

# REPORT TO THE ACTING ARCHIVIST OF THE UNITED STATES

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**Freedom of Information Act Federal Advisory Committee**



NATIONAL  
ARCHIVES

**2024-2026 Committee Term**

**Final Report and Recommendations**

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**Alina M. Semo**  
**Chair**

**July XX, 2026**

**NATIONAL ARCHIVES AND RECORDS ADMINISTRATION  
FREEDOM OF INFORMATION ACT (FOIA) ADVISORY COMMITTEE  
FINAL REPORT AND RECOMMENDATIONS**

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## EXECUTIVE SUMMARY

The National Archives and Records Administration (NARA) chartered the Freedom of Information Act (FOIA) Advisory Committee (Committee) to foster dialogue between the Administration and the requester community, solicit public comments, and develop recommendations for improving FOIA administration and proactive disclosures. Committee members represent a wide variety of stakeholders in the FOIA community, inside and outside of government, and the Committee serves as a deliberative body to advise the Archivist of the United States on improvements to FOIA administration.

During the Committee's sixth two-year term (2024–2026), members focused their efforts on identifying ways to improve FOIA fulfillment from the vantage point of agency FOIA professionals, mindful of its predecessor Committee's caution to avoid piling additional expectations on overworked FOIA officers. Accordingly, the Committee undertook an extensive research and information-gathering effort that included surveys, focus groups, listening sessions, and consultation with FOIA professionals from the federal, state, and international levels and that helped identify two priority areas: (1) Furnishing agency FOIA offices with the staffing and technology they need to keep pace with an ever-growing volume of requests, and (2) modernizing the FOIA statute to make fulfillment and dispute resolution less burdensome. This report is a culmination of extensive groundwork from three subcommittees, [Implementation](#), [Volume and Frequency](#), and [Statutory Reform](#). Each subcommittee has published a detailed account laying out the rationale and thought process behind each recommendation. Their reports are incorporated by reference as part of this high-level summary, and should be read along with it, to provide a complete understanding. As a baton-pass to future iterations of the Committee, this term's final report lays the groundwork for addressing potential high-impact reforms, such as comprehensive exemption reform, that would benefit from greater deliberation and consensus-building.

The Committee conducted its work during a significant period of disruption across the federal FOIA workforce, including hiring freezes, staffing reductions and eliminations, government

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shutdowns, and increasing FOIA backlogs. This reinforced the need to focus on practical, sustainable reforms that can improve FOIA administration despite constrained resources. The Committee concluded that many of FOIA’s most persistent challenges cannot be solved through administrative action alone, requiring both operational improvements and targeted statutory reforms to modernize FOIA for the digital era. Accordingly, nearly two-thirds of its recommendations are directed to Congress, reflecting the Committee’s view that meaningful modernization of FOIA will require legislative as well as operational reforms.

The Committee offers 11 recommendations, presented in three categories: (1) recommendations directed to Congress, (2) recommendations directed to agencies, and (3) those directed to the Chief FOIA Officers (CFO) Council, the Office of Government Information Services (OGIS) at the National Archives and Records Administration, and/or the U.S. Department of Justice’s Office of Information Policy (OIP).

The Committee understands that the Archivist has the authority only to ensure implementation of those recommendations directed at NARA. However, the Director of OGIS commits to working with the Acting Archivist of the United States to convey the Committee’s recommendations to the named components of government to which they are directed, including Congress, OIP, OGIS, federal agencies and the CFO Council.

## **BACKGROUND**

**Authority:** The National Archives and Records Administration (NARA) established the Freedom of Information Act (FOIA) Advisory Committee (Committee) to foster dialogue between the Administration and the requester community, solicit public comments, and develop recommendations for improving FOIA administration and proactive disclosures. The Committee operates under the directive in FOIA, 5 U.S.C. § 552(h)(2)(C), that OGIS “identify procedures and methods for improving compliance” with FOIA. The Committee is governed by the provisions of the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. § 10. The Archivist of the United States renewed the Committee’s Charter in April 2024.

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**Objectives and Scope of Activities:** As described in the charter, the FOIA Advisory Committee “fosters dialogue between the Federal Government and the requester community, solicits public comments, and develops recommendations for improving FOIA administration and proactive disclosures.” The Committee advises on improvements to the administration of FOIA by studying the federal FOIA landscape and making recommendations to the Archivist of the United States. Committee members represent a wide variety of stakeholders in the FOIA community inside and outside of government and have expertise with the administration of FOIA across the Executive branch. The Committee may recommend legislative action, policy changes, or executive action, among other matters.

## RECOMMENDATIONS

The Committee’s 11 total recommendations fall into three categories and are numbered according to the order in which they were approved during the Committee’s two-year term. The three categories are the audiences to which the recommendations are directed.

### *Recommendations directed at Congress:*

#### **Recommendation 2026-01:**

Congress should make the FOIA Advisory Committee a non-discretionary federal advisory committee.

#### **Recommendation 2026-02:**

FOIA’s affirmative disclosure provisions should mandate the ongoing publication of agency FOIA logs on at least a quarterly basis, unless the agency receives fewer than 100 requests per year in which case it could publish them semiannually. The logs should be posted in machine-readable format and transmitted to the Department of Justice for additional posting on foia.gov. Congress should include an appropriate effective date for this requirement that allows agencies reasonable time for implementation including interim milestones while not unduly delaying compliance.

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**Recommendation 2026-03:**

In its annual appropriation language to federal agencies, Congress should require federal agencies to fund their FOIA function at a level sufficient to enable them to fulfill their FOIA requests timely. In determining appropriate funding direction it would provide, Congress should consider an agency's average workforce size, including any contract staff; changes in the volume and complexity of its requests over the past five years; its average backlog over the past five years; and its operational structure, among other influencing factors.

**Recommendation 2026-04:**

Congress should create new, FOIA-like disclosure laws to ensure public access to records controlled by legislative and judicial branch agencies.

**Recommendation 2026-09:**

Congress should create a new "FOIA Court" with specialized jurisdiction over FOIA claims.

**Recommendation 2026-10:**

Congress should amend FOIA's judicial-review provision: 1) To reaffirm the statute's *de novo* standard; and 2) To specify the remedial authority of the courts, including the power to order an agency to comply with its affirmative-disclosure obligations, provided that a requester has exhausted administrative remedies prior to filing suit.

**Recommendation 2026-11:**

Congress should allocate funding to commission a feasibility study to examine the costs and benefits of improving the FOIA support infrastructure to better serve taxpayers, records requesters, and public agencies.

***Recommendations directed at agencies:***

**Recommendation 2026-05:**

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Federal agencies should align standard staffing levels and technological resources to meet the increasing levels of FOIA requests by analyzing existing backlogs, the volume and complexity of requests, and the workload assigned to employees. Specifically, agencies should consider the total work that includes requests and backlog and the capacity for employees to respond to these requests.

*Recommendations directed at the Chief FOIA Officers Council, OGIS and/or OIP:*

**Recommendation 2026-06:**

To increase collaboration and connection among federal agency FOIA professionals, the Chief FOIA Officers Council's Committee on Cross-Agency Collaboration and Innovation (COCACI) Resources Working Group, assisted by the Office of Government Information Services (OGIS) and the Office of Information Policy (OIP), as appropriate, should establish a process for creating and maintaining small, self-governing cohorts of federal FOIA professionals interested in collaboration, support, and sharing of best practices.

**Recommendation 2026-07:**

In an effort to increase the awareness and adoption of FOIA Advisory Committee recommendations, the Department of Justice's Office of Information Policy should require status reporting from agencies on implementation of recommendations, either through questions in annual Chief FOIA Officer reports or through another appropriate publicly available reporting mechanism.

**Recommendation 2026-08:**

To make recommendations more useful to agency FOIA professionals, the Office of Government Information Services (OGIS) should create a resource for agency use presenting FOIA Advisory Committee recommendations in an easy-to-access manner, enabling FOIA professionals to quickly identify actionable improvements to their FOIA programs.

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## SUBCOMMITTEE MISSIONS

### Statutory Reform

The Subcommittee defined its mission as “developing concrete recommendations for how Congress can amend the FOIA to improve the requesting experience, address agency processing challenges, and better achieve the goal of open and transparent government in a digital world.”

### Implementation

The Subcommittee pursued a mission “to increase the adoption and integration of past FOIA Advisory Committee recommendations” and to “focus on recommendations with both the greatest immediate executive branch-wide impact, or impact targeted to specific agencies, considering their practical achievability as well as value to the requester community.”

### Volume and Frequency

The Subcommittee defined its mission “to identify strategies and best practices to help agencies more efficiently manage the volume and frequency of FOIA requests. This includes exploring technological solutions, procedural improvements, regulatory/statutory changes, and resource allocation strategies to streamline FOIA processes and reduce backlogs.”

## SUBCOMMITTEE METHODOLOGY

Each subcommittee gathered information to meet its individual mission through a variety of ways, such as consulting previous terms’ reports, speaking with government officials, or through research, including focus groups and surveys.

While collecting information and considering potential recommendations to improve the FOIA process, this FOIA Advisory Committee term faced unique circumstances. The term began in September 2024, just before the presidential election. Recognizing the potential changes coming with a new administration, the FOIA Advisory Committee worked to first evaluate the government transparency landscape before embarking on recommendations, especially because half of the Committee seats are held by federal FOIA employees.



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When the new administration took office in January 2025, it was immediately clear that there would be unprecedented adjustments to the federal workforce. On January 20, 2025, President Trump enacted a government-wide hiring freeze. In February, the administration offered employees a deferred resignation program through which employees could resign from federal service while receiving pay and benefits during the deferred period. Three FOIA Advisory Committee members accepted this option and left the Committee as a result. The OIP Director, a committee member by virtue of the position as stated in the Committee charter and bylaws, also left government service. As of June 2025, four of the 10 government seats on the Committee were vacant. In February 2026, the Senior Advisor to the Archivist of the United States appointed the new OIP Director to the Committee, giving OIP representation on the Committee for the first time in 11 months. The new OIP Director departed in early July before the end of this Committee's term to attend Harvard Kennedy School. Throughout the spring and summer of 2025, there were extensive agency workforce reductions through layoffs, voluntary resignations, reorganizations, and position eliminations.<sup>1</sup> The uncertainty not only affected Committee members personally but also made data collection difficult. Members were not sure what the permanent effects would be on FOIA processing, and they did not want to press federal workers into sharing information during such a disruptive period. Through the end of the Committee's term, FOIA professionals were adjusting to reduced workforces, higher workloads, eliminated or reduced telework, agency reorganizations, and ongoing hiring constraints.

Additionally, during this same time, the federal workforce was managing the effects of government shutdowns. On October 1, 2025, federal funding expired and the government shut down until November 12, 2025. Over 670,000 federal workers were furloughed, adding to existing strains.<sup>2</sup> A continuing resolution lapsed January 31, 2026, and a partial government shutdown affected some agencies.

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<sup>1</sup> OpenFeds, *Cuts*, <https://www.openfeds.org/cuts> (last visited June 22, 2026).

<sup>2</sup> See, e.g., Congressional Budget Office, Letter to Hon. Joni Ernst, September 30, 2025, [Potential Effects of a Federal Government Shutdown](#) (CBO estimates that under a lapse in discretionary funding for fiscal year 2026 about 750,000 employees could be furloughed each day); Congressional Research Service, [The 2025 \(FY2026\) Government Shutdown: Economic Effects](#), Jan. 29, 2026 ("estimates suggest that around 670,000 or more federal employees were furloughed at some point during the shutdown.").

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The deep cuts in the federal workforce meant there were fewer employees to manage the increasing number of FOIA requests. The Office of Government Information Services (OGIS) studied 15 Cabinet-level departments and 10 independent agencies and reported that their FOIA staffing decreased 16% while backlogs increased by 27%, according to the Freedom of Information Act Ombudsman 2026 Report for Fiscal Year 2025.<sup>3</sup> The Department of Education lost 54% of its FOIA staff, the highest level in the report. The Department of Treasury lost 39% of its FOIA team, and there was a 36% loss in the FOIA team at the Department of Veterans Affairs. Data from all 116 departments and agencies published on [FOIA.gov](https://www.foia.gov) and not fully available at the time of OGIS's report, also indicated that backlogs increased 27% across agencies.

However, each subcommittee continued to gather information about the best practices to improve FOIA efficiency in light of the changes in the federal workforce. The Statutory Reform Subcommittee reviewed proposed statutory changes from other government agencies, including the Government Accountability Office (GAO) and the Administrative Conference of the United States, as well as civil society groups. The Subcommittee also reviewed disclosure laws in other jurisdictions and previous FOIA-related bills before Congress. It also drew from Subcommittee members' expertise, and that of current and former employees in the executive and judicial branches.

Two subcommittees, the Implementation Subcommittee and the Volume and Frequency Subcommittee, had planned to launch a series of focus groups and an online survey in the fall of 2025, but due to the workforce reductions and government shutdowns, they delayed the efforts until early 2026.

The Implementation Subcommittee carried out a barrier analysis project that involved a series of focus groups with federal FOIA professionals in the early spring of 2026. In all, there were 12

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<sup>3</sup> Office of Government Information Services, National Archives and Records Administration, *The Freedom of Information Act Ombudsman: Annual Report for Fiscal Year 2025* (last visited June 22, 2026), <https://www.archives.gov/ogis/about-ogis/annual-reports/ogis-2026-annual-report-for-fy-2025>.

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focus groups of 52 federal FOIA professionals who shared their thoughts and experiences about the barriers to affecting FOIA efficiency changes in federal agencies. Subcommittee members also reviewed Chief FOIA Officer reports from 2025 and 2026 to evaluate information about the implementation of previous recommendations, and they categorized prior recommendations in an effort to improve agencies' adoptions of new ideas.

The Volume and Frequency Subcommittee fielded an online survey from January to March 2026, and 193 eligible FOIA professionals responded. The questions, primarily open-ended qualitative questions, explored the effects that unduly burdensome requests for information have on the FOIA process. The survey also evaluated perceptions of FOIA requests generated by artificial intelligence.

An ad hoc working group under the Implementation Subcommittee umbrella also gathered to discuss the potential for an oral history project to collect and preserve perceptions and experiences of FOIA professionals who had left federal service since January 2025. Although the members did not proceed with the research, they built the foundation for such a project in the future. The ad hoc working group determined that NARA was the best suited depository for the oral histories and developed a research methodology and interview questions that it hopes will be taken up by the next Committee term (*see* Appendix B).

Throughout the term, members in all three subcommittees spoke with legal professionals, advocates, and open government professionals about their experiences in responding to requests and how potential recommendations might work in practice, ensuring that the recommendations would be realistic, viable, and workable. Members also conducted listening sessions at the Sunshine Fest, a national conference focused on government transparency, in Washington, D.C., in March 2026. During the sessions, members presented proposed recommendations and listened to conversations and feedback from experts, advocates, and officials.

More specific information about the trajectory of each subcommittee's work, their determinations and justifications, and their recommendations can be found in each

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subcommittee’s final report.<sup>4</sup> This report will also detail each of the recommendations that passed, with an explanation for each one.

## RECOMMENDATIONS

### *Introduction*

The Committee convened its term at a challenging time for FOIA. The “perfect storm” of a record-high number of FOIA requests — 1.7 million received government-wide in FY 2025 alone — and greatly diminished staffing resources to respond to the surging demand has raised questions about whether the FOIA processing and enforcement regime is fit for purpose in the modern era.<sup>5</sup> At such a time, the Committee felt that it was essential to focus on high-value recommendations with the potential for systemic change that could move the needle in the direction of more efficient and more complete fulfillment of requests. The consensus quickly coalesced around two themes.

First, the federal FOIA professionals who participated in the focus groups and survey made themselves clear throughout the information-gathering process: FOIA professionals are drowning. They need better technology and more staffing support to keep pace with incoming requests, let alone to make progress winnowing a backlog that exceeds 267,000 overdue requests.<sup>6</sup> Accordingly, three of the Committee’s 11 recommendations are targeted directly at what FOIA processors agree is their highest-priority need. The Committee urges Congress, and agencies themselves, to take stock of what assets are already available to maximize efficient FOIA handling, and to commit the necessary additional resources to enable agencies to meet their statutory mandate to process requests promptly. Adequately staffing FOIA fulfillment is not just good government; it is good for the taxpayer, because agencies’ persistent inability to

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<sup>4</sup> See OGIS’s FOIA Advisory Committee 2024-2026 term June 11, 2026, Meeting Materials, <https://www.archives.gov/ogis/foia-advisory-committee/2024-2026-term/meetings/foiaac-06-11-2026>, and July 16, 2026 Meeting Materials, <https://www.archives.gov/ogis/foia-advisory-committee/2024-2026-term/meetings/foiaac-07-16-2026>.

<sup>5</sup> Erin C. Carroll, *Beyond Democracy: How a Free Press Supports the Rule of Law*, 47 Cardozo L. Rev. 1, 46-47 (2025) (“Both Congress and the Executive Branch have let information access under the Freedom of Information Act fall apart such that the statute rarely works as it should.”).

<sup>6</sup> Dep’t of Justice, Office of Info. Policy, *2024 Annual FOIA Report Summary* at 11 (Apr. 28, 2025).

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respond within the statutory fulfillment deadline is the leading cause of litigation against the government.<sup>7</sup>

This leads to the Committee's second area of focus. The requester community is collectively fatigued by a FOIA system that, too often, delivers results slowly and incompletely.<sup>8</sup> This is not a new problem. It has spanned administrations regardless of party or ideology.<sup>9</sup> Even the best-motivated FOIA professionals can only do so much, operating within the constraints of a showing-its-age statute that Congress has not comprehensively addressed since 2016.

In no small part, agencies' inability to fulfill requests promptly is attributable to a runaway exemption system that fails to give effect to Congress' unmistakable directive that FOIA's default setting is disclosure, not concealment.<sup>10</sup> Dissatisfaction with blank-page agency responses is exacerbated by a shortage of effective remedies other than suing, which imposes needless expense on requesters and taxpayers alike. Accordingly, seven of the Committee's 11 recommendations — an uncommonly high percentage — are directed at Congress. While prior terms of the Committee focused largely on what NARA, DOJ, or agencies themselves could do to facilitate better FOIA compliance, this term examined the underlying factors contributing to persistent challenges in FOIA administration, including whether the current statutory framework

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<sup>7</sup> See Dep't of Justice, *Summary of Agency Chief FOIA Officer Reports for 2024 and Assessment of Agency Progress in FOIA Administration with OIP Guidance for Further Improvement* at 15, <https://www.justice.gov/d9/2024-10/2024%20CFO%20Summary%20and%20Assessment.pdf> (explaining that "[t]he most common cause of litigation reported by agencies was constructive exhaustion when the agency was not able to meet the twenty- or third-day deadline for responding to the request.").

<sup>8</sup> See Margaret B. Kwoka, *Transparency Guardians*, 57 Geo. Wash. Int'l L. Rev. 409, 412 (2025) ("[A] chronic, unabated, intractable failure of compliance has severely undermined FOIA's promise. Agency delay and over-withholding are endemic to the FOIA system, and the promise of judicial review of agency FOIA violations has proven woefully inadequate either as a deterrent or a remedy."); Spencer Willems, *Tape Don't Lie*, 67 Drake L. Rev. 797, 806 (2019) ("As it stands now, the federal FOIA is useless. Despite multiple attempts by Congress to strengthen both the substantive and the procedural rights of citizens to public documents through amendment, after amendment, after amendment, the law is arguably weaker now than it was when it was first given teeth in 1974.").

<sup>9</sup> See House Committee on Oversight and Government Reform, *FOIA is Broken 2*, 22-37 (Jan. 16, 2016) (<https://oversight.house.gov/wp-content/uploads/2016/01/FINAL-FOIA-Report-January-2016.pdf>); ProPublica, *Delayed, Denied, Dismissed: Failures on the FOIA Front* (July 21, 2016) (<https://www.propublica.org/article/delayed-denied-dismissed-failures-on-the-foia-front>).

<sup>10</sup> See Christina Koningisor, *Transparency Deserts*, 114 Nw. U. L. Rev. 1461, 1472-73 (2020) (observing that "members of the media argue that enumerated exemptions have been construed so broadly that they swallow vast categories of records and that excessive time delays make the statute nearly unusable") (footnotes omitted).

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fully achieves FOIA's objective of promoting transparency through a presumption of disclosure. Collectively, these recommendations seek to (1) avoid prolonged requester/agency disputes, such as by promoting greater affirmative disclosure of high-value records, and (2) resolve disputes more quickly and affordably for all participants, such as by creating a dedicated expert “FOIA court.”

Given this Committee term’s focus on promoting implementation of past recommendations, it bears emphasizing that these 11 new recommendations should be understood as part of a seamless whole, augmenting the work of the Committee’s five prior terms. The omission of any priority from the suite of new recommendations does not represent a pivot away from previously identified concerns and opportunities. For instance, it remains vitally important that agencies continue working to make their websites and online reading rooms more user-friendly, as the Committee has urged in five previous recommendations,<sup>11</sup> and that agencies identify ways to shift workload out of FOIA by making “first person” documents readily accessible without the need to burden FOIA offices, as the Committee has opined in six prior recommendations.<sup>12</sup>

Much more remains to be done. Accordingly, the Committee’s report concludes with a roadmap toward comprehensive statutory reform, in hopes of providing a “head start” for subsequent Committee terms. These recommendations focus largely on a persistent pain point identified by the requester community: Overbroad exemptions that judges have broadened even further through the development of a secrecy-deferential body of “FOIA common law.”<sup>13</sup> The Committee hopes that, by identifying recurring points of dispute that are amenable to statutory redress, this report will point the way for future terms of the FOIA Advisory Committee to assist Congress, NARA, DOJ and other FOIA stakeholders in developing the 21st-century FOIA statute that Americans expect and deserve.

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<sup>11</sup> Recommendation Nos. 2020-02, 2020-03, 2020-12, 2022-07, and 2022-10.

<sup>12</sup> Recommendation Nos. 2020-14, 2020-15, 2022-11, 2022-12, 2022-13, and 2022-14.

<sup>13</sup> John C. Brinkerhoff Jr., *FOIA’s Common Law*, 36 Yale J. on Reg. 575 (2019).

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*Recommendations*

***Recommendation 2026-01:* Congress should make the FOIA Advisory Committee a non-discretionary federal advisory committee.**

***Comment/Explanation:*** The federal Freedom of Information Act Advisory Committee is currently constituted as a “discretionary” committee, established by the Archivist of the United States in 2014 with the charge to develop recommendations for improving FOIA administrative and proactive disclosures governmentwide.

The Committee’s charter has been renewed for successive two-year periods through the present 2024–2026 term and was recently renewed for another two years. The work and focus of the Committee are important enough to warrant Congress’s codification of its existence and function into law. The FOIA, 5 U.S.C. § 552, is the natural home for such a statutory directive. The FOIA Advisory Committee serves a necessary function in fostering dialogue between federal employees and the interested public, especially civil society organizations that regularly use the FOIA. The benefits of bringing key FOIA stakeholders together around the discussion table are obvious and are evidenced by the fact that 35 of the Committee’s 67 recommendations spanning five previous two-year terms have been wholly or partially enacted, with only one recommendation rejected. A discretionary committee is relatively easy to disband, either through non-renewal or revocation of a charter. Solidifying the Committee as a statutory federal advisory committee would recognize the Committee’s indispensable role in identifying problems and developing solutions that make FOIA work better.

***Recommendation 2026-02:* FOIA’S affirmative disclosure provisions should mandate the ongoing publication of agency FOIA logs on at least a quarterly basis, unless the agency receives fewer than 100 requests per year in which case it could publish them semiannually. The logs should be posted in machine-readable format and transmitted to the Department of Justice for additional posting on foia.gov. Congress should include an appropriate effective date for this requirement that allows agencies reasonable time for implementation including interim milestones while not unduly delaying compliance.**

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**Comment/Explanation:** FOIA logs have proven useful to policymakers, journalists, and academics alike. Searching the logs can help a requester make a more precise request or identify records that would be readily available without additional time and expense for retrieval. Agencies maintain logs as part of their responsibilities to track requests and meet statutory deadlines, as well as to report processing statistics to DOJ each year. FOIA logs are among the most regularly requested type of records — indeed, there is even a term-of-art for the practice, “FOIA’ing the FOIAs”<sup>14</sup> — so it comes as no surprise that agencies may need to prepare logs in a publicly digestible format, and most agencies do proactively post some form of the logs already. Building on prior terms’ recommendations,<sup>15</sup> the Committee is putting forth a standardized protocol for what (at a minimum) FOIA logs should contain, so requesters can make meaningful use of them. The Committee recommends the FOIA logs contain, at a minimum, 13 fields generally maintained in agency FOIA tracking systems, including:

- 1) the tracking number of the request,
- 2) the date of the request,
- 3) the name of the requester, unless the requester is a first-person requester seeking access to their own information,
- 4) the organizational affiliation of the requester, if identified in the request,
- 5) the subject matter of the request,
- 6) the status of the request,
- 7) the result of the request (if closed),
- 8) exemptions cited, if any,
- 9) the date on which the request was resolved,
- 10) the fee category assigned to the request,
- 11) whether a fee waiver was requested,

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<sup>14</sup> Nat’l Freedom of Info. Coalition, *FOIA the FOIAs*, <https://www.nfoic.org/foia-foias/> (last visited June 30, 2026).

<sup>15</sup> See 2016-2018 FOIA Advisory Committee Final Report and Recommendations, <https://www.archives.gov/files/final-report-and-recommendations-of-2016-2018-foia-advisory-committee.pdf>. See also Recommendation 2022-10.



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12) if a fee waiver was requested, whether it was granted, and

13) fees charged to the requester, if any.

***Recommendation 2026-03:*** In its annual appropriation language to federal agencies, Congress should require federal agencies to fund their FOIA function at a level sufficient to enable them to fulfill their FOIA requests timely. In determining appropriate funding direction it would provide, Congress should consider an agency’s average workforce size, including any contract staff; changes in the volume and complexity of its requests over the past five years; its average backlog over the past five years; and its operational structure, among other influencing factors.

***Comment/Explanation:*** Fulfillment of FOIA requests has been a habitually understaffed and underfunded function, a problem recognized by courts since the earliest days of the statute. Just two years after the modern 1974 iteration of FOIA was codified, a federal judge opined that excusing the Justice Department from timely compliance with statutory deadlines because of inadequate staffing to process the volume of incoming requests would be “dubious and problematic.”<sup>16</sup> Appreciating that agencies understandably will prioritize discretionary funding and staffing resources toward what they regard as mission-central functions — and that few, if any, regard FOIA processing as mission-central<sup>17</sup> — a new approach is necessary, recognizing that FOIA compliance is a statutory requirement and not a discretionary function.

The Committee’s recommendation addresses this persistent problem by proposing that Congress, in its annual appropriations language, adopt a funding model that directs federal agencies to resource their FOIA operations at a level that enables them to respond to requests as statutorily

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<sup>16</sup> *Open America v. Watergate Special Prosecution Force*, 547 F.2d 605 (D.C. Cir. 1976) (Leventhal, J., concurring). See also Charles J. Richmann III, *Ridding FOIA of Those “Unanticipated Consequences.” Repaving a Necessary Road to Freedom*, 47 Duke L.J. 1213, 1248 (1998) (criticizing 1996 FOIA amendments for failing to focus on “the underlying cause of FOIA’s problems: a lack of adequate funding and staffing for agencies’ FOIA-processing divisions”).

<sup>17</sup> See Eric J. Sinrod, *Freedom of Information Act Response Deadlines: Bridging the Gap Between Legislative Intent and Economic Reality*, 43 AM. U. L. REV. 325, 342 (1994) (stating that compliance with federal FOIA’s statutory requirement of a response within 10 working days “has become the exception rather than the norm” and observing: “FOIA processing delays are caused in part by limited government resources and by an agency perception that FOIA responses are not within an agency’s core mission.”).

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mandated. The formula set forth in the Statutory Reform Subcommittee report starts from the baseline of the size of the agency workforce served by each FOIA office, adjusting for variables that include workload, backlog, and operational structure (*i.e.*, whether FOIA processing is centralized or decentralized). Importantly, it recommends that Congress establish a minimum funding threshold for every agency, so that application of the formula does not produce unintended adverse consequences for smaller agencies. The model accounts for inevitable fluctuations in an organization's size and FOIA workload by annually assessing performance and need.

By making FOIA a required element of agencies' operating budgets, Congress would enable FOIA offices across the federal government to keep pace with an ever-increasing workload. Adequate funding of agencies' FOIA function would be a cost-saver, as it would reduce the necessity to expend limited agency resources on costly litigation due to untimely responses.

***Recommendation 2026-04: Congress should create new, FOIA-like disclosure laws to ensure public access to records controlled by legislative and judicial branch agencies.***

***Comment/Explanation:*** The public's interest in obtaining access to information about government functions does not depend on where those functions are housed. But under current law, it makes a decisive difference that the United States Park Police work for the executive branch, while the Capitol Police work for the legislative branch; the records of the former are obtainable through FOIA, while the records of the latter are not, even when they work side-by-side doing similar functions.<sup>18</sup> This distinction makes no sense given that administrative agencies perform the same duties regardless of which branch of government they fall under. The Committee has long recommended that Congress addresses the inequity by imposing FOIA-like disclosure duties on administrative agencies outside of the executive branch. The Committee renews this recommendation, emphasizing that — no less than the executive branch — the

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<sup>18</sup> See *U.S. Capitol Police, Public Availability of Records Requests for Information* (Jan. 11, 2024), available at <https://www.uscp.gov/sites/evo-subsites/www.uscp.gov/files/documents/1.11.2024%20%20Requests%20for%20Information%20-%20Public%20Instructions%20Final%201.11.2024.pdf> (last visited July 8, 2026).

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legislative and judicial branches could likewise benefit from enhanced accountability and transparency at a time of declining public trust.

The Committee recommends looking to the Federal Records Act (“FRA”) as a starting point for what a broader — yet provably workable — definition of an “agency record” could look like.

The FRA lays a sturdy foundation on which to build, because it already recognizes some judicial and legislative entities as creating federal records for retention purposes.<sup>19</sup>

Importantly, the Committee’s recommendation would not extend to drafts, notes, and other such judicial work products, but rather to the administrative support functions of the judiciary that are, in large measure, indistinguishable from comparable administrative support functions within the executive branch. And importantly, any statutory right of access would augment — not replace — the recognized constitutionally based entitlement to the records of criminal proceedings,<sup>20</sup> or any right of access to court records codified in court rules and internal operating procedures or recognized by common law.<sup>21</sup> It is important to note that the Committee’s recommendation would not extend to the records of judges or their clerks, or to members of Congress and their staff.

***Recommendation 2026-05: Federal agencies should align standard staffing levels and technological resources to meet the increasing levels of FOIA requests by analyzing existing backlogs, the volume and complexity of requests, and the workload assigned to employees. Specifically, agencies should consider the total work that includes requests and backlog and the capacity for employees to respond to these requests.***

***Comment/Explanation:*** This recommendation augments Recommendation 2026-03, which encourages Congress to provide sufficient funding for the FOIA process. This complementary

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<sup>19</sup> See 44 U.S.C. § 2901(14) (stating that the records-management requirements of the FRA apply to each “federal agency,” which is defined as “any executive agency or any establishment in the legislative or judicial branch of the Government (except the Supreme Court, the Senate, the House of Representatives, and the Architect of the Capitol and any activities under the direction of the Architect of the Capitol”).

<sup>20</sup> *United States v. Smith*, 776 F.2d 1104, 1111–12 (3d Cir. 1985); *Associated Press, Inc. v. United States District Court*, 705 F.2d 1143, 1145 (9th Cir. 1983).

<sup>21</sup> *Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 597 (1978).

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recommendation is focused on assessing agency staffing and technological resources to ensure that resources — both existing and new — are optimally well-applied.

Survey recipients indicated that, given the growing number and complexity of requests, they need more staffing, better technology, and more time to complete their work. Participants stated that appropriate resources would give FOIA professionals the bandwidth to respond to challenging requests, including by taking the time to engage with requesters to clarify or simplify their requests. The Committee encourages agencies to consider whether existing software meets the needs of its users, and what new technologies may be needed to handle FOIA requests more effectively. The need for this assessment is particularly acute given a reported upsurge in requests generated by AI.

***Recommendation 2026-06: To increase collaboration and connection among federal agency FOIA professionals, the Chief FOIA Officers Council’s Committee on Cross-Agency Collaboration and Innovation’s (COCACI) Resources Working Group, assisted by the Office of Government Information Services (OGIS) and the Office of Information Policy (OIP), as appropriate, should establish a process for creating and maintaining small, self-governing cohorts of federal FOIA professionals interested in collaboration, support, and sharing of best practices.***

***Comment/Explanation:***

During the focus group process, FOIA professionals repeatedly volunteered that they felt a need for ways to connect with colleagues and share best practices. (In fact, some participants organically made plans for future collaboration during focus group sessions.) Although some groups and opportunities, such as the Chief FOIA Officer Council’s Technology Committee and the Committee on Cross-Agency Collaboration and Innovation (COCACI), already exist and serve to connect many FOIA professionals, these groups focus on specific topics. There remains a need for groups that reach across all professional levels and interest areas that have the goal of increasing connection and collaboration.

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While COCACI is well-situated to serve as the central organizing body for this effort, the Committee recommends that COCACI's role be simply as a catalyst and convenor to help bring together small, informal groups where discussion can be free flowing. Creating loosely structured opportunities for idea-sharing can produce many benefits, including allowing FOIA newcomers to benefit from the experiences of more-senior colleagues, as well as spreading awareness and adoption of FOIA Advisory Committee recommendations.

***Recommendation 2026-07: In an effort to increase the awareness and adoption of FOIA Advisory Committee recommendations, the Department of Justice's Office of Information Policy should require status reporting from agencies on implementation of recommendations, either through questions in annual Chief FOIA Officer reports or through another appropriate publicly available reporting mechanism.***

***Comment/Explanation:*** When they are aware of the work of the FOIA Advisory Committee, FOIA professionals have been able to leverage Committee recommendations to make the case for agency decisionmakers to improve FOIA processing. But many focus group participants reported limited familiarity with the Committee's work.

In response to Committee Recommendation 2024-14, the DOJ OIP included in the guidelines for preparing the 2025 Chief FOIA Officer report a question asking agencies to indicate the status of their implementation of Committee recommendations. Although it yielded many helpful responses, the question was omitted from the 2026 report guidelines. The few participants who were aware of past Committee recommendations cited the previous Chief FOIA Officer Reports as a source of their awareness, evidence that inclusion of the question was beneficial. Leveraging an existing public reporting mechanism, such as the annual Chief FOIA Officer report, represents a low-cost, low-effort way to reach all agencies, increasing their awareness and implementation of Committee recommendations.

***Recommendation 2026-08: To make recommendations more useful to agency FOIA professionals, the Office of Government Information Services (OGIS) should create a resource for agency use presenting FOIA Advisory Committee recommendations in an***

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**easy-to-access manner, enabling FOIA professionals to quickly identify actionable improvements to their FOIA programs.**

**Comment/Explanation:** OGIS’s online FOIA Advisory Committee Recommendations Dashboard, which tracks Committee recommendations by year and status, is well-structured to measure the Committee’s effectiveness but not optimally designed for the way agency FOIA professionals are likely to engage with the recommendations. When provided with a smaller list of recommendations specifically culled for applicability to agencies (*see* Appendix A to the Implementation Subcommittee report<sup>22</sup>), participants said they found the targeted list more realistic and manageable.

An agency-focused resource that allows FOIA professionals to easily identify relevant committee recommendations would increase visibility, usability, and agency adoption. Whatever format OGIS chooses should be designed for ease of access and tracking, with a focus on enabling agency professionals to identify and act on recommendations relevant to their agencies. To avoid micro-management, the Committee avoided dictating to OGIS exactly how Committee recommendations should be organized and presented to maximize adoption, but the message from this term is being clearly conveyed: Useful FOIA improvements are going unseen, and new methods are essential to put a decade-and-a-half’s worth of recommendations in front of the right eyes.

**Recommendation 2026-09: Congress should create a new “FOIA Court” with specialized jurisdiction over FOIA claims.**

**Comment/Explanation:** The volume of federal FOIA litigation steadily increases every year. In Fiscal Year 2024, requesters filed 889 FOIA suits, with more than 75% concentrated in the U.S. District Court for the District of Columbia (D.D.C.) — at times leading to frustration as judges responsible for a disproportionate FOIA caseload struggle to manage their dockets.

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<sup>22</sup> See *Implementation Subcommittee Final Report and Recommendations*, June 5, 2026, <https://www.archives.gov/files/ogis/documents/implementation-subcommittee-final-report-06.05.26.pdf> (last visited on July 8, 2026).

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To alleviate the pressure on district courts, as well as to ensure that the judges who hear FOIA claims are bringing interest and expertise to the topic, the Committee recommends that Congress create a new, specialized court that only hears FOIA claims. This specialty court should be staffed by newly appointed judges who are experts in public-access law and related topics, ensuring that cases are given adequate attention to improve the quality of the litigants' experience and consistency in the resulting decisions. Appeals from this specialty court could be directed to the D.C. Circuit, which is already known for its expertise in FOIA law. A new federal-transparency tribunal, housed within the judicial branch, could help improve the timely and expert adjudication of open-government claims, while leaving traditional district courts of general jurisdiction to manage the rest of the civil and criminal dockets.

***Recommendation 2026-10:* Congress should amend FOIA's judicial-review provision: 1) To reaffirm the statute's *de novo* standard; and 2) To specify the remedial authority of the courts, including the power to order an agency to comply with its affirmative-disclosure obligations, provided that a requester has exhausted administrative remedies prior to filing suit.**

***Comment/Explanation:*** Requesters often express frustration that they cannot obtain meaningful judicial review of agency decisions denying access to records. Some courts have also taken different approaches to reviewing agency withholding decisions, particularly in cases involving national security and law enforcement, raising questions about whether FOIA's requirement for *de novo*<sup>23</sup> review is being applied consistently.

Congress could strengthen judicial review through two targeted amendments. First, it should reaffirm that courts must independently review agency withholding decisions, consistent with FOIA's existing *de novo* standard, 5 U.S.C. § 552(a)(4)(B). This would reinforce Congress's intent that courts conduct an independent assessment rather than defer to an agency's conclusions.

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<sup>23</sup> "*De novo*" means the court takes a fresh, independent look at the issue without simply accepting the agency's decision.

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Second, Congress could clarify that courts may order agencies to comply with FOIA’s proactive disclosure requirements under 5 U.S.C. § 552(a)(2), including the requirement to make frequently requested records available in electronic reading rooms. Clarifying this authority would help resolve differing court decisions on the issue and could reduce the need for multiple requesters to file separate lawsuits seeking access to the same records.

As part of this amendment, Congress should establish a process that gives agencies an opportunity, upon being notified of deficiencies in their proactive disclosures, to cure the deficiency before being sued. If the agency declines to do so, the requester should have the opportunity to pursue an administrative appeal before filing suit.

***Recommendation 2026-11:*** Congress should allocate funding to commission a feasibility study to examine the costs and benefits of improving the FOIA support infrastructure to better serve taxpayers, records requesters, and public agencies.

***Comment/Explanation:*** A variety of entities are tasked with functions that facilitate the FOIA process, including OIP, the General Services Administration, GAO, OGIS and the federal courts. This structure leaves FOIA without a single “owner” and — as recognized in a prior FOIA Advisory Committee recommendation (2022-19) — would benefit from greater centralization in a single entity empowered to identify shortcomings in agency FOIA compliance and resolve disputes.

OGIS provides assistance to about 6,000 requesters annually, but with only 10 staff members cannot educate all Americans about their essential information rights. The 2020-2022 Committee term had recommended that OGIS be empowered and appropriately funded to take on additional duties, including the power to review records in camera, make binding decisions, and return OGIS as a direct report to the Archivist of the United States. The Committee continues to support exploration of those recommendations and calls upon Congress to support a study necessary to find new and better avenues for FOIA compliance and dispute resolution.

The Committee’s recommendation does not presuppose an outcome to such a study, which could point in many possible directions: fortified funding and staffing of existing structures; a new,



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independent information office, similar to those in the states of Connecticut and Pennsylvania, as well as more than 80 nations; and a consolidation of responsibilities into an existing entity, such as OGIS, which, since its founding, has successfully handled tens of thousands of requests for assistance. The recommendation also does not dictate where a study should be housed and conducted, or whether the study should be done internally within the federal government or by an expert external research center.

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## PRIORITIES FOR FUTURE COMMITTEE ATTENTION

The foregoing recommendations represent an ambitious agenda for modernizing FOIA compliance and enforcement. Enactment of these recommendations would go a long way toward bringing a 20th-century statute into the modern era. Nevertheless, more can and should be done. In its limited window of time — shortened by the 2025 government shutdown — the Committee made substantial progress toward, but did not complete, a comprehensive framework for rewriting FOIA for the 21st century. This section of the report represents the 2024-2026 Committee’s “baton pass” to Committee terms of the future to continue and complete this essential work.

The foundation for future work has been laid by this Committee’s data-collection efforts. We recommend that the next term of the Committee utilize the data collected to explore and prioritize these and other areas that research participants identified. The 2026–2028 FOIA Advisory Committee should leverage the survey and focus group data to identify priority areas for recommendations, such as easing software procurement processes, strengthening the culture of FOIA support within agencies, evaluating the potential for artificial intelligence to aid in response efficiencies, and modernizing the FOIA statute. It may also be beneficial for the next Committee to undertake a requester-focused data-gathering exercise to complement the efforts made during the 2024–2026 term to capture the voices and concerns of the agency FOIA professional community. Research capturing the experiences and prioritizing the needs of FOIA users would fully lay the groundwork for congressional fortification of the statute, with the following considerations as guideposts.

### 1) Giving Effect to FOIA Professionals’ Priority Concerns

Participants in the 2024–2026 surveys and focus groups underscored the need for more manageable software procurement processes. In the focus groups, participants often veered off question topics to share best practices on how to efficiently procure effective software for FOIA processing. In the survey, participants said that they lacked appropriate and effective software for processing unduly burdensome requests.

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The need for a more supportive FOIA culture within the federal government was a common theme in both projects. In the survey, participants said that the lack of leadership support for their work exacerbated the difficulties in responding to excessively challenging requests, and official support and guidance would solve their frustration. In the focus groups, participants often said that they were unable to enact change or efficiencies in their agencies because their work was not considered mission critical, and therefore less of a priority. The ad hoc oral history working group believed that collecting the oral histories of those who left service since January 2025 would memorialize the experiences and perceptions of FOIA professionals during significant changes to the federal workforce.

Artificial intelligence was considered a potential technology boon for efficiently processing requests, specifically to potentially automate review and manage work product for participants in both projects. In the survey, participants said that it could help decrease the backlog and speed up processing of requests and release of records. Focus group participants said they wished they had artificial intelligence-assisted redaction and analytics to increase efficiency.

Participants in both projects also said that the FOIA statute should be modernized to recognize the changes in the way agencies receive and process requests. Focus group participants said they need well-organized structural systems and processes, but making changes within their agencies is slow. In the surveys, participants said a modernized FOIA statute could provide clarification and guidance for responding to requests, especially burdensome ones or those generated through artificial intelligence. Future terms of the Advisory Committee should build on the knowledge base gathered through the Volume and Frequency Subcommittee's survey research to continue addressing pressing workload-management issues — including the emerging issue of voluminous AI-generated requests — which, as described in the Volume and Frequency Subcommittee's report, may entail an array of remedies including statutory modernization as well as staffing and technology enhancements.

Additionally, in light of the reality that agencies relatively rarely are able to fulfill anything but the most straightforward request within the statutory 20-day deadline, a comprehensive reassessment of FOIA should include a careful consideration as to whether a more realistic

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deadline, informed by decades of experience, would spare all participants — requester and agency alike — from fruitless litigation. Deadlines should be sufficiently rigorous to motivate prompt compliance but should also be realistic in light of practical realities, and future Advisory Committees should examine whether the current fulfillment schedule strikes the correct balance.

2) **Comprehensively Modernizing the FOIA Statute**

(a) **Restoring Balance to Overbroad Exemptions**

The Committee believes Congress should undertake a comprehensive review of the FOIA statute to address persistent and well-documented challenges in the statute’s administration, with the goal of ensuring that FOIA fulfills its promise of maximizing disclosure and minimizing withholding. A central focus of that review should be the operation of FOIA’s exemptions, many of which stakeholders contend have been expanded beyond their originally intended scope. While FOIA jurisprudence nominally calls for exemptions to be interpreted narrowly, erring in close-call situations on the side of disclosure,<sup>24</sup> this is not the prevailing experience of requesters.<sup>25</sup> Congress has periodically recalibrated the balance between access and secrecy over FOIA’s 60-year history, and it is timely to again reassess whether exemptions such as Exemption 4 (confidential business information), Exemption 5 (“deliberative” agency documents) and Exemption 7 (law enforcement investigatory records) have broadened beyond what Congress envisioned and intended. The case for revisiting oft-cited exemptions is set forth in detail in the Statutory Reform Subcommittee report,<sup>26</sup> which also identifies high-value “process” improvements worthy of congressional consideration. These include: (1) fortifying the “foreseeable harm” test to provide a more muscular check on discretionary withholding

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<sup>24</sup> See, e.g., *Vaughn v. Rosen*, 484 F.2d 820, 823 (D.C. Cir. 1973) (“This court has repeatedly stated that these exemptions from disclosure must be construed narrowly, in such a way as to provide the maximum access consonant with the overall purpose of the Act.”).

<sup>25</sup> See Daxton R. “Chip” Stewart & Charles N. Davis, *Bringing Back Full Disclosure: A Call for Dismantling FOIA*, 21 COMM. L. & POL’Y 515, 517 (2016) (stating that “what were initially intended to be narrow exemptions to FOIA have been judicially enlarged in some instances to the point of absurdity.”); see also *id.* at 519 (“FOIA has failed to live up to its promise of transparency, with agencies broadly applying exemptions and federal courts enabling expansion of the scope of these exemptions, typically in the name of protecting privacy.”).

<sup>26</sup> See *Statutory Reform Final Report and Recommendations*, June 22, 2026, <https://www.archives.gov/files/ogis/documents/statutory-reform-subcommittee-final-report-and-recommendations-final-06.22.2026.pdf> (last visited July 8, 2026).

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decisions, and (2) rethinking the indefinite duration of most FOIA exemptions and considering whether a “declassification” process — similar to that available for classified documents — should extend to all categories of records, enabling requesters to challenge whether the need for withholding has elapsed with the passage of time.

**(b) Promoting More Effective Affirmative Disclosure**

FOIA currently requires agencies to proactively disclose adjudicative opinions, policy statements, staff manuals, frequently requested records, and indexes. However, this framework does not reflect modern expectations around fiscal transparency, intergovernmental coordination, congressional oversight, or public participation. Congress should consider what additional categories of information should be added to 5 U.S.C. § 552(a)(2) to ensure that all agencies are proactively disclosing records of high value to the public. Congress should consider records such as budget documents, organizational charts, significant contracts, memoranda of understanding between agencies concerning delegation or sharing of operations, inspector general reports, agency submissions to Congress, and records disposition schedules. Congress should also consider how to require searchable indexing of all affirmatively disclosed records. Codifying these categories will increase compliance, reduce FOIA burdens, and ensure public access to information essential to evaluating agency performance.

**(c) Clarifying the Scope of FOIA-Covered “Records”**

FOIA’s definition of an agency “record” has presented interpretive challenges for agencies and courts. The statute defines “record” to include “any information that would be an agency record,” regardless of whether it is maintained in electronic form or by a contractor for records management purposes. Although these provisions address the format and location of records, they provide limited guidance regarding the scope of what constitutes a single “record” for purposes of responding to a FOIA request.

As a result, courts have developed varying approaches to defining the appropriate analysis. In some cases, courts have observed that agencies necessarily identify the records responsive to a request as part of processing that request. In other cases, courts have considered whether

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agencies may treat portions of documents or collections of information as separate records, while generally recognizing the need to avoid overly narrow segmentation that could affect the scope of disclosure.

Congress should consider whether additional statutory guidance regarding the definition of a “record” would promote greater consistency in FOIA administration and reduce uncertainty for agencies, requesters, and the courts.

(d) Spreading the FOIA Fulfillment Workload

It has long been recognized that FOIA offices are overtaxed. It is crucial to find new ways to expedite FOIA compliance and, where feasible, distribute the workload to relieve overburdened FOIA staff. At the state level, FOIA statutes already recognize — some quite explicitly — that FOIA fulfillment is the responsibility of all government employees, not just those assigned to public-records offices. For example, the Wisconsin Open Records Law states: “[P]roviding persons with such information is declared to be an essential function of a representative government and an integral part of the routine duties of officers and employees whose responsibility it is to provide such information.”<sup>27</sup> Similarly, federal law and policy should recognize that being the custodian of a record carries with it the responsibility to ensure that the record is maintained and produced in accordance with the law, including ensuring that eligible documents are posted to electronic reading rooms. Congress should consider statutory mandates — perhaps including FOIA responsibilities as part of employee performance evaluations, which was recommended in a past Committee term<sup>28</sup> — as a means to ensure FOIA is, indeed, everyone’s responsibility.

(e) Providing Effective Judicial Recourse

The Supreme Court’s decision in *TransUnion LLC v. Ramirez*<sup>29</sup> raised the bar for a plaintiff to demonstrate that a triable “case” or “controversy” exists and has prompted questions about what level of injury a FOIA complainant must demonstrate to get a case into court. The Committee

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<sup>27</sup> Wis. Stat. § 19.31.

<sup>28</sup> Recommendation No. 2018-07.

<sup>29</sup> 594 U.S. 413 (2021).

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believes that Congress should reinforce that a complainant raising a FOIA claim need only show how the requester has been denied access to records to which the requester is legally entitled. This procedural violation should be adequate to establish standing for FOIA claims. Requiring anything further stands in tension with the well-established rule in FOIA that, with limited exceptions, requesters need not demonstrate why they seek access to a particular set of records.

(f) **Broadening FOIA to Encompass Entities Performing Core Governmental Functions**

The Committee notes that, in future terms, further consideration should be given to expanding FOIA to other agency-like entities that exist on the peripheries of the constitutionally defined three branches of the federal government, or which fall outside the traditional conceptualization of the federal government yet still play a vital role either in the regulatory process or in providing administrative support to fulfillment of core government functions. These entities include (1) government-founded and/or operated nonprofit organizations, such as agency foundations; (2) government-sponsored enterprises (*e.g.*, Fannie Mae and Freddie Mac); (3) regional banks of the Federal Reserve; (4) self-regulatory organizations that participate or assist in agency enforcement proceedings or rulemaking (*e.g.*, Financial Industry Regulatory Authority (FINRA), Horseracing Integrity and Safety Authority, etc.); and (5) other consensus standards bodies, insofar as they are involved in the development of regulations.

## **FINAL OBSERVATIONS**

In its prior term, the 2022–2024 FOIA Advisory Committee noted a concern for “recommendation creep,” as the collective work of five two-year Committee terms totaled 67 recommendations, many only partially fulfilled. The Committee noted that, in light of the accumulating body of unfulfilled recommendations, it would be advisable to consider alternatives to piling more expectations onto overburdened agency FOIA professionals. And the Committee suggested looking for ways to heighten stakeholder engagement, such as through surveys and interviews. This Committee took its predecessors’ guidance to heart. This report represents a first step toward fulfilling the challenge set forth in 2022–2024, while also laying

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down markers for subsequent iterations of the Committees to follow. Future terms of the Committee would be well-served to continue looking for ways to promote adoption of high-value recommendations from past terms, as well as to evaluate compliance with — and the effectiveness of — those measures.

During the 2024-2026 term, the Committee prioritized the needs of government FOIA professionals, responding to those professionals' consensus that additional staffing and technological resources were their greatest needs. The Committee made relatively less progress on addressing the greatest identified need of the requester community: Clarifying and narrowing the workings of FOIA exemptions. Optimizing agencies' FOIA staffing and funding will accomplish only half the mission if optimal resourcing results in nothing more than quicker denials. The Committee encourages the next term to prioritize exemption reform, perhaps as a standalone subcommittee, so that attention can be focused on the highest-value reforms that would benefit the broadest range of requesters. Importantly, while many current and past recommendations require additional expenditures, reforming the exemption system does not — and, to the contrary, could produce great economies in the form of agency review being simplified and litigation avoided.

Despite all of its well-documented frustrations and shortcomings, FOIA remains a force for good. At a time when the public is bombarded with online misinformation and disinformation, promptly producing truthful information would serve as the best antidote. This report identifies important structural ways in which FOIA standards can be clarified and FOIA compliance streamlined. However, a well-functioning FOIA requires cultural as well as statutory and financial support. Transparency is a belief system as much as it is a regulatory system. It is incumbent upon government leaders at all levels to reinforce that FOIA compliance is not to be undertaken as a low-priority distraction from agencies' missions, but rather — as we celebrate 250 years of our country's independence and 60 years since the passage of FOIA — to be celebrated as central to the continued civic health of an engaged, participatory citizenry.



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**David Cuillier**, University of Florida

**Whitney Frazier-Jenkins**, Pension Benefit Guaranty Corporation

**Sean Glendening**, U.S. Department of Justice, Office of Information Policy

**Elizabeth Hempowicz**, American Oversight

**Scott Hodes**, U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services

**Shelley Kimball**, Johns Hopkins University

**Margaret Kwoka**, The Ohio State University Moritz College of Law

**Frank LoMonte**, Cable News Network (CNN)

**Marianne Manheim**, U.S. Department of Health and Human Services

**Deborah O. Moore**, U.S. Department of Education

**Ryan Mulvey**, Americans for Prosperity Foundation

**Richard Peltz-Steele**, University of Massachusetts School of Law

**Sarah Weicksel**, American Historical Association

**Nicholas Wittenberg**, representing the interests of requesters in the "commercial" FOIA fee category

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**Designated Federal Officer**

**Kirsten B. Mitchell**, Office of Government Information Services, National Archives and Records Administration

**Alternate Designated Federal Officers**

**Daniel Levenson**, Office of Government Information Services, National Archives and Records Administration

**Kimberlee Ried**, Office of Government Information Services, National Archives and Records Administration

**Past Members (2024-2026 Term)**

**Kevin Bell**, Federal Energy Regulatory Commission (August 2024 - February 2025)

**Joan Moubleaux**, Environmental Protection Agency (August 2024 - May 2025)

**Melissa Pickworth**, U.S. Department of Health and Human Services (August 2024 - March 2025)

**Bobak (“Bobby”) Talebian**, U.S. Department of Justice, Office of Information Policy (August 2024 - March 2025)

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Jay A. Trainer, Chief Operating Officer, NARA

William Fischer, Executive for Agency Services, NARA

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Rana Khandekar, Assistant General Counsel, NARA

Merrily Harris, Committee Management Officer, NARA

Jessie Kratz, Special Assistant to the Archivist, NARA

The staff from the following NARA offices:

Audio/Visual Services Team

Agency Accommodation Program

Office of Government Information Services (OGIS)

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## APPENDIX A

### **2024-2026 FOIA Advisory Committee Charter**

- 1. Official Designation.** The name of this advisory committee shall be the Freedom of Information Act Advisory Committee (FOIA Advisory Committee).
- 2. Authority.** The National Archives and Records Administration (NARA) established the FOIA Advisory Committee in 2014 pursuant to the second United States Open Government National Action Plan released on December 5, 2013. The Committee operates under the directive in the Freedom of Information Act (FOIA), 5 U.S.C. § 552(h)(2)(C), that NARA's Office of Government Information Services (OGIS) "identify procedures and methods for improving compliance" with the Freedom of Information Act (FOIA). The FOIA Advisory Committee is governed by the provisions of the Federal Advisory Committee Act, 5 U.S.C. § 10, as amended ("FACA").
- 3. Objectives and Scope of Activities.** The FOIA Advisory Committee advises on improvements to the administration of FOIA. The objective of the FOIA Advisory Committee is to study the current FOIA landscape across the Executive branch and make recommendations to the Archivist of the United States.
- 4. Description of Duties.** The FOIA Advisory Committee fosters dialogue between the Federal Government and the requester community, solicits public comments, and develops recommendations for improving FOIA administration and proactive disclosures. The Committee may recommend legislative action, policy changes, or executive action, among other matters. The FOIA Advisory Committee is advisory only.
- 5. Official(s) to Whom the Committee Reports.** The FOIA Advisory Committee shall report to the Archivist of the United States.
- 6. Support.** NARA's OGIS will provide funding and administrative support for the FOIA Advisory Committee to the extent permitted by law and within existing appropriations.

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**7. Estimated Annual Operating Costs and Staff Years.** The annual operating cost for the FOIA Advisory Committee is estimated to be \$182,775 and one full staff year. There will be no compensation for members of the FOIA Advisory Committee. NARA will not provide travel and/or per diem costs.

**8. Designated Federal Officer (DFO).** The DFO (or designee) is a full-time or permanent part-time NARA employee, appointed in accordance with agency procedures, and will perform the duties set forth in § 102-3.120 of the FACA Final Rule. The Archivist of the United States shall designate a DFO who shall manage the FOIA Advisory Committee and provide such clerical, administrative, and logistical support as necessary for the FOIA Advisory Committee to effectively conduct its business. The DFO will approve or call all of the FOIA Advisory Committee's and subcommittees' meetings, prepare and approve all meeting agendas, attend all Committee and subcommittee meetings, adjourn any meeting when the DFO determines adjournment to be in the public interest, and chair meetings when directed to do so by the official to whom the advisory committee reports.

**9. Estimated Number and Frequency of Meetings.** In consultation with the Archivist of the United States, the DFO shall hold meetings up to four times per year and may call additional meetings as may be necessary.

**10. Duration.** The need for this FOIA Advisory Committee is continuing.

**11. Termination.** The Charter shall be eligible for renewal every two years.

**12. Membership and Designation.** The Committee will consist of no more than 20 individuals. Government members of the FOIA Advisory Committee should include, at a minimum, three FOIA professionals from Cabinet-level Departments; three FOIA professionals from non-Cabinet agencies; the Director of the Department of Justice, Office of Information Policy (OIP), or the OIP Director's designee; and the Director of OGIS, or the OGIS Director's designee, who will chair the committee. Non-governmental members of the FOIA Advisory Committee will include, at a minimum, two individuals representing the interests of

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non-governmental organizations that advocate on FOIA matters; one individual representing the interests of FOIA requesters who qualify for the “all other” FOIA requester fee category; one individual representing the interests of requesters who qualify for the “news media” FOIA requester fee category; one individual representing the interests of requesters who qualify for the “commercial” FOIA requester fee category; one individual representing the interests of historians and history-related organizations; and one individual representing the interests of academia.

The FOIA Advisory Committee will be composed of Representative members and Regular Government Employees. The Archivist of the United States shall appoint as Chairperson. If necessary, a Vice Chairperson may be designated annually by members of the FOIA Advisory Committee, in consultation with the Archivist of the United States.

**13. Subcommittees.** NARA may approve the creation and operation of subcommittees by the FOIA Advisory Committee as necessary to support the Committee’s work in accordance with FACA. The subcommittees must report to the full FOIA Advisory Committee. The subcommittee chairperson(s) shall be a Committee member(s).

**14. Recordkeeping.** The records of the FOIA Advisory Committee and any subcommittee(s) shall be handled in accordance with General Records Schedule 6.2, item 10, and any approved NARA agency records disposition schedule. These records shall be available for public inspection and copying, subject to the FOIA, 5 U.S.C. § 552.

FILE DATE: April 26, 2024

/s/ Dr. Colleen Shogan

COLLEEN SHOGAN

Archivist of the United States

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## APPENDIX B

### Oral History Research Design

In the wake of significant departures of federal FOIA professionals due to reductions in the workforce, an ad hoc group gathered to develop an oral history project to understand and memorialize the experiences of those who left government service. The group developed a research design and plan for depositing the oral histories, but it could not carry it out before the end of the Committee term. Therefore, the group encourages later Committee terms to conduct the oral history project. The histories would focus on two primary questions:

1. What were the experiences and perceptions of federal FOIA professionals who left service from January 20, 2025, to present?
2. What were the effects on their agency's internal FOIA process as a result of their departures?

**Depository:** The depository for the histories should be the National Archives. Each oral history would be deposited in written transcript form, not as recordings, in an effort to protect the identities of those who participate. Each participant would be required to sign a Deed of Gift to the Public Domain for the transcripts.

**Participants:** Any federal FOIA professionals who left service after January 20, 2025.

- Recruitment: Purposive referral sampling of federal FOIA professionals who left service after January 20, 2025.
- Confidentiality: Participants' identities will be kept confidential unless they choose to disclose their identity publicly.

**Data collection:** In-person interviews at a mutually agreed-upon location. If participants prefer, they will be interviewed in an online meeting.

The interviews would be conducted by members of the FOIA Advisory Committee. They would be audio recorded and transcribed. For those participants who choose to keep their identities

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confidential, their interview recordings would be maintained only as long as it takes to transcribe the interview, confirm that the transcription is accurate, and allow the participants to review the transcripts. Once the transcripts are confirmed to be accurate, the recordings would be destroyed.

Before the oral histories begin, the participants should sign a Deed of Gift for the Public Domain. The National Archives has an approved, fillable PDF form available. Participants should clearly understand that signing the deed of gift means that they are releasing all rights over the interview transcripts.

**Interview Questions:** Suggested questions for participants include:

- When did you leave service, position at time of leaving?
- At what point did you decide that you wanted to pursue a career in FOIA?
- Describe your FOIA career up to that point.
- What made you want to do this kind of work?
- At what point did you begin to consider leaving federal service—and why?
- What made you finally decide to leave?
- What was your experience like when you left?
- What are your thoughts about the state of the federal FOIA since January 2025?
- What are your hopes for the state of FOIA moving forward?

**Additional Resources:**

- Overview of Oral Histories at the National Archives:  
<https://www.archives.gov/about/history/oral-history-at-the-national-archives>
- National Archives Gift Acquisition Policy on deeds of gifts:  
<https://www.archives.gov/publications/general-info-leaflets/34-media.html>
- Smithsonian Institution oral history best practices: <https://siarchives.si.edu/history/how-do-oral-history>