



OFFICE *of* GOVERNMENT  
INFORMATION SERVICES

# Freedom of Information Act (FOIA) Advisory Committee

December 7, 2023

<https://www.archives.gov/ogis/foia-advisory-committee/2022-2024-term>



# Welcome

## Trouble with your computer audio on Webex?

Call 888-251-2949  
Access code 5157965#

We are also streaming at  
<https://www.youtube.com/usnationalarchives>



National Archives Identifier 6600730



# Archivist Welcome



Dr. Colleen Shogan

Archivist of the United  
States



# Welcome and Updates

**Alina M. Semo**

**Director, Office of Government  
Information Services  
and Chair, FOIA Advisory  
Committee**





# Chat Tips



National Archives Identifier 208383217

In Webex, chat “All Panelists” otherwise the Committee members and/or OGIS staff will not see your comments.

The YouTube chat function is not on. Please submit comments to:  
[www.archives.gov/ogis/public-comments](http://www.archives.gov/ogis/public-comments)



# Subcommittee Reports



National Archives Identifier 24472221

## Implementation Subcommittee

David Cuillier and  
Catrina Pavlik-Keenan



# Implementation Subcommittee

Jason Baron

David Cuillier

Lauren Harper

Michael Heise

Alex Howard

Luke Nichter

Catrina Pavlik-Keenan

Tom Susman

Ben Tingo

Patricia Weth

University of Maryland

University of Florida, co-chair

National Security Archive

EEOC

Digital Democracy Project

Chapman University

DHS, co-chair

American Bar Association

AINS

EPA



# Subcommittee Mission

Review past recommendations of the four previous terms of the FOIA Advisory Committee to evaluate the current status of their implementation and opportunities for improvement. End products might include:

1. Summary of previous work by topic to avoid re-inventing the wheel.
2. Report out areas where gaps still exist.
3. Highlight examples of positive outcomes.
4. Examine how recommendations can be more widely communicated, understood, and implemented.
5. Foster dialogue between agencies and the requester community.





# Progress to date

- Reviewed and grouped each recommendation.
- Examined OGIS and OIP reports.
- Surveyed agency Chief FOIA Officers.
- Examined Chief FOIA Officer reports.



# Next steps

1. Seek further input today from Committee
2. Further discussions with OIP/OGIS
3. Interview agency staff and requesters
4. Draft final report with recommendations



# Current status: OGIS Dashboard

- Completed: 27
- In progress: 10
- Pending: 9
- Deferred: 4
- Rejected: 1



# Survey findings

- 22 agencies out of 120 (18%)
- Likely skews toward the FOIA-friendly
- Will follow up with interviews



# Improvement noted

- Most (91%) say they follow OGIS reading rooms guidelines.
- Agencies provide simple explanations on how to file a request (91% yes).



# Gaps

- Agencies provide Glomar info online (64% no, 9% yes, 27% N/A).
- FOIA performance standards in all employee appraisals (86% no).
- Agency leaders send annual FOIA reminder to employees (90% no).
- Shift common records out of FOIA (two-thirds no or N/A).
- Applying AI to improve processing (77% no).



# Challenges

- Congress should enact FOIA-like laws for some legislative records.
- 508 compliance.
- One centralized FOIA platform.
- Strengthen OGIS (or other alternative. resolution entity with enforcement powers).



# Awareness of recommendations

- Most (95%) have heard of the committee.
- Four found the recommendations helpful (first-person, Glomar, posting FOIA logs, upgrading websites).
- About **half** didn't know about the recommendations.
- Small agencies reported most difficulty – make-work.





# Subcommittee Reports



National Archives Identifier 17444711

## Modernization Subcommittee

Jason R. Baron and  
Gorka Garcia-Malene



# 2022-2024 FOIA Advisory Committee Modernization Subcommittee

Jason R. Baron (co-chair)  
Gorka Garcia-Malene (co-chair)  
Allyson Deitrick  
Michael Heise  
Alex Howard  
Adam Marshall  
Luke Nichter  
Tom Susman  
Benjamin Tingo



# Completed: FOIA Advisory Committee Recommendation 2023-1

We recommend that the Office of Information Policy issue guidance stating that whenever an agency withholds information pursuant to Exemption 5, the agency should identify the corresponding privilege(s) invoked. If the withholding takes the form of a redaction, the identification of a privilege should be made part of the redaction label; if a record is withheld in full, the agency should identify privilege(s) in its determination letter.



# Update: Proposed Model Agency Determination Letter (Adam M.)

- Public comments
- Revisions



# Other Recommendations Under Consideration

- Recommendations on Early Engagement with Requestors & Negotiated Search Protocols. (Jason B.)
- Recommendation on Enhancing Agency Engagement With FOIA Requester Communities. (Alex H.)
- Additional recommendations



## 1<sup>st</sup> RECOMMENDATION UNDER CONSIDERATION

We recommend that OIP issues guidance to federal agencies stating that within a reasonably short time frame after a request has been filed, either as part of an acknowledgement letter or in separate correspondence, agencies should offer requesters the opportunity to discuss their request with an agency representative, for the purpose of clarifying, narrowing, and expediting the request.



## 2<sup>nd</sup> RECOMMENDATION UNDER CONSIDERATION

We recommend that OIP issues guidance to federal agencies encouraging the option of providing requesters, at their request, an early, interim response consisting of a small sample of documents found as the result of searches conducted, and subsequently reviewed for partial or full withholding.



## 3<sup>rd</sup> RECOMMENDATION UNDER CONSIDERATION

We recommend that agencies expand their public engagement activities focused on improving the FOIA process.





## Additional Recommendations Under Consideration

- ❖ Recommendation encouraging agencies to use email rather than US Mail for correspondence with requestors
- ❖ Recommendation regarding agencies developing RFIs in connection with the purchase of e-discovery tools and services



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# FOIA Advisory Committee is on a break: back soon!

[archives.gov/ogis/foia-advisory-committee/2022-2024-term](https://www.archives.gov/ogis/foia-advisory-committee/2022-2024-term)



National Archives Identifier 6656626



# Subcommittee Reports

## Resources Subcommittee

Paul Chalmers and  
Gbemende Johnson



National Archives Identifier 83228981



# Resources Sub-Committee:

FOIA, STAFF RESOURCES, AND TRAINING  
Interviews  
Survey  
Proposed Recommendations



- Resources Sub-Committee
- Interviews
  - Focus: Technology, Training, Financial and Staff Resources
  - 12 High-Level FOIA Officials
  - 10 from Cabinet Agencies (8 Cabinet Agencies represented), 2 from Independent Agencies
  - Multiple Intelligence-Oriented Agencies/Bureaus
  - December 7: Notes on Staff Resources and Training



- ASAP Survey
- Fielded June 2023 at ASAP Conference, Survey Distributed to ASAP Email List July 2023
- Survey Focus: Staff, Training, Technology Resources
- Approximately 150 complete responses
- December 7: Notes on Staff Resources and Training

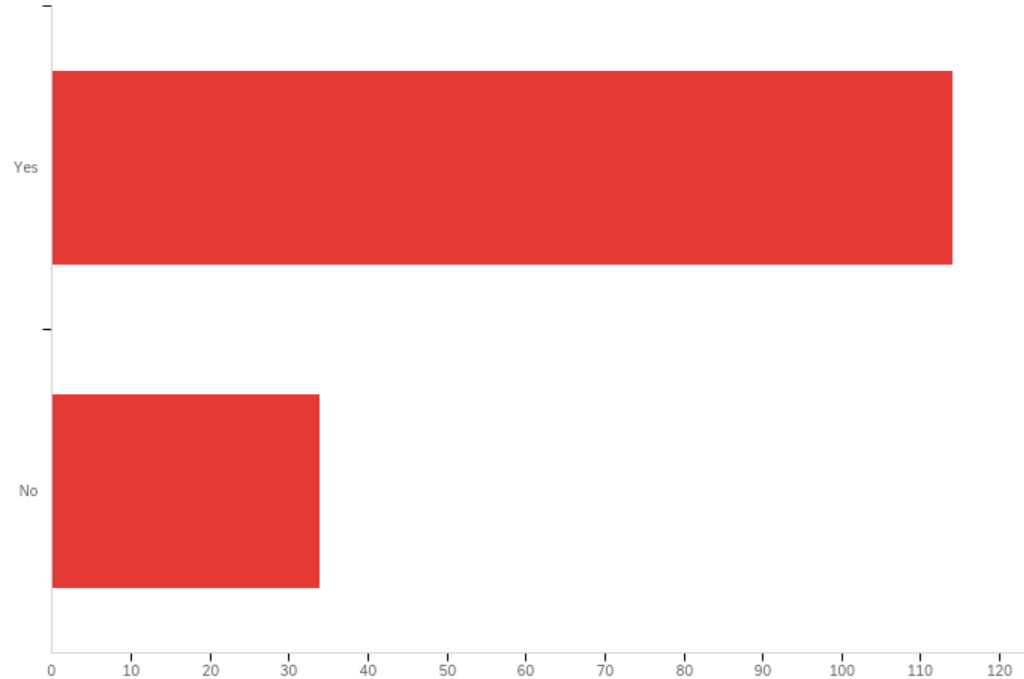


# Resources and Staffing

- Resource Concerns surrounding Staff from Interviews
  - Concerns raised about hiring staff, retaining staff
    - FOIA work is difficult
    - FOIA staff is currently overworked
    - Lack of time to do things outside of processing requests
    - Need staff with requisite skills, ability to think critically, FOIA is not “black and white”
    - Concern about limited upward mobility opportunities
    - Concern about turn-over/retirement of currently employed FOIA staff
      - Loss of institutional memory
    - FOIA Technology or Staff greater?: common response was staff
    - Vacancies remaining from pandemic



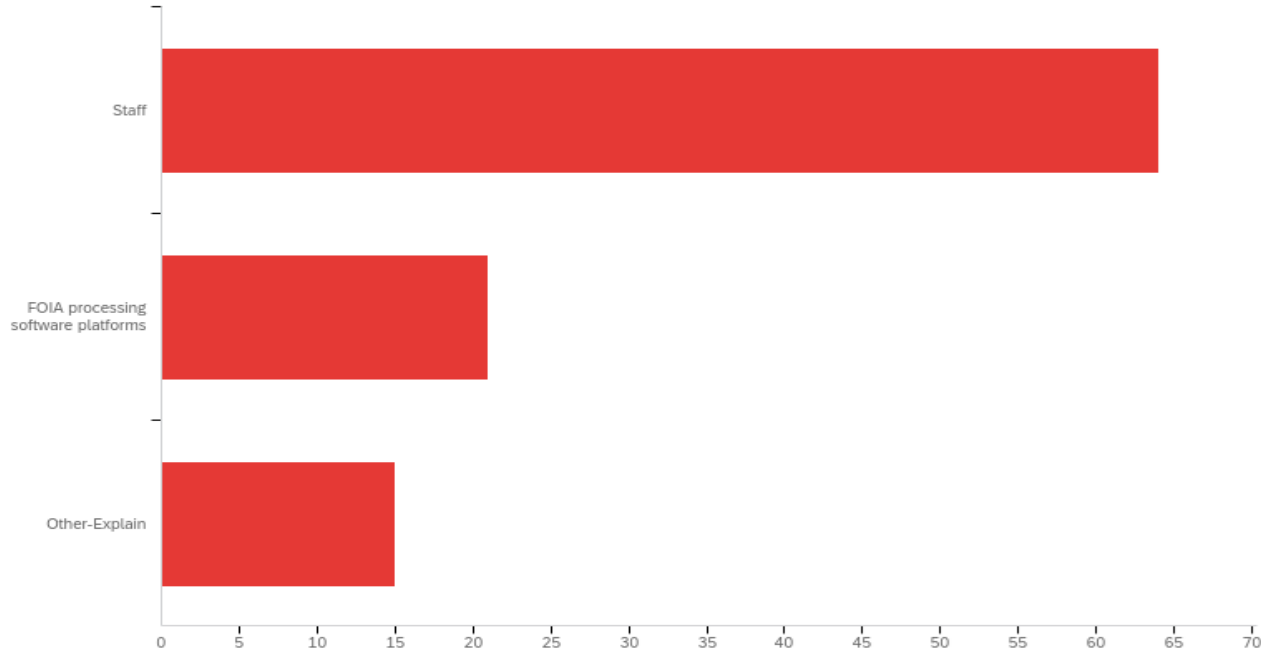
# Q21 - 16. Do you feel that you need additional resources to properly implement the FOIA?





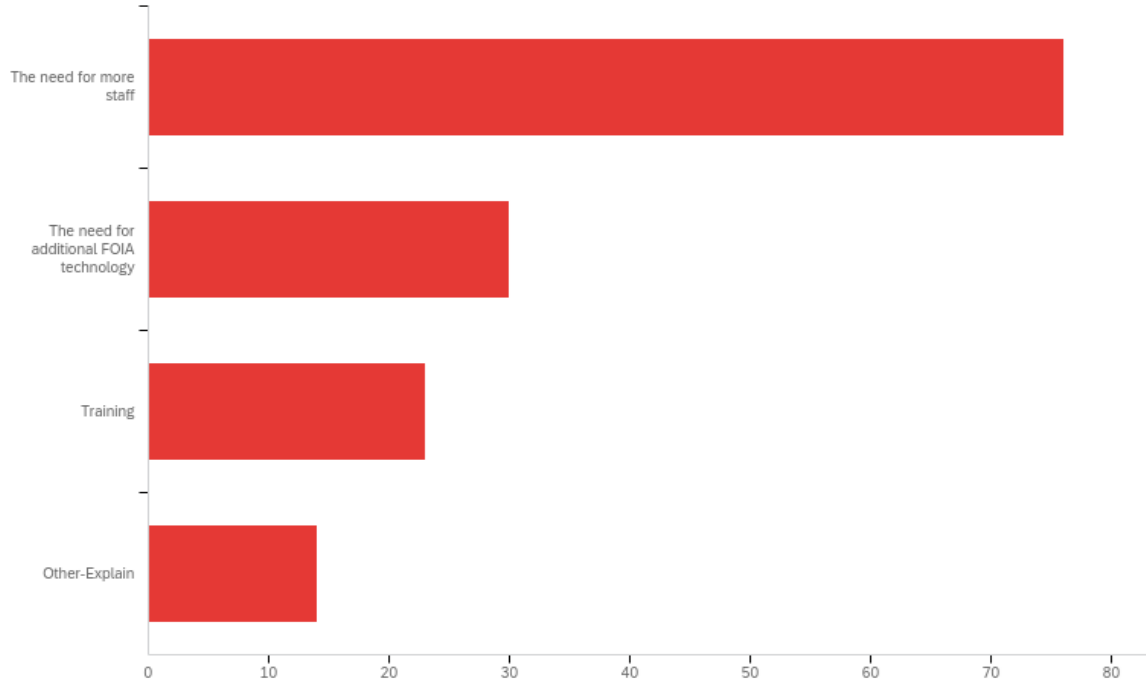


# Q22 - What additional resources has your office attempted to acquire to properly implement the FOIA?



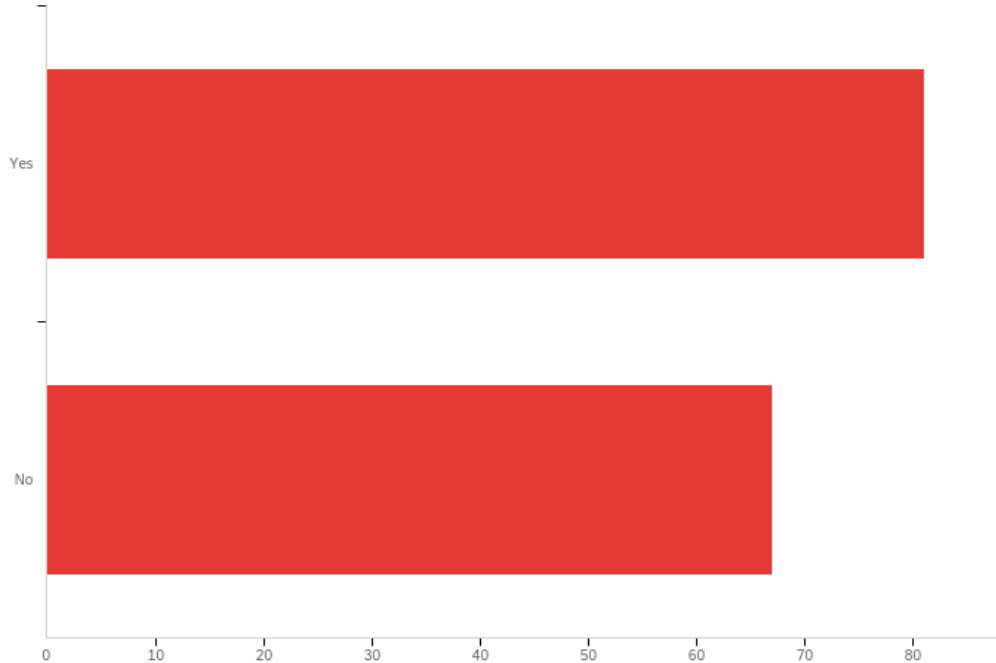


# Q23 - 17. What do you believe is a greater need in your office?





# Q30 - 24. Have you considered leaving your current position?





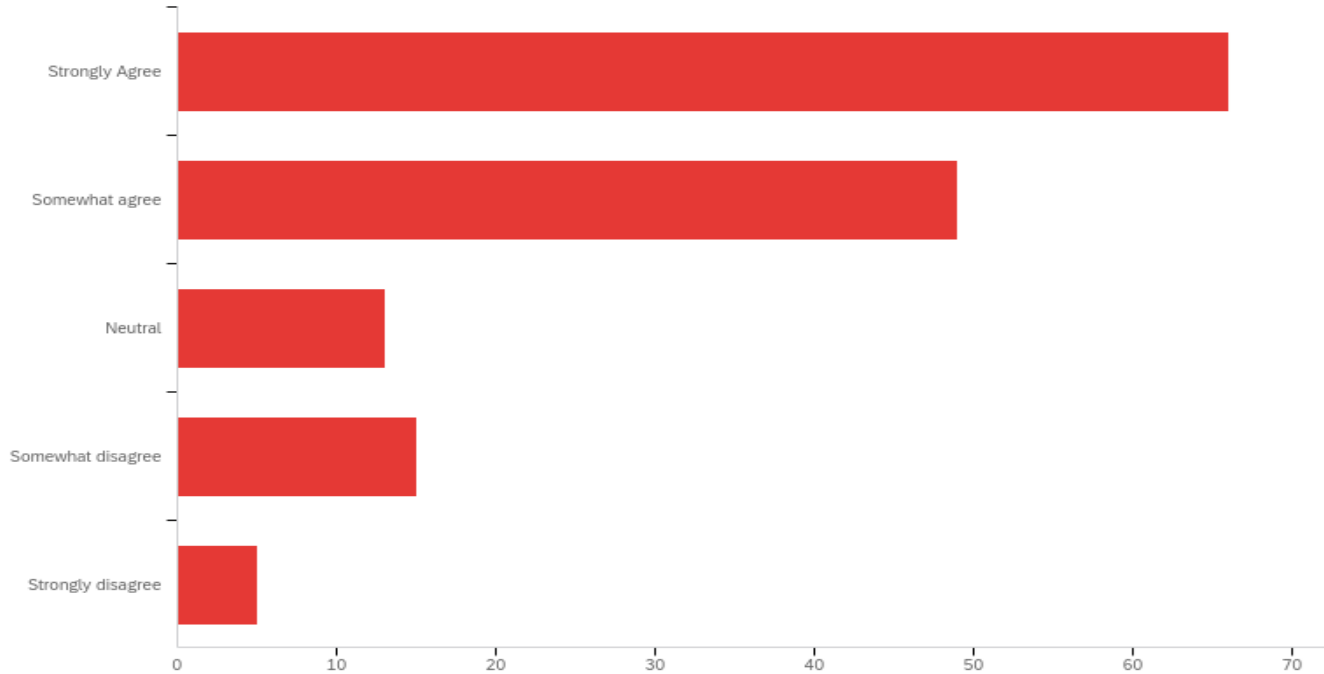
# Training Resources

- Training

- Respondents noted the importance of proper training: variation in whether all employees were required to receive FOIA training.
  - Ex: all new executives may receive FOIA training in some agencies
- In addition to internal training, provide access to DOJ Training, OGIS, and ASAP conferences (particularly for full-time FOIA employees)
- Relationship between budget and training
- Differences in handling of classified and non-classified material (classified material more difficult to manage)
- FOIA is everyone's responsibility



# Q32 - 25. Do you agree or disagree with the following statement: I have received adequate training from my agency for my current position.





# Proposed Recommendations (in progress)

## Staff Resources: Availability of personnel

- Not able to hire and retain qualified personnel
- Key issue in survey and interviews
- Cited causation is complex
  - Lack of opportunities to advance
  - Higher pay grades available at other agencies
  - Lengthy hiring process
- Propose to address problem in several ways
  - Direct hiring for FOIA personnel
  - Encourage agencies to create ladders to higher grades
  - Ease process for hiring contractors when needed to fill gaps



# FOIA Training

- Preliminary research regarding training-focused recommendation
- Previous FOIA recommendations on training
- Important to revisit:
  - Chief FOIA Officer report research shows that few agencies have made FOIA training mandatory for all employees (FOIA, non-FOIA staff, and on-boarding)
  - Post-COVID realities regarding communication, remote work, and FOIA responsibilities
  - Important to know: what is cost of making yearly FOIA mandatory for all employees
    - Existing modules developed by OGIS/DOJ can reduce costs of training



# FOIA Advisory Committee

## Public Comments

<https://www.archives.gov/ogis/foia-advisory-committee/public-comments>



National Archives Identifier 205581775





# FOIA Advisory Committee



Mark your calendars!

The next meeting of the 2022-2024 term is

**Tuesday, March 5, 2024**

National Archives Identifier 44267671