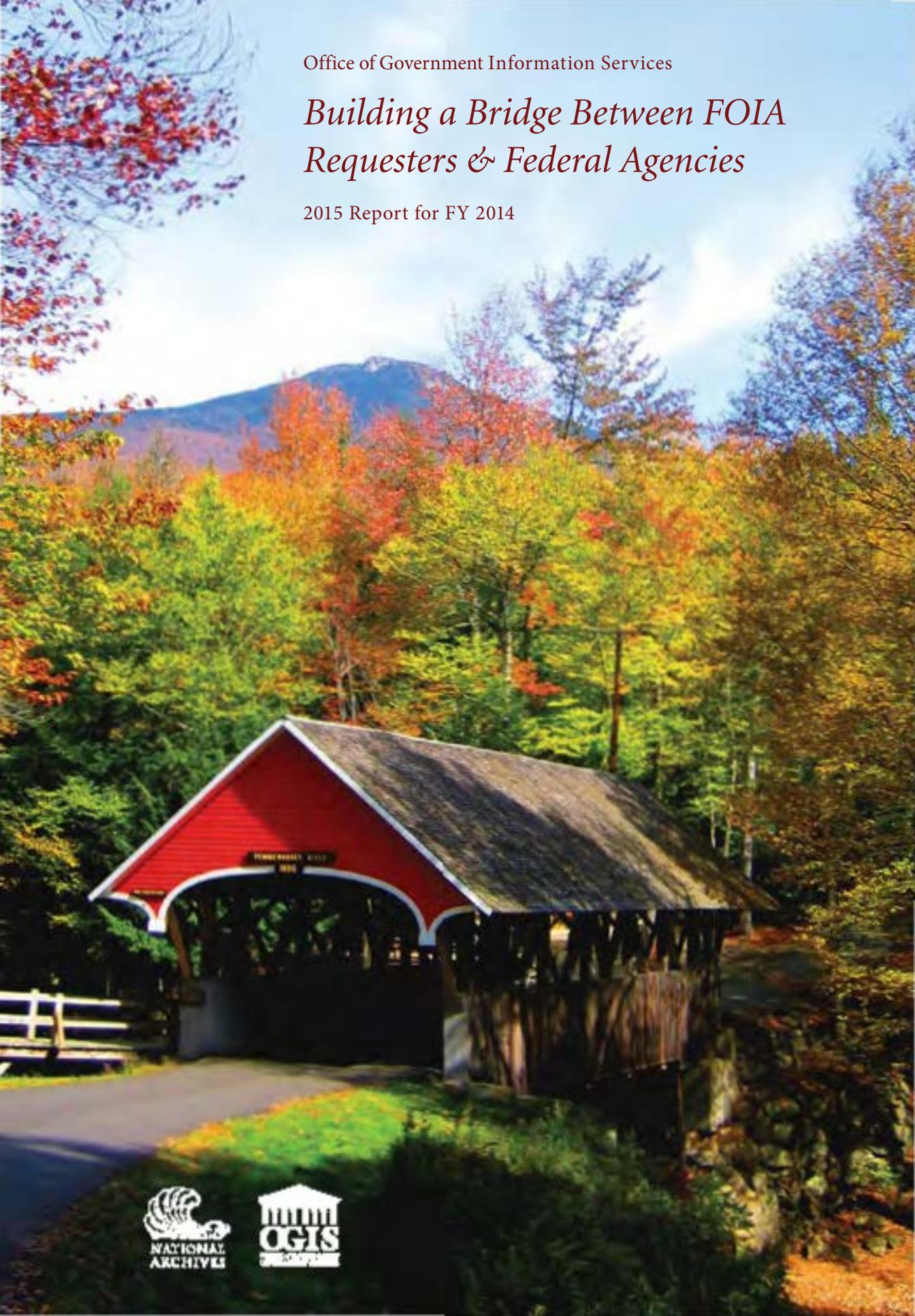


Office of Government Information Services

Building a Bridge Between FOIA Requesters & Federal Agencies

2015 Report for FY 2014



2014

Office of Government
Information Services

*Building a Bridge Between
FOIA Requesters &
Federal Agencies*

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Cover image: Kancamagus Scenic Byway in the White Mountains National Forest; photo by Forrest Seavey from Records of the Federal Highway Administration (NARA Identifier 7719813)





This fifth annual report of the [Office of Government Information Services](#) (OGIS) is particularly special to me because I retired as OGIS Director near the end of 2014. It was my great pleasure and privilege to establish and lead OGIS in its first five years, and I thank all of my excellent staff for their hard work.

In our fifth year, we continued breathing life into Congress's novel idea of introducing mediation services into the [Freedom of Information Act](#) (FOIA) process; in doing so, we've demonstrated that there are more fruitful ways to solve FOIA disputes than battles in the courtroom.

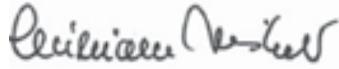
I am particularly proud of all OGIS achieved in our fifth year. While we continued to provide mediation services to resolve disputes between FOIA requesters and agencies—we had nearly 900 requests for assistance this year—we also took a careful look at our staffing and services and established a new team dedicated to agency review. The review team developed an assessment process that examines an agency FOIA process in an impartial, neutral manner. The first agency review was a great success, and I look forward to seeing what this new team does in the year ahead.

Another significant achievement in 2014 was establishing the [FOIA Advisory Committee](#) as part of the [Second U.S. Open Government National Action Plan](#). The Committee is a diverse group of FOIA experts from inside and outside of government with the shared goal of charting a path for tackling some of FOIA's trickiest issues.

I would also like to thank the agencies that have worked so hard to make dispute resolution and customer service part of their FOIA programs; the

requester community for its great support of OGIS and its work advocating for FOIA; and Congress, whose great interest in OGIS shows a commitment to affirmatively and expressly bring a non-adversarial approach to FOIA, an essential tool of our democracy.

Sincerely,

A handwritten signature in black ink, appearing to read "Miriam Nisbet". The signature is written in a cursive style with some loops and flourishes.

Miriam Nisbet



The [Office of Government Information Services](#) (OGIS) marked its fifth year in Fiscal Year 2014 with two key accomplishments: establishing a new team to review agency [Freedom of Information Act](#) (FOIA) policies, procedures, and compliance, and establishing a new [Federal Advisory Committee on the FOIA](#). The review team conducted its first assessment of an agency FOIA program, setting the stage for robust assessments of FOIA programs government-wide. OGIS, under the direction of its parent agency, the National Archives and Records Administration (NARA), also established a FOIA Advisory Committee as part of the [Second U.S. Open Government National Action Plan](#) released in December 2013. All the while, OGIS continued providing mediation services to FOIA requesters and agencies alike as the Office has done since it opened in 2009.

As FY 2014 ended, OGIS was poised to hire three new staff members, bringing to 10 the total number of OGIS staff and growing the staff for the first time since 2010.

OGIS is mandated in the FOIA statute to review agency FOIA policies, procedures, and compliance, 5 U.S.C. §§ 552 (h)(2)(A) and 552 (h)(2)(B). During its early years, OGIS reviewed agency FOIA policies, procedures, and compliance by

- highlighting agency best practices
- reviewing and commenting on proposed or updated agency FOIA regulations
- reviewing and suggesting improvements to agency FOIA materials

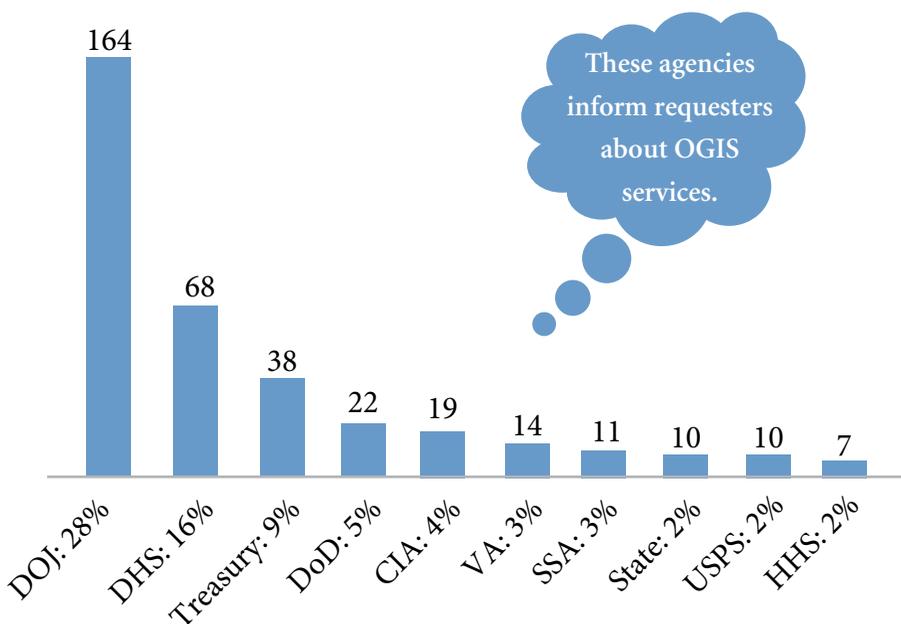


OGIS provides its services in a neutral fashion, advocating not for the requester or for the agency, but for the FOIA process to work as intended. (NARA Identifier 6011370)

- working with agencies when OGIS observes policies and procedures that appear to be inconsistent with FOIA law or that may be different from practices occurring at other agencies
- reviewing government and non-government reports on FOIA activities and compliance.

The Government Accountability Office (GAO) conducted an [audit of OGIS](#) in FY 2013 and recommended that OGIS establish a time frame for completing and implementing a methodology for reviewing Federal agencies' FOIA policies, procedures, and compliance. In FY 2014, OGIS launched an agency assessment program by which the Office will assess individual agency FOIA programs by reviewing the agency's FOIA regulations, website, FOIA request files, and other material, and surveying and conducting onsite interviews with agency FOIA professionals.

Top 10 departments & agencies involved in OGIS cases closed in FY 2014

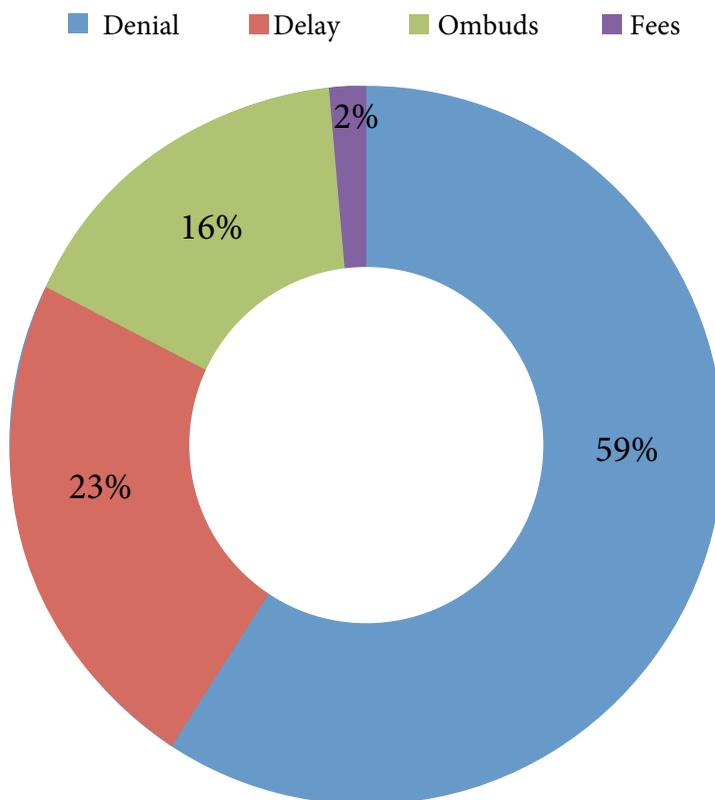


OGIS will continue all existing review activities as it conducts agency assessments, both on a regular schedule and in certain circumstances under special request, and selects particular issues to review on an ad hoc basis.

As with its mediation services, OGIS's review of agency policies, procedures, and compliance is conducted as an advocate for the FOIA process with a focus on impartiality and fairness, in accordance with ombudsman principles of independence and neutrality.

NARA's operational FOIA program within the Office of General Counsel agreed to be the subject of OGIS's first assessment. This NARA FOIA team, which processes about 300 FOIA requests a year for operational records cre-

OGIS FY 2014 closed cases by category

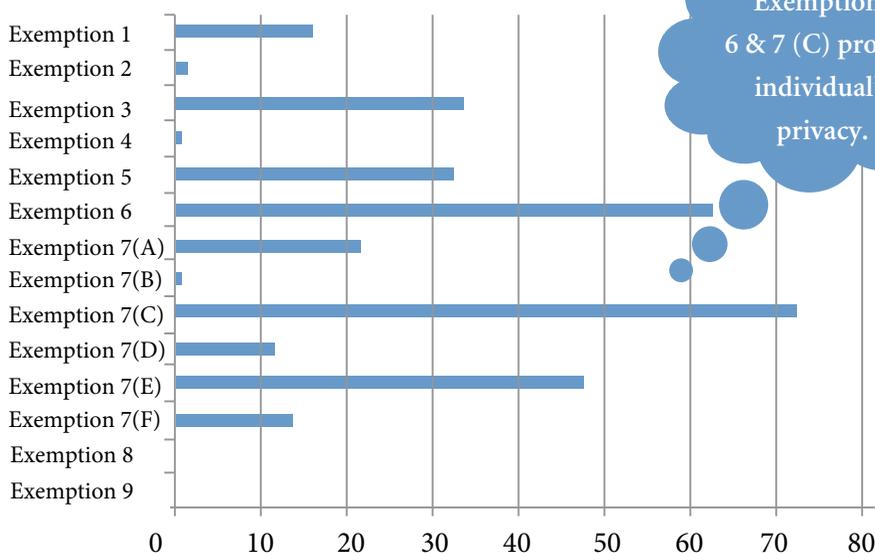


ated or received in carrying out the Archives' mission and responsibility, talked with OGIS about how it administers FOIA, and opened its FOIA files for OGIS to examine. OGIS produced a [10-page report](#) documenting OGIS's observations, including best practices, and recommendations. At the end is an at-a-glance summary of recommendations designed to provide a checklist, of sorts, of steps to be taken to ensure that the FOIA process works better for all—agency and requester.

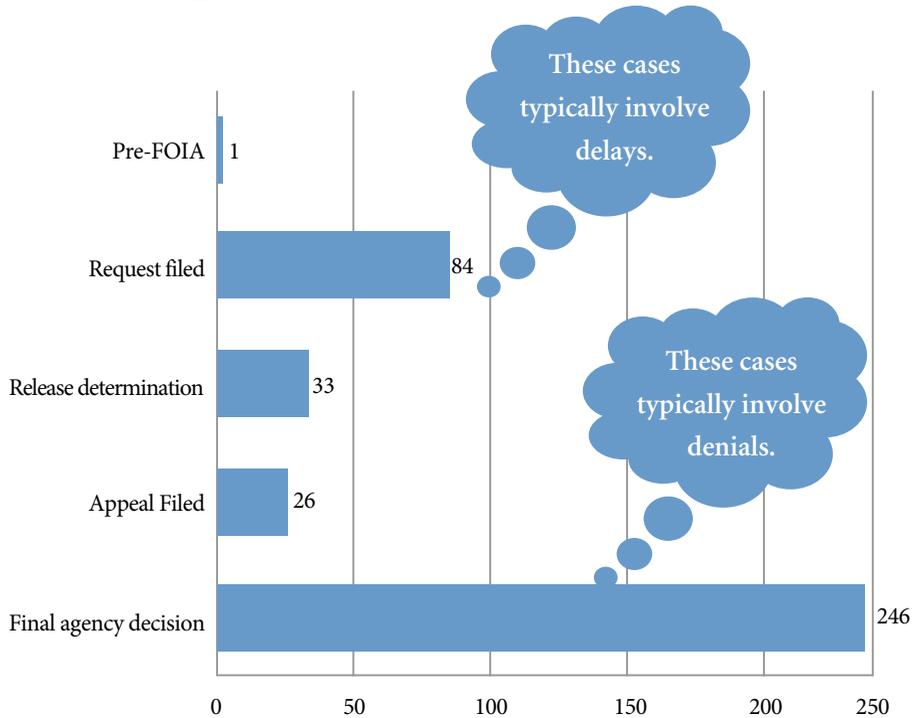
OGIS's assessment reports are not designed to provide grades or rankings or include a comprehensive tally of every aspect of an agency's FOIA program; rather, the reports are intended to provide thoughtful and practical analysis in a readable and useful format. The reports will be shared with agency FOIA professionals and the Chief FOIA Officer as well as the head of the agency.

By broadening the scope of OGIS's review program to include agency assessments, OGIS hopes to touch as many agency FOIA programs as possible. FOIA

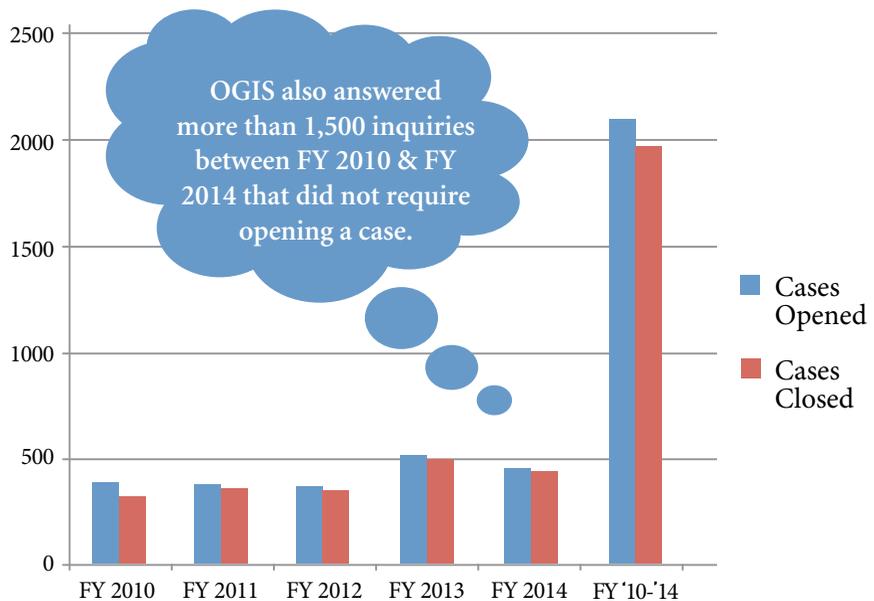
OGIS FY 2014 closed cases by exemption



When in the FOIA administrative process requesters come to OGIS (Cases closed in FY 2014)



OGIS caseload in its first five years



applies to all 15 Cabinet-level departments and 85 agencies within the Executive branch; as such, OGIS's jurisdiction extends to those departments and agencies.

The number of agencies OGIS will be able to assess each fiscal year will depend on the Office's assessment experiences in Fiscal Year 2015 and the number of OGIS staff dedicated to the review program.

Because FOIA case files generally include records protected by the Privacy Act, agencies must notify the public that OGIS can access these files before they share them with OGIS. Agencies do this by publishing a Privacy Act Systems of Records Notice (SORN) in the Federal Register. By the end of FY 2014, seven of the 15 Cabinet-level departments and six agencies had such SORNs in place regarding OGIS. The Office continues to encourage agencies to publish such a routine-use procedure using model language created by OGIS and the Department of Justice. A [2012 OGIS recommendation](#) asked the Office of Management and Budget (OMB) to consider providing such permission for all executive branch agencies by publishing a government-wide SORN.



OGIS's agency assessment program includes reviewing agency FOIA request files. (NARA Identifier 6200848)



The [Second U.S. Open Government National Action Plan](#), released by the White House in December 2013, commits to strengthening and modernizing FOIA. One step in the five-part plan called for establishing a [FOIA Modernization Advisory Committee](#) “comprised of government and non-governmental members of the FOIA community, to foster dialogue between the Administration and the requester community, solicit public comments, and develop consensus recommendations for improving FOIA administration and proactive disclosures.”

NARA is the home for this new Federal Advisory Committee, which OGIS administers. OGIS worked with the [General Services Administration](#) (the lead agency for the Federal Advisory Committee Act) to quickly get the committee up and running.

Archivist of the United States David S. Ferriero appointed the [20 members](#) of the FOIA Advisory Committee to two-year terms in May 2014. Ten government members and 10 nongovernment members who have considerable FOIA expertise were selected to achieve a balanced representation. Until her retirement in November 2014, OGIS Director Miriam Nisbet chaired the Committee, which will meet up to four times a year and may recommend legislative action, policy changes, or executive action, among other matters.

The committee set three top priorities at its inaugural meeting in June 2014:

- Expanding oversight of the FOIA process
- Increasing proactive disclosure
- Reforming FOIA fees

Committee members paired up—one government member and one nongovernment member—to lead subcommittees to work on each of the three subjects.

A brainstorming exercise at the Committee’s inaugural meeting showed that a majority of the committee members think that FOIA would benefit from

more oversight and accountability, whether through existing entities such as OGIS, the [Department of Justice's Office of Information Policy](#), or through an entity outside the executive branch. The committee agreed to look at what oversight now exists; identify gaps in oversight as well as best practices in state, Federal, and international oversight of freedom of information programs; and analyze how compliance audits might contribute to robust oversight.

The Committee also set proactive disclosure as a priority and agreed to look at existing requirements regarding proactive disclosure, what the barriers are to proactive disclosure, and which agencies have excellent proactive disclosure practices. The committee discussed having requesters help set priorities for proactive disclosures.

The Committee also set fees and fee waivers as a priority and discussed how and whether to reform FOIA fees; whether to revise or eliminate fees for non-commercial or all requesters; and how to reduce “fee animosity” between requesters and agencies.

The Committee's work on these three issues continues.



The FOIA Advisory Committee held its inaugural meeting in June 2014. (NARA Identifier 6011299)



As OGIS expanded its review program—a key ombuds activity—OGIS continued providing mediation services. OGIS received 880 requests for assistance in 2014; 420 of those were relatively simple inquiries in which OGIS assisted through a phone call or email. OGIS closed 425 of the more complicated inquiries in 2014. These numbers represent requests for assistance from requesters of all backgrounds related to requests to 34 agencies, including all 15 Cabinet-level departments and agencies.

OGIS's role in resolving disputes gives it a broad perspective on issues occurring across the Federal FOIA landscape. One recurrent issue OGIS identified in 2014 was a continued reluctance on the part of some agencies to provide estimated dates of completion for delayed requests as required by FOIA, 5 U.S.C. § 552(a)(7)(B). OGIS will track this issue more carefully in 2015, and will examine this practice in the context of the review program.

As with previous years, the majority of the requests for OGIS's assistance in 2014 related to agencies' withholding of requested records. Many FOIA exemptions do not allow agencies discretion to release information; in those cases, OGIS plays a key role in helping the requester better understand why the material was withheld. Fostering understanding in this way is an essential ombuds service.



Mediation allows participants to leave behind storms and enjoy better weather.
(NARA Identifier 6011262)



FOIA directs that OGIS recommend to Congress and the President actions to improve FOIA administration, 5 U.S.C. § 552(h)(2)(C). In its first five years, OGIS recommended 11 actions aimed at improving the FOIA process—5 in 2012, 4 in 2013, and 2 in 2014. Seven of the recommendations are specific to actions that OGIS believes it should take (in certain cases in conjunction with agency partners and other stakeholders), while 2 of the recommendations focus on actions to be taken by other Federal agencies. The remaining 2 recommend White House action.

Specifically, OGIS recommended the following actions that it had either taken or was planning to take in its role of improving the FOIA process government-wide:

- **Work to encourage other departments and agencies to partner with OGIS to expand dispute resolution training for their FOIA professionals so that they can assist their FOIA colleagues in preventing and resolving disputes (2012).** OGIS began providing training in dispute resolution skills in 2010, and in the following year began offering the training tailored toward specific agencies. Since its first year, OGIS has trained more than 500 FOIA professionals in dispute resolution skills. Demand for OGIS training sessions is high, and OGIS regularly receives positive feedback from attendees on the usefulness of the training.
- **Work with other agencies to consider how a government-wide FOIA web portal could improve public access to government information and to save taxpayers' money by sharing agency technology (2012).** OGIS encouraged agency participation in [FOIAOnline](#), the Federal Government's first multi-agency FOIA portal. As a founding partner in FOIAOnline, OGIS continues to support the portal's improvement of services and expansion of partners.
- **Facilitate the coordination of interagency communication regarding multiagency FOIA requests, with OGIS serving as the central point-of-**



In its first five years, OGIS proposed 11 recommendations for improving the FOIA process. (NARA Identifier 6010440)

contact for agencies in sharing information, and for relaying information to requesters as appropriate (2012). OGIS continues to work on such cases and to be available to agencies who are working on multiagency FOIA requests.

- **Develop, with the [Chief Information Officers Council](#), methods for agencies regarding requesters seeking their own records under the Privacy Act to improve how requesters navigate agency processes to obtain needed assistance (2012).** OGIS will continue to work on this recommendation in FY 2015.
- **Work with the [Office of Management and Budget \(OMB\)](#) to create a government-wide Privacy Act routine-use procedure to streamline the way in which agencies share with OGIS information about FOIA requests that are covered by the Privacy Act (2012).** OGIS continues to believe this is a good idea and notes that at the end of FY 2014, 7 of the 15 Cabinet-level departments and six agencies have such procedures (known as Privacy Act Systems of Records Notices) in place regarding OGIS.
- **Work with stakeholders from both inside and outside government to review the issues surrounding FOIA fees and fee waivers, which remain a persistent point of contention administratively and in litigation (2013).** OGIS is pleased that the FOIA Advisory Committee is looking into this issue and looks forward to their results and recommendations.
- **Work with agencies to streamline the process of requesting immigration-related records because of the increased number of requests related to these records (2013).** OGIS worked with U.S. Citizenship and Immigration Services (USCIS) to convene a stakeholder meeting that included immigration lawyers and FOIA requesters as well as representatives of other agencies, including the Department of Health and Human Services, Homeland Security, and State. The August 2014 meeting, moderated by OGIS Director Miriam Nisbet, outlined USCIS's handling of 600 requests a day and offered tips to both requesters and agencies. Through its mediation services, OGIS continues to work with USCIS and other agencies processing immigration records as well as with requesters and immigration lawyers.

OGIS also recommended that Federal agencies take the following actions:

- **Encourage and support the use of dispute resolution in the agency FOIA**

processes to prevent and resolve disputes administratively and avoid litigation (2013). OGIS is pleased that agencies are continuing to learn about and embrace dispute resolution as a path to avoid lawsuits.

- **Remind all staff of the importance of FOIA and recognize FOIA as a priority and everyone's responsibility by, among other actions, providing day-one training to all new employees as part of traditional agency orientation (2013).** OGIS is pleased that employees at the Departments of Energy and Transportation, as well as our parent agency, the National Archives and Records Administration, have received reminders from their agency leaders that FOIA is everyone's responsibility.

OGIS recommended that the White House take the following two actions:

- **Issue a Memorandum to Agency General Counsels and Chief FOIA Officers that focuses on exemplary customer service for a better FOIA process with particular attention to the importance of embedding Alternative Dispute Resolution into the FOIA process and supporting FOIA Public Liaisons in their statutory role of assisting in resolving disputes between FOIA requesters and Federal agencies, 5 U.S.C. §§ 552(a)(6)(B)(ii) and 552(l) (2014).** OGIS continues to work with the White House on this recommendation.
- **Work with OGIS's parent agency, the National Archives and Records Administration, the Office of Management and Budget, and the Department of Justice on a program to ensure that FOIA requirements are incorporated into the information technology procurement process for efficient and effective searches for records in response to FOIA requests for the information contained in those records, and for proactive disclosure of the information or data (2014).** This is an ongoing recommendation.



A central tenet of mediation is that the future is more important than the past. While OGIS is proud of the work it accomplished in its first five years, OGIS is excited about the future, particularly growing its nascent review program. OGIS looks forward to creating an environment in which its mediation and review teams work together in a neutral manner to improve the FOIA process for all—agency and requester.

OGIS thanks the 113th Congress for its support of the FOIA Ombudsman's office:

[Senate Judiciary Committee](#) Senator Patrick Leahy and Ranking Member Senator Chuck Grassley, and their personal and committee staffs; Representative Darrell Issa, chairman of the [House Committee on Oversight and Government Reform](#); Ranking Member Representative Elijah Cummings and Representative John Mica, chairman of that committee's [Subcommittee on Government Operations](#), and their personal and committee staffs.

We extend a special thanks to our colleagues at the [National Archives](#), including Archivist of the United States David S. Ferriero, Executive for Agency Services Jay Trainer, and National Archives General Counsel Gary M. Stern, for their support of OGIS's work.

We also thank John Powers and Mark Riddle of the [National Archives' Information Security Oversight Office](#), whose guidance on agency assessments was invaluable, and Stephanie Foust in the Archives' Office of the Chief Operating Officer, who helped OGIS create its survey of agency FOIA professionals as part of the agency assessment program.



OGIS sends heartfelt thanks to folks inside and outside the Government. (NARA Identifier 7260795)

We owe much gratitude to Mr. Stern, the Archives' Chief FOIA Officer; Joseph Scanlon, the Archives' FOIA and Privacy Act Officer; and Martha Murphy, Chief of the Archives' Special Access and FOIA Unit, who agreed that their FOIA programs could be the subjects of OGIS's first agency assessment.

We thank Jim Clemmens of the U.S. Department of Education, who spent nearly six months detailed to OGIS helping the Office get its agency assessment program up and running.

Finally, we thank Miriam Nisbet, whose leadership in OGIS's first five years established OGIS as the Federal FOIA Ombudsman and laid the foundation for a bright future.



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