

Recommendation SR-6¹

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.

In 2022, the FOIA Advisory Committee recommended (2022-19²) that the Archivist of the United States commission a feasibility study to explore the costs and benefits of several recommended actions related to improving the FOIA process, specifically to empower the Office of Government Information Services (OGIS) or another entity with the authority and resources to mediate and settle disputes,³ similar to models employed by some states and more than 80 other nations.⁴ Since that recommendation passed, OGIS has attempted to acquire the funds needed for the feasibility study, but has been unsuccessful. We urge Congress to provide the allocation to explore new systems that could have far-reaching savings and efficiencies for federal agencies and the public.

Currently, a variety of functions intended to facilitate the FOIA process are performed—either discretionarily or under statutory obligation—in part and to varying levels of success by the Office of Information Policy, Government Services Administration, Government Accountability Office, the Office of Government Information Services, and the federal courts. The GAO is tasked with audits, but they are infrequent and lack a consistent schedule and strategy. The OIP is tasked with training and some technological assistance, but as an office within the Department of Justice—the government’s law firm—it lacks perceived neutrality by requesters. The GSA provides technological assistance, but lacks the day-to-day workings within FOIA, among custodians and requesters to devise and update a truly effective single platform to efficiently receive requests, track them, process them (with AI and other technologies), and report out. The DOJ and OMB are tasked with providing such a platform, but have yet to create a complete infrastructure, across all agencies, from a record request’s entire life cycle. The OGIS provides assistance for about 6,000 requesters annually, but with just 10 staff members cannot educate the other 343 million Americans in their essential information rights.

At the same time, backlogs and delays continue to increase as agencies face more requests with fewer resources.⁵ Agencies are tasked with establishing and maintaining their own FOIA case

¹ This recommendation was crafted by the Enforcement Working Group (David Cuillier, Margaret Kwoka, and Ryan Mulvey) within the Statutory Reform Subcommittee of the 2024-2026 term of the FOIA Advisory Committee.

² See, <https://www.archives.gov/files/ogis/assets/foiaac-final-report-and-recs-2022-07-05.pdf#page=31>.

³ OGIS 2.0: Reimagining FOIA Oversight, <https://www.archives.gov/files/ogis/assets/reimagining-ogis-recommendations-03-30-2022.pdf>

⁴ See, Michael Karanicolas & Margaret B. Kwoka, *Overseeing Oversight*, 54 CONN. L. REV. 655 (2022) (documenting that more than eighty countries have an independent oversight bodies that assist the public records process); Mark Fenster, *The Informational Ombudsman: Fixing Open Government by Institutional Design*, 6 Int’l J. Open Gov’t 275 (2015) (examining models in Connecticut and New Jersey); Margaret B. Kwoka, *Transparency Guardians*, 57 GEO. WASH. INT’L L. REV. 409 (2025), and Mitch McKenney, *Just \$25 to File, No Lawyer Required: Assessing an Alternative Public Record Complaint Procedure*, 7 J. CIVIC INFO. 4, 1 (2025). (The court costs 8 cents per Ohio resident per year.)

⁵ Examining 2025 FOIA report data at [FOIA.gov](https://www.foia.gov) data portal indicates that on average, federal agencies had their FOIA staffs cut 14%, with Education cut by 54%, Treasury 39% and Veterans Affairs 36%. As a result, backlogs increased 27%, on average, with Education backlogs up 84% and Veterans Affairs up 130%. Average time to

management systems, causing inefficiencies and confusion through a patchwork of platforms, some with questionable performance and security capabilities, which frustrate custodians and requesters alike. Litigation continues to cost agencies, and therefore taxpayers, about \$50 million per year,⁶ and bogs down the federal courts. Research continues to show the growing frustration of requesters to acquire government information, and agencies in providing it.⁷ The system needs help.

The 2020-22 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. Those recommendations remain in limbo, waiting for further study. We continue to support exploration of those recommendations, as well as additional activities outlined below, and we call upon Congress to act to support a study necessary to find new and better avenues for accomplishing these tasks.

The ultimate outcome could take many different paths. One approach is to double down on the existing system by better funding the agencies currently tasked with training, technology, mediation, audits and other activities. Ostensibly, this could improve the process, or, conversely, it could represent the “sunk cost fallacy” – throwing good money after bad. A feasibility study could explore that more deeply.

A second approach is to consolidate FOIA activities into a new independent information office, similar to those in Connecticut, Pennsylvania and more than 80 nations, exemplified by a system that worked well in Mexico before its dismantling in 2025.⁸ The concept is simple: One office responsible for making the system work more effectively through alternative dispute resolution, technology assistance, training, and public education. Some people we talked to this term said creating a new agency could prove difficult during the current political climate. Nevertheless, we believe this option should be included in the study, given its documented success throughout the world.

A third possibility is to consolidate and empower an *existing* agency with the resources and responsibilities currently dispersed. One such agency could be OGIS, if provided adequate resources. The agency is still within the executive branch but perceived by requesters as more neutral than the Department of Justice. OGIS dates back to 2009, when it began assisting requesters

complete simple requests increased 14% across the government, from 53 days to 61 days. The total number of requests increased from 1.5 million to 1.7 million in fiscal year 2025, up 13%.

⁶ According to FOIA.gov, total FOIA litigation costs for fiscal year 2025 were \$50.7 million.

⁷ See A. Jay Wagner and David Cuillier, *Tale of Two Requesters: How Public Records Law Experiences Differ by Requester Types*, 26 JOURNALISM 2, 325 (2025), DOI: 10.1177/14648849241242988, and from a custodian’s perspective, Michele Bush Kimball, *Public Records Professionals’ Perceptions of Nuisance Requests for Access*, 5 UB J. MEDIA L. & ETHICS ½ (2016), <https://www.k-state.edu/media-communication/research/journal/Vol.%205%20No.1-2%20Complete.pdf>.

⁸ See Margaret B. Kwoka, *Transparency Guardians*, 57 GEO. WASH. INT’L L. REV. 409 (2025), and an analysis of lessons learned, Gregory Michener, Fernando Nieto Morales, Margaret Kwoka and Maria del Carmen Nava Polina, *Lessons from the Dissolution of Mexico’s Information Commission*, 38 GOVERNANCE 3 (2025), <https://doi.org/10.1111/gove.70031>.

with mediation services.⁹ Over the years, it has handled tens of thousands of requests for assistance, has fulfilled its statutory compliance role admirably, and also has been assigned by statute to take on an ever-growing role in promoting good FOIA practices and policies government wide. For example, it conducts reviews of agency FOIA programs in which it assesses FOIA operations, policies, program design, and implementation.¹⁰ These reviews include recommendations for improvements to those offices. OGIS has also co-chaired the Chief FOIA Officers Council since its statutory creation in 2016.¹¹ This body provides a forum for Chief FOIA Officers to collaborate across agencies to improve the administration of FOIA.¹² And, of course, OGIS hosts this body, the federal Freedom of Information Act (FOIA) Advisory Committee, established by the National Archives and Records Administration in 2014.¹³

Other types of enforcement and agency-support activities could, therefore, be delegated to OGIS—so long as the necessary funding and staffing accompany these additional mandates—to engage in a wider variety of activities that would improve the administration of FOIA government-wide. That OGIS already conducts oversight and policy-setting roles demonstrates the feasibility of such an approach. We acknowledge that in 2022, OGIS did not favor 2022-15 (binding decisions) nor 2022-16 (review records *in camera*). They suggested that enforcement power would be counter to a true ombudsman office. Also, this term, OGIS representatives expressed concerns about taking on additional activities that might interfere with its mediation mission and impact its neutrality as an ombuds. Their concerns, as well, should be incorporated into the study. We want to emphasize that any feasibility study must examine the costs necessary to carry out new activities. Already, OGIS is stretched thin. Since its founding in 2009, total FOIA requests have increased from 560,000 to 1.7 million, and the number of people assisted has risen from 391 to 6,061. During those 17 years, its budget has remained flat, accounting for inflation, and its total staff fluctuating between just six and 10. OGIS is the exemplar for true government efficiency, and additional duties would require additional resources.

⁹ See OFFICE OF GOVERNMENT INFORMATION SERVICES, THE FIRST YEAR: BUILDING BRIDGES BETWEEN FOIA REQUESTERS AND FEDERAL AGENCIES, <https://www.archives.gov/files/ogis/assets/website-assets/about-ogis/building-bridges-report.pdf>

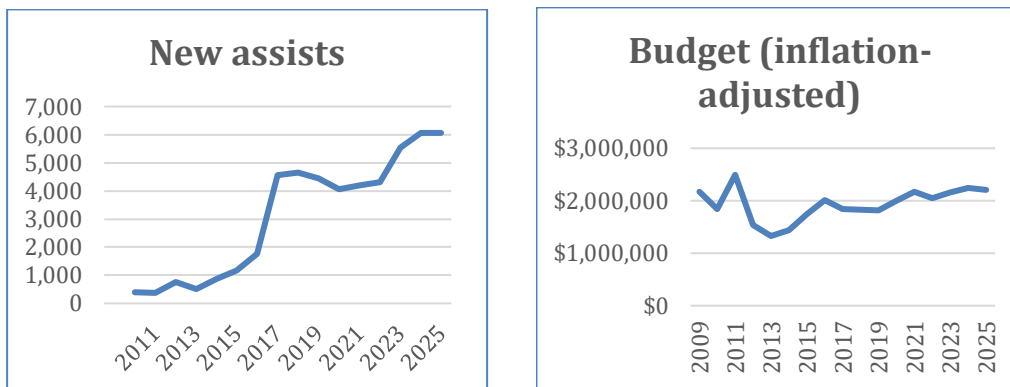
¹⁰ Office of Government Information Services, Agency Compliance Reports, <https://www.archives.gov/ogis/foia-compliance-program/agency-compliance-reports> (listing fourteen such reviews over the past twelve years).

¹¹ See FOIA Improvement Act of 2016, Public Law No. 114-185, *available at* <https://www.congress.gov/114/bills/s337/BILLS-114s337enr.xml>

¹² Office of Government Information Services, Chief Freedom of Information Act (FOIA) Officers Council, <https://www.archives.gov/ogis/about-ogis/chief-foia-officers-council>.

¹³ Office of Government Information Services, Freedom of Information Act (FOIA) Advisory Committee, <https://www.archives.gov/ogis/foia-advisory-committee>

OGIS 2009-2025: Number of people assisted up while budget remains flat



Who should complete this study? We leave Congress to decide. Perhaps it would be the Administrative Conference of the United States, OMB or the GAO. Or, perhaps, even a respected, neutral entity outside the government. Regardless of what entity conducts the feasibility study, we would encourage the scope of the study to focus on the committee's previous recommendations from 2022, in addition to the following activities that could aid the system, for agencies and requesters:

1. Creation and maintenance of a National Transparency Portal, which could be based on, as a starting point, FOIA.gov, to enhance agencies' technical capabilities. While the OMB and the DOJ are tasked by statute to create a consolidated online request portal for submitting requests, the system is not holistic in shepherding requests through the entire process, and agencies are still left to fend for themselves in creating a records request management system. This places a burden on agencies to acquire and manage portal software, and creates a confusing patchwork for requesters. One agency should be tasked (and funded) to create a well-functioning request system, similar to what other nations and many states and local jurisdictions have created, through which:
 - requesters can file a request to any agency;
 - agencies can track, refer, and respond to requests;
 - requesters can appeal a response;
 - requesters can see all of their requests, deadlines, responses, and appeals in a single log-in;
 - agencies post their materials required to be made proactively available;
 - agency responses to requests are posted, with the exception of PII released to first-person requesters;
 - the public can search previously released material and proactive disclosed records; and
 - statistics on FOIA compliance are readily available.
2. Lead the development of other technological solutions to FOIA processing, including the use of artificial intelligence to find records, and make those technologies available to all FOIA offices governmentwide. While General Services Administration provides governmentwide technology services, they typically are not specific to the FOIA process.

3. Audit agency compliance with FOIA obligations, including identifying priority agencies for such auditing through the data collected by the National Transparency Portal. While the GAO provides audits occasionally, they are infrequent and inconsistent when it comes to FOIA. Consistent audits would improve the system by:
 - inspecting a sample of unappealed FOIA responses to determine legal compliance, including reviewing unreleased records in camera;
 - inspecting systems of records to ensure agencies are performing adequate searches;
 - auditing agency compliance with proactive disclosure requirements.
4. Develop and provide agency training on FOIA compliance for:
 - FOIA officers throughout the government;
 - a designated FOIA liaison from within each program unit at every agency who is tasked with ensuring the program unit cooperates fully with the FOIA office in responding to requests.
5. Engage in public education about FOIA and transparency values, including by advertising, civic engagement, attending community events, supporting public education, and other activities designed to further public knowledge about their rights under FOIA and the value of transparency in a democratic society. While OGIS staff currently educate requesters who seek assistance, no government agency provides education about FOIA to the entire nation.
6. Offer services to members of the public wishing to exercise their rights under FOIA by, for example, assisting members of the public in:
 - directing, submitting, and framing their requests;
 - searching for already available records;
 - creating an account in the online portal;
 - ensuring accessibility of FOIA processes, systems, and records for members of the public with disabilities;
 - facilitating access to FOIA for disadvantaged or marginalized populations;
 - providing translation services for members of the public unable to access their rights under FOIA in English.
7. Accept petitions from agencies to intervene in requests deemed unduly burdensome or frequent in nature, thereby relieving the agency of the duty to respond to requests in extreme cases. An entity could be empowered to set up a petition process and be delegated express authority for establishing exacting standards for when such relief would be granted, similar to the Connecticut Freedom of Information Commission, the United Kingdom Information Commission Commissioner's Office, and other arbiters of such disputes.

This non-exhaustive list of authorities and competencies would go a long way to complementing a newly established FOIA Court, as addressed in this Committee's separate recommendation, to create a comprehensive FOIA administration and enforcement scheme, aiding both requesters and agencies. The feasibility study could study potential costs, savings, and unintended positive and negative consequences of these approaches. Much can be learned from state commission models

as well as the dozens of nations that have adopted independent commissions with binding authority. Key issues to be addressed by the study, for example, include:

- How to provide the delegated agency(ies) sufficient independence to avoid political capture or undue executive influence.
- The necessary level of staffing and funding to adequately resources to perform both existing mandates and all new mandates as outlined above.
- The role of guidance provided by OGIS or another entity vis a vis guidance provided to agencies by OIP. While OIP provides essential legal guidance and training to government agencies, and should continue to do so, its mission is to protect and defend the government, which does not create a fair playing field, at least from the requester's perspective.

We believe these issues can be addressed in such a feasibility study, and that the United States can build a structure that improves efficiencies for agencies and requesters, saves tax dollars, and fulfills the democracy mandate Congress launched nearly 60 years ago through passage of FOIA.