FOIA Advisory Committee
PUBLIC COMMENT**

**by Robert Hammond
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Issue

- Agencies routinely release records in PDF format with redactions that are unnecessarily not complaint with the Americans with Disabilities Act, Section 508.
- For example, redactions are routinely in small, red font (e.g., Arial 5.5-point), against a black background, violating ADA compliance requirements for font size, color, and contrast.
- Agencies also release records that have not been processed for Optical Character Recognition (OCR), which is also a violation of the ADA.
- There is a simple solution.



Simple Solution

- Agencies would not intentionally violate the ADA.
- All MS Office products contain integral ADA compliance accessibility checkers under the Review => Check Accessibility tab, as do Adobe products, which alerts the user that a document is non-compliant when saving the document.
- There are also free resources for checking accessibility.
- NARA OGIS and/or DOJ OIP can issue an Advisory for official dissemination and public posting to instantly and permanently resolve this simple issue.
- Address this issue in the Open FOIA Advisory Committee Meeting for public viewing (YouTube) and include comments in the meeting minutes for preservation.



Impediments to Easy Resolution

- Both the DOJ Office of Information Policy (OIP) and NARA's Office of Government Services have responsibilities for FOIA compliance with the ability to issue Advisories.
- No action has been taken by multiple Public Comments, DOJ OIP Compliance Inquiries, or OGIS dispute resolution and compliance requests.
- NARA's OGIS Director stated on multiple occasions that, "... regarding compliance with the Section 508 of the Americans with Disabilities Act, which is outside of OGIS's jurisdiction, we suggest that you work with the individual agencies on this matter."
- However, NARA OGIS and DOJ OIP co-chair the FOIA Advisory Committee and the Chief FOIA Officer Council, which have subcommittees addressing various aspects of ADA Section 508 compliance.



What Makes a PDF ADA Compliant?

Some of the features of an ADA compliant PDF include:

- Tags: Add these when creating the PDF to make it searchable
- Searchable text: Note that PDFs created by scanning may actually be an image and do not contain searchable text
- Alt text: Images within the PDF have alternate text that provides a description of the image when a screen reader is used
- Bookmarks: For documents longer than nine pages
- Logical reading order (left-to-right) in tables
- No background images or watermarks
- Table rows that don't split across pages

(tsts.com/blog/how-to-make-pdfs-ada-compliant-for-your-website/)



DOJ OIP Authority

- The mission of the Office of Information Policy (OIP) is to encourage and oversee agency compliance with the Freedom of Information Act (FOIA). OIP is responsible for developing government-wide policy guidance on all aspects of FOIA administration
- In addition to its policy functions, OIP oversees agency compliance with the FOIA.
- As part of its oversight and guidance responsibilities, OIP reviews inquiries made by the public raising issues regarding agencies' compliance with the FOIA statute and the Attorney General's FOIA Guidelines.



OGIS Authority

FOIA Improvement Act of 2016

Revised Duties for OGIS

The duties for OGIS have been revised and new reporting obligations are included.

- OGIS shall “identify procedures and methods for improving compliance” under the FOIA.
- In providing mediation services, OGIS may issue advisory opinions at its discretion **or upon the request of any party to the dispute.**
- Not less than annually OGIS shall submit to Congress and the President, and make available to the public electronically:
 1. A report on its findings from its reviews of agency policies, procedures, and compliance.
 2. A summary of its mediation services, including any advisory opinions issued and the number of times each agency engaged in dispute resolution with the assistance of OGIS or the FOIA Public Liaison.
 3. Any legislative and regulatory recommendations to improve FOIA.
- OGIS is not required to obtain prior approval of any officer or agency of the United States before submitting to Congress reports, recommendations, testimony, or comments, if such submissions include a statement indicating that the views expressed are those of the OGIS Director and not necessarily the views of the President.
- Not less than annually, OGIS shall hold a **public meeting** on its activities and “allow interested persons to appear and **present** oral or written statements.



OGIS & Archivist of US ADA, Section 803 Compliance

OGIS Website States:

- “**The Archivist of the United States** will request that the Office of Government Information Services (OGIS) conduct an assessment of the methods undertaken by agencies to prepare documents for posting on agency FOIA reading rooms,” and that;
- “The CFO Council Technology Committee also established a working group to examine the intersection of 508 compliance and FOIA,” and that;
- “The 508 Compliance and Collaborative Tools Working Group is established to advise and support the CFOC Technology Committee in all areas involving Section 508 compliance and accessibility with respect to not only internal customers but external customers as well. The working group will provide resources and information regarding collaboration tools and Section 508 best practices throughout the federal FOIA community and in the private sector to promote the efficient operation of FOIA programs.”



OGIS, DOJ OIP Responsibility

FOIA Advisory Committee Recommendations by Term

Committee Term	Recommendation No. / Category	Recommendation Description
2016-2018	2018-05 / FOIA AND ACCESSIBILITY	The Archivist of the United States will request that the Office of Government Information Services (OGIS) conduct an assessment of the methods undertaken by agencies to prepare documents for posting on agency FOIA reading rooms.
	Status	Action Taken
	IN PROGRESS	Aspects of this recommendation have been addressed through the submission of the Federal Acquisition Regulation (FAR) business case discussed in Recommendation 2018-03. The Technology Committee of the Chief FOIA Officers (CFO) Council spent FY 2019 and 2020 studying the FOIA technology landscape and will continue 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 working group to examine the intersection of 508 compliance and FOIA.



OGIS, DOJ OIP Responsibility Chief FOIA Officers Council (CFO)

Technology Committee 508 Compliance and Collaborative Tools Working Group Charter

- Co-Chairs: Stacy Ekis
Anne Carraturo
Michelle McKown
Amy Bennett
Elena Richardson
- **Purpose:** The 508 Compliance and Collaborative Tools Working Group is established to advise and support the CFOC Technology Committee in all areas involving Section 508 compliance and accessibility with respect to not only internal customers but external customers as well. The working group will provide resources and information regarding collaboration tools and Section 508 best practices throughout the federal FOIA community and in the private sector to promote the efficient operation of FOIA programs.



OGIS, DOJ OIP Responsibility

CFO Technology Committee 508 Compliance

Purpose: The 508 Compliance and Collaborative Tools Working Group is established to advise and support the CFOC Technology Committee in all areas involving Section 508 compliance and accessibility with respect to not only internal customers but external customers as well. The working group will provide resources and information regarding collaboration tools and Section 508 best practices throughout the federal FOIA community and in the private sector to promote the efficient operation of FOIA programs.

Objectives:

1. Providing resources to ensure that users with varying degrees of expertise can access information related to Section 508 compliance and collaborative tools.
2. Identifying and providing useful information regarding the usage of varying collaborative tools.
3. Providing recommendations and best practices to the CFOC Technology Committee and the larger FOIA professional population on Section 508 compliance.



OGIS, DOJ OIP Responsibility

CFO Tech Committee 508 Compliance Deliverables

Proposed Deliverables and Target Deadlines:

1. Examine how federal agencies and the private sector use collaboration tools to promote efficiencies in communication and decision-making processes. Examine tools that are used in the federal government and private sector for Section 508 compliance. - Target deadline: February 28, 2021

This is a research deliverable. Review existing documents and reports, talk to FOIA professionals who are open to sharing their experiences, etc. Identify potential and actual solutions to address collaboration and Section 508 challenges.

2. Develop a series of resource papers for collaborative tools for a FOIA Professional. - Target deadline: May 31, 2021
3. Develop a series of resource papers for 508 compliance for a FOIA Professional. - Target deadline: May 31, 2021
4. Participate in the Vendor Day held by the Technology Committee/Office of Information Policy (OIP)/Office of Government Information Services (OGIS).



Action Sought

1. Chief FOIA Officers Council, FOIA Advisory Committee, NARA OGIS and DOJ OIP address this matter with federal agencies in appropriate correspondence and forums and include this Requester-Submitted issue as a Section 508 Compliance win in respective Annual Reports.
2. Hon. David S. Ferriero clarify, as the Archivist of the United States, the NARA authority and responsibility regarding the Americans with Disabilities Act Section 803 compliance in the FOIA process.
3. OGIS & Chief FOIA Officer Council Outreach. Per 5 U.S.C. §552 requirements “to consult on a regular basis with members of the public who make requests under this section:”
 - I am seeking opportunities to participate in such consultations toward the goal of improving FOIA processes for everyone.
 - However, OGIS Director has stated, “Regarding your interest in participating in the Council’s Technology Committee’s working groups, please note that the groups consist of federal employees with expertise in FOIA and technology. Requesters are not part of the Council, the Technology Committee or the working groups, although each strives to “consult on a regular basis with members of the public who make requests under” FOIA. 5 U.S.C. § 552(k)(5)(B).”



Backup



DOJ United States Marshall's Service Example

- DOJ United States Marshall's Service TWICE released a redacted record, that wrt font, color, and contrast, contains redactions in Arial 5.5-point, red font against a black background, violating all three.
- It also was not produced as an Optical Character Recognition searchable PDF, also in violation of the ADA.
- Like many, I am red/green color blind and cannot read the small, red redaction citations against a black contrast background. I cannot read anything in 5-point font. (I had to enhance the PDF scans to recognize text, convert to MS. Word, change the font size and color, and remove the black background).
- The continuing ADA violations suppressed the rights of requesters such as me under the FOIA.



Another Example + Moot Determination

- After I appealed an agencies similar redactions that did not comport with the FOIA and Section 508 wrt font size, color, and contrast, and the PDF was not in OCR searchable format, the Agency improperly closed my Appeal “moot.”
- Thereafter, the Agency issued a revised document for the “closed” FOIA request without the Appellate Authority first granting my appeal of the non-compliant initial determination (which is an adverse action under FOIA) and then did not release the promised revised document until after the appeal closed and I complained that EPA had not released the promised revised document.
- If not corrected, this will result in false FOIA reporting to the Attorney General of the United States and Congress.
- I have submitted multiple DOJ OIP complainece inquiries and OGIS assistance/compliance determination requests on this matter and sought Advisory Opinions stating that it is improper.



Another Example + Moot Determination Continued

- The Appellate Authority must first grant my appeal and remand it for further response; then the Agency must account for the processing time of the remand separately from the initial closed FOIA request.
- Also, there is no statutory or DOJ approved appellate determination of “moot” for FOIA Reporting to the Attorney General of the United States (and Congress via public posting) and every use of “moot” is improper.
- Appeals must be adjudicated based on the facts at the time of the appeal and are not made “moot” by anything that occurs thereafter.
- DOJ FOIA Handbook for FOIA Reports states that, “On appeal the agency is reviewing an action that already occurred and so the disposition categories capture whether that initial action was upheld by the appellate authority.” (DOJ FOIA Handbook for FOIA Reports).
- See *also* DOJ Handbook for Annual FOIA reports (www.justice.gov/oip/docs/doj-handbook-for-agency-annual-freedom-of-information-act-reports.pdf/download).