

# FOIA Advisory Committee Bylaws

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## Article 1. Purpose.

The Freedom of Information Act (“FOIA”) Advisory Committee (“Committee”) advises on improvements to the FOIA and studies the current FOIA landscape across the Executive Branch. The Committee shall report to the Archivist of the United States (“AOTUS”) and may recommend legislative action, policy changes or executive action, among other matters.

## Article 2. Authority.

The Committee was established in accordance with the second United States Open Government National Action Plan released on December 5, 2013. **The Committee operates under and** the directive in the FOIA, 5 U.S.C. § 552(h)(2)(C), that the Office of Government Information Services (“OGIS”) within the National Archives and Records Administration (“NARA”) **“identify procedures and methods for improving compliance” with recommend policy changes ... to improve** FOIA **administration.** This Committee is subject to the Federal Advisory Committee Act (“FACA”), the FOIA, and the Government in the Sunshine Act (“GISA”).

## Article 3. Membership.

**A.** The Committee will consist of no more than 20 individuals. To ensure balanced representation, NARA will strive to appoint equal numbers of government and non-governmental members. Government members of the Committee should include, at a minimum, three FOIA professionals from Cabinet-level Departments; **four three** FOIA professionals from non-Cabinet agencies; one representative from the Department of Justice, Office of Information Policy; and one representative from NARA. Non-governmental members of the advisory committee will include, at a minimum, **three two** individuals representing the

interests of non-governmental organizations that advocate on FOIA matters; **two one** individuals 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.

Any Federal employees appointed to the Committee must comply with the following guidelines: (1) Federal employees appointed to the Committee must annually file a confidential financial disclosure report with the NARA Office of General Counsel (“NGC”) on or before the date of their first participation in a Committee meeting, (2) Any Federal employees appointed to the Committee will serve on the Committee in their official capacity and exercise their own individual best judgment on behalf of the government in Committee deliberations, free from conflicts of interest.

The Designated Agency Ethics Official (“DAEO”) for NARA has determined that all non-Federal members of the Committee are “representatives” for purposes of federal ethics laws and regulations (rather than Special Government Employees or SGEs), and, thus, do not need to file annual financial disclosure reports. All Representative members must comply with the following guidelines: (1) Representatives appointed to the Committee are expected to provide the Committee with the “interests, views or biases” of a non-governmental entity or recognizable group of stakeholders in the area of FOIA that that member represents, and to exercise their best judgment about the matters under consideration.

Guidance on exercising one’s judgment in Committee deliberations is found in the Office of Government Ethics guidance of 2005 at <https://www.archives.gov/files/ogis/assets/05x4.pdf> and the OMB guidance of August 13, 2014 at <http://www.gpo.gov/fdsys/pkg/FR-2014-08-13/pdf/2014-19140.pdf>

**B. Nominations.** The Chairperson will solicit and accept nominations for Committee membership. Potential nominees are responsible for complying with any procedures and/or receiving necessary approvals from their agency or organization prior to submitting their name and information for consideration.

**C. Appointment.** The AOTUS shall appoint all Committee members.

**D. Term of Membership.** The term of membership for both Government and Representative members shall be two years. Members may serve successive terms. In the event that a Committee member is unable to serve a full term, no longer meets the requirements under

which he or she was appointed, or fails or is unable to participate regularly in Committee work ~~in the eyes of the Chairperson~~ **as determined by the Chairperson and the Designated Federal Officer (“DFO”)**, the Archivist shall appoint a replacement through the process described in Article 3. B. and C. to complete the unexpired portion of that departing member’s term. An appointment letter from the Archivist to each member will convey each member's term.

**E. Compensation.** There will be no compensation for members of the Committee. NARA will not provide travel or per diem compensation.

#### **Article 4. Meetings.**

**A. General.** The Committee will meet up to four times per year **— or more frequently as deemed necessary by the Chairperson —** as called by ~~the Designated Federal Officer~~ **(“DFO”)**. The DFO will set the time and place for meetings and will publish a notice in the Federal Register at least 15 calendar days prior to each meeting.

**B. Quorum.** The Committee will hold meetings only when a quorum is present either in person or via a phone or video conference. For this purpose, a quorum is defined as two-thirds of the 20 members, or 13 members.

**C. Open Meetings.** Unless otherwise determined in advance, all meetings of the Committee will be open to the public. All matters brought before or presented to the Committee during the conduct of an open meeting, including the minutes of the proceedings of an open meeting, shall be available to the public for review or copying.

**D. Closed Meetings.** The Committee will hold closed meetings only in limited circumstances and in accordance with applicable law. If, during the course of an open meeting, matters inappropriate for public disclosure arise during discussions, the Chairperson will order such discussion to cease, and shall schedule it for a closed session. Notices of either full or partial closed meetings will be published in the Federal Register at least 15 calendar days in advance of the meeting.

**E. Agenda.** The DFO, in consultation with the Chairperson, shall approve the agenda for all meetings. OGIS will distribute the agenda to the members prior to each meeting. OGIS will post a copy of the agenda to the Committee’s webpage or subpages at <https://www.archives.gov/ogis/foia-advisory-committee/2022-2024-term> in advance. Any member of the Committee may submit agenda items to the Chairperson or DFO. Non-members, including members of the public, may also suggest agenda items to the Chairperson or DFO.

**F. Conduct of Meetings.** The Chairperson will call meetings to order, following which the **DFO will confirm a quorum.** ~~members will state their presence.~~ The Chairperson will then read or reference the certified minutes of the previous meeting. The Chairperson will make announcements, ask for reports from subcommittees or individual members as previously arranged, open discussion of unfinished business, introduce new business, and invite members to comment on any business. Public oral comment may be invited at any time during the meeting, but most likely at the meeting's end, unless the meeting notice advised that written comment was to be accepted in lieu of oral comment. Upon completion of the Committee's business, as agreed upon by the members present, the DFO will adjourn the meeting.

**G. Minutes.** The DFO will prepare minutes. The Chairperson will certify the accuracy of the minutes within 90 calendar days. Copies of the minutes will be published on the Committee's web page once certified. The minutes will include a record of the persons present (including the names of committee members, names of staff, and the names of members of the public from whom written or oral presentations were made) and a description of the matters discussed and conclusions reached, and copies of all reports, recommendations, or other materials received, issued or approved by the Committee.

**H. Public Comment.** Members of the public may attend any meeting, or any portion of a meeting, that is open to the public, and may, at the determination of the Chairperson, offer public comment during a meeting. The meeting announcement published in the Federal Register may note that oral comment from the public is excluded and in such circumstances invite written comment as an alternative. Members of the public may submit written statements to the Committee at any time.

**I. Subcommittee Meetings.** The Committee Chairperson, in consultation with the full Committee and with the approval of the DFO, may convene subcommittees, to include subgroups or working groups, to support the Committee's functions. Each subcommittee shall brief the members of the full Committee on its work, and present any recommendations to the full Committee for deliberation. Each subcommittee shall report directly to the Committee.

## **Article 5. Voting**

When a decision or recommendation of the Committee is required, the Chairperson shall request a motion for a vote. Any member of the Committee, including the Chairperson, may move that the Committee take a vote. No second after a proper motion shall be required to bring any issue to a vote.

**Voting Eligibility.** Only the Chairperson and the members may vote on an issue before the Committee.

**Voting Procedures.** The Committee shall vote by a show of hands or a voice vote **and, as necessary, a roll call vote may be conducted by the DFO.** ~~in the case of members participating by telephone.~~

**Reporting of Votes.** The Chairperson **or the DFO** will report to the public the results of any votes. In reporting or using the results of Committee voting, the following terms shall apply: (1) Unanimous Decision: Results when every voting member, except abstentions, is in favor of, or opposed to, a particular motion; (2) General Consensus: Results when at least two-thirds of the total votes cast are in favor of, or are opposed to, a particular motion; (3) General Majority: Results when a majority of the total votes cast are in favor of, or are opposed to, a particular motion.

## **Article 6. Committee Officers and Responsibilities.**

**A. Chairperson.** The Chairperson will: (1) call meetings of the Committee to order; (2) set the meeting agenda; (3) determine a quorum; (4) open and preside over the meetings; and (5) certify meeting minutes. **The Chairperson is the presiding officer of the FOIA Advisory Committee who guides its efforts to the effective completion of its assigned tasks. The Chairperson shall provide leadership and adhere to the Charter and such other rules of order and operating procedures as the FOIA Advisory Committee may adopt; maintain order; and conduct each meeting in accordance with FACA and the prescribed rules and procedures. 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. The Vice Chairperson shall assume and perform the duties of the Chairperson in the event the Chairperson is absent or unavailable.**

**B. Subcommittees.** The Committee Chairperson, in consultation with the full Committee and with the approval of the DFO, may convene subcommittees to support the Committee's functions. All subcommittees will report their work and findings to the Committee for deliberation.

**C. Subcommittee Co-Chairs.** Each formally designated subcommittee shall have two chairs, one Government member and one Representative member from the Committee membership, selected in consultation with the Committee Chairperson and the DFO. Each subcommittee chair shall serve a term as appropriate to the work of the subcommittee. The co-Chairs will: (1) call meetings of the Subcommittee to order; (2) set the meeting agenda; (3) open and preside over the meetings; (4) copy the DFO and alternate on all subcommittee correspondence, and (5) send copies of Subcommittee meeting notes and related materials

to the DFO. The DFO will: (1) Approve or call the meeting of the Subcommittee; (2) approve the Subcommittee meeting agenda; (3) attend Subcommittee meetings; (4) Adjourn Subcommittee meetings; and (5) Chair Subcommittee meetings when so directed by the Committee Chairperson or Subcommittee co-Chairs.

**D. Designated Federal Officer.** The FACA requires each advisory committee to have a DFO and an alternate, one of whom must be present for all meetings. OGIS staff serves as the DFO and alternate for the Committee. Any meeting held without the DFO or alternate present will be considered as a subcommittee, subgroup, or working group meeting. The DFO will: (1) call the meeting of the Committee or Subcommittee(s); (2) approve the agenda for all meetings; (3) attend the meetings of the Committee and Subcommittee(s); (4) adjourn the meeting of the committee or Subcommittee(s); and (5) chair any meeting when so directed by the AOTUS.

**E. Committee Staff.** The NARA staff shall serve as the Committee staff on an as-needed basis, and shall provide all services normally performed by such staff. NARA Office of General Counsel will provide ethics program support to the Committee.

#### **Article 7. Records.**

Records presented to the Committee by any method at any time, including those distributed during the course of a meeting, are part of the official Committee files, and become NARA agency records within the meaning of the FOIA, and are subject to the provisions of that Act.

Committee records shall be available for public inspection and copying in accordance with Section 10(b) of the FACA, which “provide[s] for the contemporaneous availability of advisory committee records that, when taken in conjunction with the ability to attend advisory committee meetings, provide a meaningful opportunity to comprehend fully the work undertaken by the advisory committee.”

Committee members should preserve records, including correspondence exchanged between Committee members, stakeholders, and/or agency committee staff (such as the DFO), that document Committee activities. Committee members must copy the DFO on all Committee and Subcommittee correspondence to simplify recordkeeping.

NARA will post as many Committee documents as is feasible to the Committee’s webpage or subpages at <https://ogis.archives.gov/foia-advisory-committee.htm>.

#### **Article 8. Committee Expenses.**

NARA will cover committee expenses, such as facility, staffing, and transcription services. NARA will not provide compensation, travel or per diem compensation for members. NARA will not provide funds for meals or refreshments.

**Article 9. Amendment of Charter and Bylaws.**

Amendments to the Charter and Bylaws of the Committee must conform to the requirements of the FACA and be agreed to by two-thirds of the 20 members. The DFO shall confirm that all Committee members have confirmed receipt of any proposed amendment before any vote to amend the Charter or Bylaws.