

**To: 2022-2024 FOIA Advisory Committee**

**From: Implementation Subcommittee**

**Date: May 7, 2024**

**Re: Recommendations**

## **A. Membership**

Members of the Implementation Subcommittee for this term:

David Cuillier, University of Florida (Co-chair)  
Michael Heise, Equal Employment Opportunity Commission (Co-chair)  
Catrina Pavlik-Keenan, Department of Homeland Security  
Jason R. Baron, University of Maryland  
Lauren Harper, National Security Archive (through March 2024)  
Alex Howard, Digital Democracy Project  
Luke A. Nichter, Chapman University  
Thomas Susman, American Bar Association  
Benjamin Tingo, OPEXUS  
Patricia Weth, Environmental Protection Agency

## **B. Overview**

The Implementation Subcommittee's mission for the 2022-2024 term was to review the 51 recommendations from the four previous terms of the FOIA Advisory Committee, from 2014 through 2022, to evaluate the current status of their implementation and what work is left to do. Anticipated final products and goals potentially included:

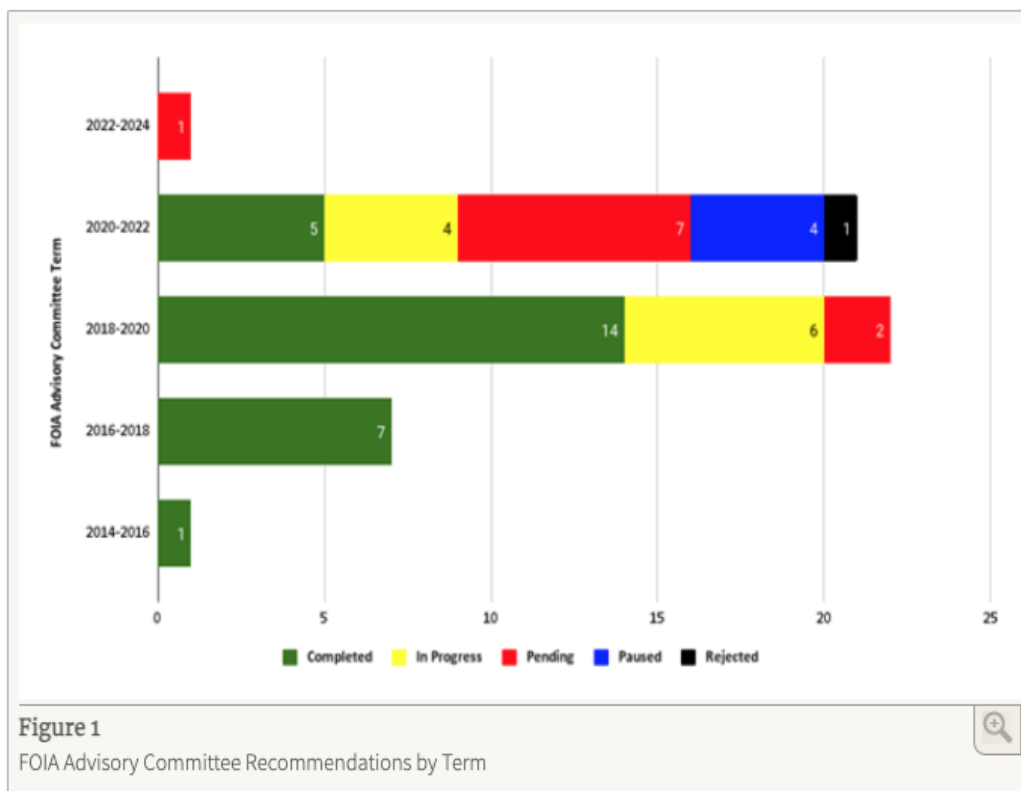
1. Summarizing previous work to avoid duplication and re-inventing the wheel for current/future Committee terms.
2. Relaying to the Archivist, OIP, agencies, Congress, the requester community, and the public the effectiveness of recommendations and action taken, focusing on those still pending and providing suggestions for moving forward.
3. Highlighting examples of positive outcomes to aid and inspire FOIA officers.

The Subcommittee was guided by the Office of Government Information Services (OGIS) [dashboard](#) to focus on particular recommendations with the greatest impact on improving the FOIA process. In undertaking its efforts, the Subcommittee implemented a variety of methodologies, including interviewing agency personnel, conducting

surveys, examining previous data and Chief FOIA Officer reports, and inviting individuals to report to the FOIA Advisory Committee as a whole.

As referenced above, OGIS has created a dashboard that captures the progress made to implement the Committee’s full set of recommendations. See Figure 1 (current as of the date of this interim report).<sup>1</sup> The dashboard contains the following legend:

- **COMPLETED** means that we have fulfilled the recommendation although opportunities may exist for additional work.
- **IN PROGRESS** means work has begun on fulfilling the recommendation.
- **PENDING** means work has not yet started on the recommendation.
- **DEFERRED** means the recommendation is on hold pending the outcome of a feasibility study.
- **REJECTED** means the Acting Archivist of the United States did not accept the recommendation.



The principal focus of our efforts was to determine to the best of our ability the current status of those recommendations either “In progress” or “Pending.” However, we also believed it to be within our charge to investigate the actual state of implementation of

<sup>1</sup> <https://www.archives.gov/ogis/foia-advisory-committee/dashboard>.

recommendations deemed by OGIS to be “Completed” by OGIS and OIP on the dashboard.

After setting out the Data Collection methods used by our Subcommittee in Part C, we provide in Part D a summary analysis of past recommendations, broken down by categories on the OGIS dashboard under the labels of “Completed,” “Pending,” “In Progress,” or “Deferred” that the Subcommittee considered the most important for OGIS to focus on in ensuring future compliance across executive branch agencies. This analysis is supplemented by two appendices providing detailed summaries of specific recommendations: Appendix A consists of a breakdown of all past actions labeled “Completed” on the OGIS dashboard, and Appendix B represents a listing of what we have termed “priority” recommendations especially worthy of greater attention from OGIS and OIP. In Part E we make three recommendations to advance our findings. Part F consists of our additional observations on the subject of making recommendations and employing strategic alternatives to improve FOIA administration.

## **C. Data Collection**

In addition to reviewing the OGIS dashboard, the following steps were taken to examine progress in achieving past recommendations:

1. Interviewing OGIS and OIP staff to get further details about the present status of their continuing efforts in furtherance of past recommendations.
2. Reviewing previous reports and collecting data compiled by OGIS, OIP, and other sources relevant to previous recommendations. This effort also included reviewing responses to this term’s Resources Subcommittee survey of agencies, conducted in Summer 2023 through the American Society of Access Professionals.
3. Conducting an online survey in Fall 2023 of Chief FOIA Officers from selected agencies to gather information about previous recommendations not otherwise publicly available. See Appendix C for the results of the survey.
4. Reviewing annual Chief FOIA Officer Reports from 2022 and 2023, which together contain information from federal agencies particularly relevant to nine of the Committee’s past recommendations. See Appendix D for the results of the review.
5. Interviews conducted virtually with 10 federal FOIA officials in early 2024 to learn more about their agencies’ implementation of specific recommendations, and their views on raising the visibility of the FOIA Advisory Committee and its recommendations in future terms. See Appendix E for a summary of the interviews.

## D. Summary Analysis of Past Recommendations

### 1. Recommendations Labeled “Completed”

As of the date of this report, OGIS lists on its dashboard 26 recommendations as “Completed.” Based on our further review, those recommendations that have been deemed to be “Completed” may best be viewed as falling into three categories:

- (A) Recommendations calling for OGIS and/or OIP to take some form of action, which in turn resulted in full and complete execution of the recommendation without any further “compliance” issue(s) still outstanding. Completed actions of this type include OGIS requesting that OIP supplement the Chief FOIA Officer Reports with additional questions, and OGIS and OIP requesting that the Chief FOIA Officers Council create standing committees.
- (B) Recommendations calling for OGIS and/or OIP to have taken some form of action which OGIS and/or OIP duly accomplished, but where there is an outstanding issue as to the level of compliance by agencies in implementing the guidance provided. Completed actions by OGIS and OIP of this type include OIP issuing memoranda, guidance or a report to agencies on best practices to be followed, or a report detailing the state of executive branch implementation of a FOIA policy issue, where compliance issues still exist.
- (C) Recommendations calling for the Archivist of the United States or OGIS to send correspondence to Congress or to some other government entity, requesting action on a policy recommendation, where there has been no further action taken on the recommendation — for whatever reason(s).

A full list of recommendations labeled as “Completed” is provided as Appendix A.

As is evident from the detailed listings in Appendix A, the staff of OGIS and OIP have shown a high level of dedication to ensuring that the recommendations of the FOIA Advisory Committee have been put into effect. Past Committee recommendations have been effectuated by a variety of means, including through the creation of committees and working groups on the CFO Council; the issuance of OIP best practices memoranda; the creation of eLearning modules on FOIA topics for agency use; the inclusion of desired questions added to the annual CFO Reports, and correspondence sent from the Archivist or OGIS to Congress and other governmental entities requesting that legislation be considered and/or some further executive branch actions be taken.

Specifically in the cases of recommendations falling within the scope of category (B), OGIS and OIP have diligently carried out the wishes of the Committee in jump-starting the process of executive branch-wide implementation of the Committee’s recommendations. Where there are perceived deficiencies in the rate of compliance with certain recommendations on the part of individual agencies, we believe in the overwhelming number of cases this is largely due to the fact that the recommendations are aimed at

addressing systemic, long-standing inefficiencies and deficiencies in the administration of the FOIA; recommendations of this type are not easily “solved” without significant resources being devoted to the task of doing so.

With respect to category (C), neither OGIS, OIP, nor the Archivist can be faulted for having attempted through written correspondence and specific follow-up actions to effectuate any of the listed recommendations, where there has yet to be a discernible response from Congress or other intended recipients.

## **2. Recommendations Labeled “In Progress,” “Pending,” and “Deferred”**

The OGIS dashboard shows that all but one of the remaining 25 out of 51 recommendations of the FOIA Advisory Committee fall into three categories: they are labeled either as “In Progress,” “Pending,” or “Deferred.”<sup>2</sup> We have not included in this report recommendations approved (or about to be approved) during the present term.<sup>3</sup>

The Subcommittee recognizes that recommendations – especially more recent ones from the last two terms of the Committee – once approved by the Archivist, take time to implement. For those recommendations that are listed on the OGIS dashboard as “Pending,” OGIS and/or OIP have the lead in committing to take further administrative actions to effectuate implementation, where the action has not yet been initiated. We believe that OGIS and OIP are acting in good faith, within the constraints of time and resources, in continuing to move forward on all “Pending” recommendations. For recommendations “In progress,” OGIS and OIP have indeed taken one or more first steps in issuing guidance or carrying out some action in response (often in the same manner as the actions noted in Category (B) above).

We are sympathetic to the rate in which FOIA and agency staff across the government can be expected to educate themselves and put into effect best practices in line with recommendations arising out of this Committee. This is true not only for “Pending” or “In-progress” recommendations, but those “Completed” recommendations as discussed above where substantial compliance is still to be achieved. While we recognize that one cannot expect full compliance with recommendations deemed to be “In progress,” we nevertheless have found significant implementation gaps that are worthy of particular attention. Three examples:

- a. [Recommendation 2020-17](#) recommended agency leadership issue a memorandum annually reminding its workforce of its obligations under FOIA. Our survey found that only two out of 21 agencies have done so.
- b. [Recommendation 2022-10](#) recommended that agencies publish FOIA logs in Excel or CSV format instead of PDF in their reading rooms on an ongoing

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<sup>2</sup> [Recommendation 2022-20](#), recommending that OGIS report directly to the Archivist, was rejected by the Acting Archivist.

<sup>3</sup> These include [Recommendation 2023-01](#) (Exemption 5 annotations) and [Recommendation 2024-01](#) (model determination letter), as well as further recommendations recently approved in the public meeting of the Committee held on April 4, 2024.

- basis (at least quarterly) with the ability for full text searching. While about half the agencies responding to the Resources Committee survey reported that they do this, there is reason to question the results of the sample. Published data from a private research firm indicates that only 8% of federal agencies post to their websites FOIA logs on a timely basis in Excel or CSV formats.<sup>4</sup>
- c. [Recommendations 2020-22](#) and [2020-11](#) proposed that the Archivist and OIP promote artificial intelligence and e-discovery tools in aiding search and redaction. Our review of Annual CFO Reports indicates that while many agencies have begun to use e-discovery tools for certain purposes, very few have moved forward in considering acquiring advanced AI and automated forms of software for the purpose of conducting searches against large electronic repositories of records, or for reviewing records for exempt material. While some pilot projects and prototypes are under discussion, much more work is to be done on this front.

We also note that the category of “deferred” recommendations on the OGIS dashboard all appear to hinge on approval of funding for [Recommendation 2022-15](#), a feasibility study of recommendations contained in the 2020-2022 FOIA Advisory Committee’s “Reimagining OGIS” [report](#).<sup>5</sup>

As described below, we consider a number of these “Pending” and “In progress” recommendations to be of special importance and therefore suggest that OGIS and OIP consider taking further steps to ensure that progress continues to maximize compliance and implementation.

### **3. Prioritizing Past Recommendations for Further Action**

To assist future terms of this Committee, as well as the Archivist of the United States, OGIS, OIP, and others, members of our Subcommittee prioritized recommendations that in our view were worthy candidates to which the staff of OGIS and OIP should pay heightened attention in connection with ensuring compliance and implementation.

Each Subcommittee member ranked his or her top five (5) recommendations in order of importance.<sup>6</sup> The Subcommittee compiled these rankings to calculate an overall count and importance rating for each recommendation. In all, 25 of the 51 recommendations received at least one “vote” for future work. Two received 5 votes, four received 4 votes, two received 3 votes, nine received 2 votes, and eight received 1 vote. The Subcommittee noted that the highest rated priorities, where at least two members included it in their rankings (17 in all), tended to fall into four categories, intended to:

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<sup>4</sup> See Appendix B at n.15 (citing to FOIAengine, <https://poliscio.com/about-foia-engine/>).

<sup>5</sup> See <https://www.archives.gov/files/ogis/foia-advisory-committee/2020-2022-term/meetings/reimagining-ogis-recommendations-05.04.2022.pdf>.

<sup>6</sup> Adam Marshall, a Committee member who does not serve on the Implementation Subcommittee, also provided rankings, making for a total of 11 respondents.

1. Improve agency FOIA websites and online interactivity for requesters.
2. Aid search and redaction through improved technology.
3. Remove first-person requests from the FOIA process.
4. Nurture a culture of transparency throughout government.

These “priority” recommendations are drawn from the entire corpus of past recommendations approved by the Committee, including “Completed” actions in subcategories (B) and (C), as well as in the “Pending,” “In Progress,” and “Deferred” categories.

Our list of “priority” past recommendations with more detailed comments as to each is set out in Appendix B.

## **E. Our Recommendations**

Based on its conclusions, the Implementation Subcommittee proposes three recommendations for the Committee’s consideration and approval:

**Recommendation 1: We recommend that OGIS and OIP follow up with selected agencies and other government entities in an effort to increase compliance with past recommendations of the FOIA Advisory Committee.**

Comment: Given their limited resources and budget, the staff of OGIS and OIP have done a remarkable job since 2016 (over the past four terms of the FOIA Advisory Committee) in marshaling their resources to implement as many as possible of the Committee’s prior 51 recommendations. In addition to completing what the Committee has asked them to do on 26 recommendations, OGIS and OIP staff are presently working on an additional 13 recommendations deemed “In progress,” and remain committed to devoting time and resources to carry out an additional nine currently “Pending” recommendations. This is all highly commendable.

Notwithstanding these efforts, we found many instances of a somewhat lesser degree of agency compliance or implementation with particular Committee recommendations than one would ideally hope for. We understand that in a substantial percentage of these cases, our past recommendations have attempted to address facets of long-standing, systemic challenges that all agencies face. These include, but are not limited to, agencies keeping up with technological developments, and having sufficient staffing and resources to address “improvements” along the lines of Committee recommendations in the face of growing FOIA backlogs and a variety of resource constraints. In such cases, it would be unfair to expect that OGIS or OIP can alone “solve” these issues. While acknowledging this, we nevertheless believe that attempting to make progress in certain key areas remains a worthy effort.

To that end, we have prioritized a subset of 17 past recommendations that, in the view of the members of our Subcommittee, are of particular importance and where

compliance with the Committee’s recommendations we believe can be improved. For these cases, we have attempted to provide concrete guidance to OGIS and OIP in the form of considering additional actions to take. These include, for example, directly interacting with OMB to get “buy in” and assistance; following up with inquiries to specific agencies with respect to known compliance gaps; issuing further (reminder) guidance; and engaging in outreach to the FOIA community and civil society groups to make their views known. Moreover, for certain recommendations we have pointed to analogous policies implementing public disclosure laws at the state government level.

This recommendation is not intended to unduly burden OGIS and OIP staff in their continuing work to put into effect “Pending” recommendations of this Committee, or otherwise to interfere with the missions and operations of those offices. The wording of this recommendation urges OGIS and OIP to engage only in “follow up” with selected agencies and other government entities – no more and no less. We believe that making judicious inquiries focused on specific issues in designated agencies holds the potential to achieve progress towards greater FOIA compliance.

**Recommendation 2: We recommend that OIP include one or more specific questions in annual Chief FOIA Officer (CFO) Reports requesting agencies to report on activities that they have implemented consistent with selected FOIA Advisory Committee recommendations.**

Comment: The annual CFO Reports OIP requires agencies to submit invaluable information on a wide variety of matters involving how agencies go about administering the FOIA. For example, the 2024 CFO report is divided into five sections:

- Section I: FOIA Leadership and Applying the Presumption of Openness;
- Section II: Ensuring Fair and Effective FOIA Administration;
- Section III: Proactive Disclosures;
- Section IV: Steps Taken to Greater Utilize Technology; and
- Section V: Steps Taken to Remove Barriers to Access, Improve Timeliness In Responding to Requests, and Reduce Backlogs;

These sections cumulatively call upon agencies to respond to 62 questions.

The Committee has previously recommended on two occasions that OIP collect specific types of information in the CFO report. [Recommendation 2018-02](#) requested OIP to add a question on search methods and technologies, and [Recommendation 2020-08](#) concerned adding a question on standard operating procedures. Additionally, we understand that either OGIS has informally asked OIP to consider including, or OIP itself decided to include, as many as eight additional questions in the CFO Reports in various years related to subjects covered in past recommendations.

Our review focused primarily on Committee recommendations generally incorporated in the CFO reports. We were able to generally track how agencies have made progress in areas related to the selected Committee recommendations. However, as explained in



further detail in Appendix D, we found that agencies have not been called upon to explicitly refer to our Committee's recommendations, and for this and various other reasons there remains a measure of uncertainty as to how to interpret agency compliance in either implementing or mirroring our Committee's recommendations. We believe it would be useful, therefore, if the CFO Report expressly referenced the existence of FOIA Advisory Committee recommendations in one or more prompts. In doing so, agencies would be given the opportunity to explain how specific policies they have put into place correspond to best practices contained in Recommendations advanced by this Committee since its inception in 2014.

We leave to OIP's discretion how to best implement this recommendation. We can conceive of several ways in which OIP could go about doing so, including:

- (i) Adding a "Section VI," entitled "Implementing FOIA Advisory Committee Recommendations," where agencies are asked a general question as to how they have taken into account the Committee's recommendations, either through implementing them directly or creating initiatives that are consistent with one or more recommendations.
- (ii) Adding one or more questions in each section of the report (or designated sections) requesting a response as to how an agency implemented specifically identified recommendations.
- (iii) Same as (ii) above but limiting additions to one or more questions related to FOIA Advisory Committee recommendations from the most recent term.
- (iv) Embedding references to applicable FOIA Advisory Committee recommendations within the text of an existing question set in the CFO Report.

We understand that there is a trade-off in imposing additional reporting burdens on agencies, where doing so takes time and resources away from actual processing of FOIA requests. We believe, however, for all the reasons stated in this report, that it would greatly aid the work of this Committee to get a better read on ongoing implementation efforts.

**Recommendation 3: We recommend that the FOIA Advisory Committee create an Implementation working group, to be charged with:**

- 1. providing a summary of previous recommendations to the Committee early in the term;**
- 2. coordinating with Subcommittees throughout the term to provide research and context from previous terms related to their work;**
- 3. conducting research throughout the term to assess progress on previous selected recommendations; and**
- 4. highlighting for the Committee recommendations that could use further attention including proposing ways to achieve greater implementation.**

Comment: Prior to this term, four preceding FOIA Advisory Committees issued a total of 51 recommendations, with all but five accepted by the Archivist (one was rejected and four deferred). This term, an additional 13 recommendations have been approved to date, not counting the three being proposed here by our Subcommittee. Altogether, these 67 recommendations have been the subject of Committee Final Reports and Subcommittee Reports, in some cases accompanied by appendices of various kinds, and all provide justifications for their enactment in great detail, formed through extensive research and discussion. This repository of accumulated documentation (institutional memory) can be of help to new, incoming Committee members; it will enable them to better understand what has been recommended in the past, and what remains to be done, to make their terms of service more efficient and effective. It is at the same time a somewhat daunting prospect to be asked to absorb this repository without further guidance.

A working group charged with the responsibilities set out in this recommendation can be of great assistance in acting as a clearinghouse for all members of the Committee to get up to speed on past recommendations and work accomplished. Working group members would in turn commit to continuing the work of the present Implementation Subcommittee in researching and analyzing how past recommendations can achieve greater implementation. We expect that the working group would choose to be judicious in tackling only a select number of past recommendations over a given term. It would be expected that some kind of report to the full Committee would be made at the end of term, with further observations and suggestions for future action.

This working group might include both members from previous terms for historical context and background, and new members for fresh perspective. The working group also might wish to organize a bootcamp provided especially for new Committee members at the beginning of a term for the purpose of recapping prior recommendations and reviewing suggestions by a prior implementation working group.

## **F. Additional Observations**

The Implementation Subcommittee's charge this term has been to review the set of past recommendations approved by the FOIA Advisory Committee and endorsed by the Archivist for the purpose of determining the extent to which they have been complied with and/or implemented. While the lens we have applied in this exercise has necessarily been focused on "recommendations," an opportunity would be lost here by failing to discuss the efficacy of the FOIA Advisory Committee's continuing to make recommendations each term.

As articulated in the introductory section of the Modernization Subcommittee's [report](#),<sup>7</sup> we must first acknowledge feedback the Committee has received this term with respect to the widespread dissatisfaction that exists with how the FOIA is administered, where

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<sup>7</sup> [https://www.archives.gov/files/ogis/documents/modernization.subcommittee.report.final\\_.pdf](https://www.archives.gov/files/ogis/documents/modernization.subcommittee.report.final_.pdf).

many requesters believe that agencies are “no longer able to carry the weight of ensuring public access to government information in a timely, cost effective, and user-friendly manner.” Agency backlogs and severe resource constraints hamper attempts on the part of members of this Committee, OGIS, and OIP to make as much progress as each would wish in advancing the cause of government transparency.

Additionally, our interviews with FOIA officials richly describe why in their view this Committee’s past recommendations have not had a greater impact in improving FOIA processes at individual agencies. Apart from the more senior FOIA records officers, FOIA staff are not generally aware of past Committee final reports. In contrast, records officers themselves are generally overwhelmed by the amount of guidance coming from both OIP, OGIS, and from this Committee. Interviewees reported that they have discounted past recommendations, either because they were not tailored to their agency (especially smaller agencies), or otherwise did not address certain practical realities. The interviewees had over three dozen suggestions for the Committee to consider, both with respect to its recommendations, as well as the impact we can make through greater efforts at external communications. Many of these observations dovetail with recommendations on public engagement coming out of the Modernization Subcommittee that have been approved by the Committee and will be forwarded to the Archivist in our Final Report. See Appendix E to this report.

Given this reality, the foundational question otherwise left unaddressed in this report is whether the FOIA Advisory Committee, in future terms, should continue to be in the business of crafting numerous new recommendations to add to the accumulated corpus of existing ones. At the present rate of crafting between 10 and 20 new recommendations per term, by the year 2030 this Committee will have produced well over 100 recommendations for agencies and other government entities to implement. The prospect of continuing down this path and expecting that interested parties (OGIS, OIP, FOIA staff, and future members of this Committee) will be able to continue to reasonably keep track of and absorb this cumulative number of “best practice” recommendations is unrealistic.

Beyond the sheer numbers, it is evident from this report that, despite the best efforts of OGIS and OIP staff, there are observable gaps in compliance and implementation with many of the recommendations already extant. We believe that some measure of creativity is called for in thinking outside the recommendations box to make concrete and sustained progress in improving FOIA administration. To this end, we ask that the full Committee this term, and readers of this report serving as members on a future Committee, consider employing and urging others to employ reform strategies that do not necessarily or solely require implementation of a new batch of Committee “recommendations” as such.

One such strategy is making a more vigorous attempt to call upon staff in OMB’s Office of Information and Regulatory Affairs to consider the issuance of presidential-level guidance or the taking of other visible, government-wide actions that will be on the radar screens of senior officials across the government to a greater extent than our Committee’s recommendations. Such guidance could be in the form of an Executive

Order or government-wide memorandum, of the type that President Obama [issued](#) on his first day in office.<sup>8</sup> OMB and the White House Office of Science and Technology Policy could also be called upon to embed FOIA access issues into Administration guidance implementing existing Executive Orders on AI and on Customer Experience. OMB could also be asked to spearhead some kind of presidential level advisory commission, devoted to improving the mission of FOIA through technology upgrades.

Our Committee this term also has approved a recommendation that the Archivist engage with governmental actors involved in the development of the Sixth Open Government National Action Plan. We can envision ways in which agencies would benefit from greater interaction and engagement with open government advocates with both technological and policy expertise applicable to the hosting and processing of agency records in electronic form.

Our recommendations include several that emphasize the importance of automated and AI tools and methods applicable to the FOIA. It may well be that OGIS and the Archivist should assemble a group of Committee of members with a heightened level of technical expertise to be able to address state-of-the-art issues in applying new technologies in the FOIA space.

OGIS has pitched several Committee recommendations to Congress with the objective of obtaining relief in the form of greater funding, enhanced statutory direction, and more active engagement between the legislative and executive branches on FOIA issues. Although these entreaties have not borne fruit, OGIS should continue to exercise its statutory authority to advance legislative and regulatory recommendations to improve FOIA administration, continuing to enhance its connection with congressional actors, and should not hesitate to avail itself of opportunities to do so.

As has been pointed out elsewhere in this term's Subcommittee reports and in past term Final Reports, we are all living in an era of unprecedented growth in the volume and variety of records in electronic and digital formats. This may be the most significant access challenge facing the government over the next decade, starting with how to provide access to email records and other forms of electronic messaging given burgeoning amounts of records into the tens and hundreds of millions. Any recommendations that this Committee ends up adopting and any other actions that can be creatively made should all take into account this new reality.

Given the state of FOIA access, we urge the members of future terms of the Committee to seriously consider the observations we are making here. We support efforts to achieve greater compliance with – and implementation of – the entire corpus of past recommendations forthcoming from our Committee. Whether the path forward should include devoting the overwhelming amount of time of a future Committee to the business of making additional recommendations is a question that should be addressed in the next term and beyond.

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<sup>8</sup> <https://obamawhitehouse.archives.gov/the-press-office/freedom-information-act>.

## Appendix A : Analysis of Recommendations Labeled “Complete” on the OGIS Dashboard

In the main report, we characterized recommendations that have been labeled complete on the [OGIS Dashboard](#) as falling within three categories (see our report at Section D.1). The following consists of a comprehensive listing of the 26 recommendations to date that OGIS has labeled as “Completed.”

### Category (A) Success: No Further Actions Need Be Taken

*Previous recommendations deemed “Completed” on the dashboard that have been fully executed by OGIS and/or OIP and no further actions need be taken:*

- a. [Recommendation 2018-01](#) urged the Chief FOIA Officers Council to create a standing Technology Committee, which came into existence in 2018. The [Committee](#) has fostered conversation and technology showcases toward improving technological solutions to improve the FOIA process.
- b. [Recommendation 2018-02](#) recommended that OIP gather information on agency use of technology by means of an additional question asked in annual Chief FOIA Officer (CFO) [Reports](#) submitted to OIP by all executive branch agencies. This question has been included in the CFO reports since 2019, and based on our survey of agency CFO reports is fully complied with in terms of generating responses in every agency annual report submission.
- c. [Recommendation 2020-04](#) recommended NARA and OIP offer training to FOIA officers and modules available to all federal employees. Currently, three e-Learning FOIA training modules are provided by OIP for FOIA employees, and OGIS worked with the Office of the Chief Records Officer at NARA to develop a storyboard in aiding OIP in its training modules for all federal employees.
- d. [Recommendation 2020-09](#) recommended that NARA incorporate and further develop the idea of public access to federal records, including through FOIA, as part of its Federal Electronic Records Modernization Initiative ([FERMI](#)), and in April 2020 NARA updated its Universal Electronic Records Management ([ERM](#)) Requirements to include FOIA.
- e. [Recommendation 2020-10](#) urged NARA and DOJ to establish liaisons with the Chief Data Officers (CDO) Council to ensure that Council officials understand the importance of federal recordkeeping and FOIA requirements. The CDO Council welcomed both the OGIS and OIP Directors as ex officio members, ensuring that the Council understands federal recordkeeping and FOIA requirements with periodic presentations at regular Council meetings.
- f. [Recommendation 2020-16](#) recommended that the CFO Council create a committee to research and propose cross-agency grant programs and other FOIA funding sources, create career paths for FOIA professionals, and promote models to align agency resources with agency transparency. In March 2021, the CFO Council co-chairs established a robust Committee on

Cross-Agency Collaboration and Innovation ([COCACI](#)), which meets monthly and has been focused on virtual (pandemic-era) FOIA office administration; Government Information Specialist (GIS) job series; and technology standardization.

### **Category (B) Partial Success: OGIS and OIP Have Acted, But Compliance Issues Continue to Exist.**

*Recommendations where OGIS and/or OIP have successfully completed what the original recommendation called for, but where there are issues of compliance and implementation on the part of federal agencies.*

- a. [Recommendation 2016-01](#) asked the Archivist to recommend to OMB that it update its 1987 OMB Guidelines for FOIA fees. The Archivist sent a [letter](#) in 2016, asking for revisions to reflect technological changes, and after OGIS provided OGIS with suggested updates, OMB published a proposal on fees in the Federal Register, which was [finalized](#) in December 2020. While the OMB fee regulation made a number of revisions conforming the fee provisions to the current statute and making other clarifying changes, OMB did not address several issues requested of them by the Archivist and OGIS.
- b. [Recommendation 2018-04](#) requested that the Archivist “launch” an interagency effort to develop section 508 compliant FOIA processing tools. With the assistance of OGIS, the CFO Council Technology Committee established in 2020 a 508 Compliance and Collaborative Tools Working Group. Recommendation 2018-04 was supplemented by [Recommendation 2022-09](#), recommending that the Working Group continue to research and recommend options in resolving inherent challenges as between section 508 of the Rehabilitation Act and FOIA’s proactive disclosure requirements. The OGIS dashboard reports that the Working Group “continues to work on the challenges.”
- c. [Recommendation 2018-05](#) asked OGIS to conduct an assessment of the methods undertaken by agencies to prepare documents for posting on agency FOIA reading rooms. In December 2020, OGIS [published](#) OGIS Issue Assessment: Methods Agencies Use to Prepare Documents for Posting on Agency Freedom of Information Act (FOIA) Websites, offering 18 best practices for agencies to consider when preparing and posting documents. According to the OGIS 2020 Issue Assessment, many agencies struggle to post documents in compliance with Section 508, particularly when redaction software automatically converts documents to PDF or TIFF files. The report provided other practices that could be bolstered by agencies to improve their reading rooms.
- d. [Recommendation 2018-07](#) required OGIS to examine the use of appropriate performance standards in federal employee appraisal records and work plans to ensure compliance with the requirements of FOIA. In September 2020, OGIS [published](#) an “OGIS Issue Assessment: Freedom of Information Act (FOIA) Performance Measures for Non-FOIA Professionals,” and

- recommended four actions for agencies to take. In accordance with the recommendation, OGIS submitted the assessment results to Congress and the President in 2021 as part of its FY 2020 [Annual Report](#).
- e. **Recommendation 2020-01** recommended that OGIS assess information about the FOIA filing process available on agency websites, with the goal of further informing OIP guidance on how agencies may improve online descriptions of the process. In November 2022, OGIS [published](#) an “OGIS Issue Assessment: Agency FOIA Websites,” finding that almost all agency websites have deficiencies in the information they include; there are some data points that almost all agencies include; and agencies generally include ample information on their websites, but finding it can often be difficult to locate. In furtherance of the recommendation, OIP updated its FOIA Self-Assessment [Toolkit](#) in March 2023 to include additional milestones for FOIA website development and maintenance and proactive disclosures.
  - f. **Recommendation 2020-05** urged DOJ OIP to issue guidance requesting agencies to provide annual mandatory FOIA training to all new and current employees and contractors. The Associate Attorney General issued a [memorandum](#) to agency General Counsels and Chief FOIA Officers in August 2022 emphasizing three e-Learning FOIA training [modules](#) for the federal workforce: executives, federal employees whose primary responsibility is not FOIA, and FOIA professionals. In our survey, about half the agencies (48%) indicated that they mandate training for all new employees, and 30% said they require it annually for all employees. On April 4, 2024, the current FOIA Advisory Committee voted to approve a recommendation to have OIP request agencies to consider mandatory training for all employees.
  - g. **Recommendation 2020-06** recommended that OGIS and OIP assist agencies in developing FOIA and records management briefings for incoming senior leaders following changes in administration or leadership. OGIS worked with the Office of the Chief Records Officer for the U.S. Government to develop background material on FOIA and records management for senior leaders which it then shared with OIP. In turn, OIP created a 15-minute FOIA Training for Executives [module](#) that can be used in agency learning management systems. Based on our review of a sample of 2023 CFO Annual Reports, we believe a number of agencies do commit to providing briefings to incoming and/or current senior leaders; however, the extent of government-wide compliance remains undetermined.
  - h. **Recommendation 2020-07** requested OGIS and OIP to review FOIA performance measures used in Agency Performance Plans and Reports, encourage agencies to include FOIA in their performance plans, and submit the results of their review and any recommendations to Congress and the President. In response, OGIS [published](#) in September 2022 an “OGIS Issue Assessment: The Freedom of Information Act’s Inclusion in Agency Performance Plans.” The 2022 Issue Assessment reported that 25% of the departments reviewed included FOIA in their performance plans, and that they varied widely. The Assessment recommended that federal agencies receiving more than 50 FOIA requests annually should include FOIA in their

annual performance plans, and those plans should include specific goals and metrics. OGIS also submitted the results in its FY 2022 report to Congress and the President.

- i. **Recommendation 2020-08** urged OIP to collect information as part of Chief FOIA Officer Reports regarding standard operating procedures (SOPs) for FOIA processing. OIP asked agencies in their 2021 Chief FOIA Officer Reports and 2022 Chief FOIA Officer Reports multiple questions regarding SOPs for the FOIA process. For its part, OGIS **reported** in “Assessing Freedom of Information Act (FOIA) Compliance through the 2016 National Archives and Records Administration’s Records Management Self-Assessment,” that 77% of respondents to the survey had SOPs for FOIA processing, while 12% reported having SOPs for some parts of the process. OIP issued **guidance** in 2023 to help agencies establish or update their SOPs.
- j. **Recommendation 2022-11** recommended that OIP urge agencies to remove from first-person FOIA practice any records that agencies use to determine the individual’s eligibility for benefits or affect an individual in proceedings. In his March 15, 2022 **Memorandum**, the Attorney General issued updated FOIA Guidelines encouraging agencies to examine whether they have records they would make more readily accessible without requiring individuals to file FOIA requests. In addition, OIP asked agencies to report in their 2021, 2022, 2023, and 2024 Chief FOIA Officer **Reports** on whether they have explored alternative means of access to first-person information. Our agency survey indicated that roughly half of agencies reported doing so.
- k. **Recommendation 2020-12** requested agencies to publicly release FOIA documents on their websites in open, legible, machine-readable and machine-actionable formats to the extent feasible. Agencies have provided updates on their efforts in the 2022, 2023, and 2024 **CFO Reports**. The OGIS dashboard states: “Opportunities exist for additional work on this recommendation,” and that OGIS and OIP have committed to “continue to encourage agencies to post documents” in these open formats.
- l. **Recommendation 2020-13** asked agencies to review FOIA-related technological and staffing capabilities within two years, and agencies have reported their findings in the 2022 and 2023 CFO Annual Reports. The OGIS dashboard states: “OIP and OGIS will continue to encourage agencies to review FOIA staffing and technology.”
- m. **Recommendation 2020-14** asked that OGIS and OIP help agencies to explore alternative ways to provide access to first-party requests. OGIS published an **assessment** in August 2021 with three further recommendations, and the 2020-2022 FOIA Advisory Committee made four related recommendations.
- n. **Recommendation 2020-15** requested agencies to make commonly requested documents available outside of the FOIA process, including in publicly accessible online databases. The 2020-2022 FOIA Advisory Committee Report notes that “several” agencies have met this recommendation’s request. The OGIS dashboard states that “opportunities exist for additional work on this recommendation.”



- o. **Recommendation 2020-19** requested OGIS to ask Congress to engage in regular and more robust oversight of FOIA, hold more hearings, establish regular and coordinated communications with agencies, and strengthen OGIS clearer authority and expanded resources. Congress has not yet taken direct action in response to this recommendation. However, OGIS followed up in 2020 asking GAO to pinpoint systemic and specific compliance issues for Congress to address, and GAO issued a [report](#) in 2024 on backlog issues. GAO also made [recommendations](#) to DOJ in 2024.
- p. **Recommendation 2022-11** requested OIP to urge agencies to remove from first-person FOIA practice records that agencies use to determine eligibility for benefits or affect individual proceedings. While not directly addressing the recommendation, the OGIS dashboard states that in March 2022 the Attorney General “issued [FOIA Guidelines](#) encouraging agencies to examine whether they have records they would make more readily accessible without requiring individuals to file FOIA requests. The OGIS dashboard also states that agencies were asked to respond in the 2021-2024 CFO Reports on “whether they have explored alternative means of access to first-person information.”

### **Category (C) No Success: OGIS, OIP, and/or the Archivist Acted, But No Action Taken to Date**

*Recommendations where the Archivist or OGIS have sent correspondence to Congress or another component of government advocating for adoption of a recommendation, where no action has been taken.*

- a. **Recommendation 2018-03** requested that the Archivist suggest a modification to the Federal Acquisition Regulation (FAR) to require all agencies, when acquiring electronic records management software, electronic mail software, and other records related information technology, to consider features that will help facilitate the agencies’ responsibilities under FOIA to provide access to federal agency records. OGIS drafted a business case in FY 2019 that would modify the FAR to require access to federal agency records as a consideration in the procurement process and NARA submitted the business case to OMB in early FY 2020 for consideration by the [Federal Acquisition Regulatory Council](#). OGIS states on the Dashboard that it “will continue to urge this amendment to the FAR.”
- b. **Recommendation 2018-06** urged OGIS to highlight issues with proactive disclosure and Section 508 compliance in its report to Congress. In three of its Annual Reports, FY [2018](#), FY [2020](#), and FY [2021](#), OGIS recommended to Congress that legislation be enacted to clarify agency requirements under the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794d, especially as they relate to proactive posting of large numbers of records. On the Dashboard, OGIS “continues to observe agencies struggling with balancing the requirements of both statutes.” Congress has yet to take any action.
- c. **Recommendation 2020-18** urged the Council of the Inspectors General on Integrity and Efficiency (CIGIE) to consider a cross-cutting project examining

- how successful agency FOIA programs are in providing access to agency records in electronic and digital form. NARA sent a [letter](#) to CIGIE in April 2023, and facilitated presentations to two different CIGIE committees in April 2023 and August 2023. In August 2023, CIGIE sent correspondence to OGIS stating that it was declining to move forward with a cross-cutting project on FOIA.
- d. **Recommendation 2021-01** requested that the Archivist ask Congress to expand public access to federal records in particular congressional support offices by creating disclosure procedures modeled after FOIA. OGIS transmitted the recommendation in letters to the chairpersons and ranking members of the Senate Judiciary Committee and the House Committee on Oversight and Reform on May 15, 2022. Congress has not taken any action on this recommendation.
  - e. **Recommendation 2020-20** requested that OGIS ask Congress to address funding for agency FOIA programs. Congress has not done so. OGIS followed up in a recommendation in their 2020 [Annual Report](#) that Congress ask GAO to conduct a funding study. To our knowledge Congress has not yet asked GAO to act on this request.

## Appendix B: Priority Recommendations for Future Attention

### Overview

This appendix summarizes previous recommendations that the Implementation Subcommittee recommends warrant further attention by the Archivist, OGIS, OIP, future FOIA Advisory Committees, or other entities. We acknowledge that there are a number of additional recommendations that could also require additional actions being taken, but are recommending these as ones in which further efforts to ensure compliance may prove fruitful and/or would have the most impact on FOIA administration.<sup>9</sup>

### Method

With the data collection efforts of the Subcommittee in mind, each Subcommittee member<sup>10</sup> rated their top five (5) recommendations that they deemed important for further work. Those rankings were compiled to calculate an overall count and “importance” rating for each recommendation. In all, 25 of the 51 recommendations received at least one “vote” for future work. Two received five (5) votes, four received four (4) votes, two received three (3) votes, nine received two (2) votes, and eight received one (1) vote. Here is the complete list:

Term	Number	Description	Count	Avg
2018-2020	2020-03	Agencies should use one platform for their released records.	5	4.25
2018-2020	2020-22	The Archivist should promote AI technologies for search and redaction.	5	3.00
2018-2020	2020-17	Agency leaders should send annual FOIA reminders to employees.	4	3.50
2018-2020	2020-14	Agencies should provide alternatives to FOIA for common first-party records ( <i>e.g.</i> , A-Files).	4	3.00
2018-2020	2020-11	OIP should provide guidance on e-discovery tools for searches.	4	2.50
2020-2022	2022-10	Agencies should post FOIA logs quarterly as structured data (.csv, etc.).	4	2.13
2018-2020	2020-12	Agencies should post data that is machine readable (structured - .csv, etc.).	3	3.67
2020-2022	2021-01	Congress should enact FOIA-like laws for some legislative records.	3	2.50
2016-2018	2018-05	OGIS to assess methods for posting to reading rooms.	2	5.00
2018-2020	2020-05	Agencies to provide mandatory FOIA training for all agency employees.	2	4.00
2020-2022	2022-15	OGIS should have the authority to make binding decisions.	2	4.00
2018-2020	2020-07	Agencies should include FOIA in their performance plans.	2	3.50

<sup>9</sup> The following Committee recommendations from the last two terms were not the subject of further evaluation in this appendix: Recommendations 2020-02, 2020-21, 2022-01, 2022-02, 2022-04, 2022-05, 2022-06, 2022-07, 2022-12, 2022-13, 2022-14, 2022-16, 2022-17, and 2022-18.

<sup>10</sup> FOIA Advisory Committee member Adam Marshall, who is not a member of the Implementation Subcommittee, also participated in the ranking exercise.

2020-2022	2022-19	Archivist to commission a study of costs/benefits of alternative enforcement mechanism(s).	2	3.00
2020-2022	2022-03	Agencies should post information about Glomar/Neither Confirm Nor Deny responses on their websites.	2	3.00
2020-2022	2022-08	CFO Council should study release of records in native format, including metadata.	2	2.50
2018-2020	2020-01	OGIS should assess agency website instructions for the FOIA request process.	2	2.00
2020-2022	2022-13	Agencies should identify the most requested first-person requests.	2	2.00
2016-2018	2018-01	Establish a CFO Council technology subcommittee for best practices.	1	5.00
2016-2018	2018-07	Include performance standards in all employee appraisals.	1	4.00
2018-2020	2020-06	OGIS/OIP should provide FOIA briefings for new senior leaders.	1	2.00
2018-2020	2020-19	Archivist should commission a study of costs/benefits of alternative enforcement mechanism(s).	1	2.00
2020-2022	2022-09	Resolve proactive disclosure and 508 issues	1	2.00
2014-2016	2016-01	OMB should further revise fee guidance.	1	1.00
2020-2022	2022-07	OIP should encourage agencies to include key elements on websites.	1	1.00
2020-2022	2022-17	Congress should provide a direct line-item appropriation for OGIS.	1	1.00

We note that the highest rated priorities, where at least two members noted it in their rankings (17 in all), tended to fall into four categories, intended to:

### 1. Improve agency FOIA websites and online interactivity for requesters

- 2020-03 Agencies should use one centralized platform for their released records.
- 2022-10 Agencies should post FOIA logs quarterly as structured data (.csv, etc.).
- 2020-12 Agencies should post data that is machine readable (.csv, etc.).
- 2022-08 CFO Council should study release of records in native format, including metadata.
- 2018-05 OGIS to assess methods for posting to reading rooms.
- 2022-03 Agencies should post information about Glomar/Neither Confirm Nor Deny responses on their websites.
- 2020-01 OGIS should assess agency website instructions for the FOIA request process.

### 2. Aid search and redaction through improved technology

- 2020-22 The Archivist should promote AI technologies for search and redaction.
- 2020-11 OIP should provide guidance on e-discovery tools for searches.

### 3. Remove first-person requests from the FOIA process

- 2020-14 Agencies should provide alternatives to FOIA for common first-party records (e.g., A-Files).
- 2022-13 Agencies should identify the most requested first-person requests.

#### 4. Nurture a culture of transparency throughout government

2020-17	Agency leaders should send annual FOIA reminders to employees.
2020-05	Agencies to provide mandatory FOIA training for all agency employees.
2020-07	Agencies should include FOIA in their performance plans.
2021-01	Congress should enact FOIA-like laws for some legislative records.
2022-15	OGIS should have the authority to make binding decisions.
2022-19	Archivist to commission a study of costs/benefits of alternative enforcement mechanism(s).

#### Priorities for Further Attention

Below is a more detailed explanation of those 17 recommendations, grouped into the above four categories, that received at least two “votes.” The list below includes the wording of the original recommendation, a link to its original supporting material, and our conclusions based on our research and discussions.

#### 1. Online/Website Improvements

**2020-03**      **Agencies should use one platform for their released records.**  
*We recommend that agencies work toward the goal of collecting, describing, and giving access to FOIA-released records in one or more central repositories in standardized ways, in addition to providing access on agency websites.*

In the time since the issuance of this recommendation, agencies have confronted the need to meet a deadline of August 2023 set in a joint Justice Department and Office of Management and Budget Memorandum (M-19-10) requiring all agencies to have interoperability with FOIA.gov, the National FOIA Portal, by August 31, 2023. In addition, the then-existing foiaonline.gov portal used by approximately 22 agencies was decommissioned as of September 2023. On August 21, 2023, the Co-Chairs of the Chief FOIA Officers Council issued a memorandum for Chief FOIA Officers reminding them of the upcoming interoperability deadline, as well as the need to take appropriate steps for agencies using foiaonline.gov to ensure the preservation of data when transitioning to a new system.

Our review of the latest round of annual CFO Reports shows that a substantial number of agencies are reporting some measure of interoperability with FOIA.gov. However, from public reporting<sup>11</sup> and

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<sup>11</sup> See, e.g., Rebecca Heilweil, “Some agencies fall behind on FOIA.gov interoperability requirements,” FedScoop (Sept. 15, 2023), <https://fedscoop.com/some-agencies-fall-behind-on-foia-gov-interoperability-requirements/>.

members of our Subcommittee's own anecdotal experience, we believe that there are ongoing gaps in agencies' being fully compliant with the OMB deadline. We have not had time to survey agency compliance in preserving records formerly residing in the foiaonline.gov repository.

The Resources Subcommittee of this term's FOIA Advisory Committee has proposed a recommendation that the CFO Council form a working group to analyze the need for (i) a shared FOIA case management system, and (ii) a centralized record repository for use by federal agencies and the public, and that the working group produce a report with recommendations within two years. The Resources Subcommittee's recommendation contemplates that as a future policy option the CFO Council engage with OMB in building out the proposed government-wide case management system and centralized records repository.

In parallel with this recommendation, we believe that OGIS and OIP should also consider working with OMB to enhance FOIA.gov, using policy and performance tools such as recommending FOIA.gov for a renewed "Cross-Agency Priority Goal" at performance.gov, and encouraging greater agency use of "release to one, release to all" policies mirroring the State Department's policy in this area.

Other measures to be considered in the near term to advance the cause of government-wide shared FOIA repositories would be for agencies to pay greater attention to ensuring that records are in open, machine-readable formats, with proper metadata, for the purpose of making them "AI-ready." OIP and OGIS should continue to encourage agencies to adopt best practices in these areas, as well as to seek public input from the FOIA community and civil society organizations with expertise in open government reforms.

**2020-01 OGIS should assess agency website instructions for the FOIA request process.**

*We recommend that the Office of Government Information Services undertake an assessment of the information agencies make publicly available on their FOIA websites to facilitate the FOIA filing process and for the purpose of informing further guidance by the Office of Information Policy on how agencies may improve online descriptions of the process.*

OGIS did undertake an assessment of what instructions agencies post online for FOIA requests, published in November 2022.<sup>12</sup> The assessment found that almost all agency FOIA websites have deficiencies in the

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<sup>12</sup> See <https://www.archives.gov/ogis/foia-compliance-program/targeted-assessments/agency-foia-websites-28-nov-2022>.

information they include; there are some data points that almost all agencies include; and, while agencies generally include ample information on their websites, finding that information can often be difficult. OIP updated its FOIA Self-Assessment Toolkit in March 2023,<sup>13</sup> to include additional milestones for FOIA website development and maintenance and proactive disclosures. OIP's update is a commitment in the Fifth U.S. Open Government National Action Plan.

The OGIS assessment indicated many agencies do not provide all of the information in a way that can be easily found by requesters. Our survey indicated that most agencies (91%) say they provide on their website plain language, step-by-step explanations on how to file a FOIA request, in addition to their regulations (we infer that agencies completing the survey were more likely to comply with the suggestions). OGIS may loop back to assess the websites again in 2027 as a five-year review to examine progress.

**2020-12 Agencies should post data that is machine readable (.csv, etc.).**

*We recommend that agencies release FOIA documents to the public on their FOIA websites and in FOIA portals in open, legible, machine-readable and machine-actionable formats, to the extent feasible.*

**2022-08 CFO Council should study release of records in native format, including metadata.**

*The Chief FOIA Officers Council Technology Committee will establish a working group and within two years determine best practices for release of records in native format, including metadata. (Long recommendation with detailed suggestions.)*

These two recommendations focus on the release of records, typically data structured records, such as in Excel or “.csv” (comma-separated variable), in their native format. Requesters, particularly journalists who routinely acquire and analyze government data, indicate frustration at receiving databases converted solely into PDFs. We note that in some states, such as Arizona, agencies are required by law to provide records in their native format, if requested.<sup>14</sup>

Our survey of select agencies indicated that 14% always post data in machine readable formats (e.g., .csv), 19% most of the time, 43% sometimes, and 14% never. Moreover, many agencies convert records into PDFs, saying it is automatically converted by their processing system.

More attention should be made to incorporating systems that do not convert data to PDFs (with resulting stripping of metadata, as well as “file

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<sup>13</sup> See [https://www.justice.gov/d9/2023-03/foia\\_self-assessment\\_toolkit\\_2023\\_update.pdf](https://www.justice.gov/d9/2023-03/foia_self-assessment_toolkit_2023_update.pdf).

<sup>14</sup> See, e.g., Jonathan Anderson and Sarah K. Wiley, “Freedom of the Database: Auditing Access to Structured Data,” 3(1) J. CIVIC INFO. 30 (2021), <https://journals.flvc.org/civic/article/view/129181/130783>.

flattening” thereby rendering the documents content to 508-required assistive technology). Our understanding from the director of OIP is that, pursuant to Recommendation 2022-08, a best practices working group has been created within the CFO Council’s Technology Committee. We believe OIP and OGIS should continue to monitor the progress of this working group in meeting the expectations of Recommendation 2022-08, including coming up with best practices for the release of records in native format with metadata. We also suggest that, in the absence of further agency action on Recommendation 2020-12, OIP and/or the new working group on the CFO Council also specifically give guidance to agencies on the matter of what constitutes “machine readable formats” as a subset of native formats.

Consideration should also be given to OIP and OGIS’s approaching OMB to obtain definitive guidance on the applicability of the OPEN Government Data Act’s format requirements for proactive disclosure of FOIA records online. The OPEN Government Data Act was enacted to ensure that “public data assets” are machine-readable. In Recommendation 2020-12, the FOIA Advisory Committee deferred to “guidance expected to be issued by OMB” on the subject of whether the OPEN Government Data Act’s definition of “public data assets” includes agency responses to FOIA requests. To the best of our knowledge, the expected OMB guidance has not been issued.

**2022-10 Agencies should post FOIA logs quarterly as structured data (.csv, etc.).**

*We recommend that agencies proactively publish FOIA logs in the agency’s electronic reading room (often referred to as FOIA Libraries) on an ongoing basis, at least quarterly. Agencies should allow for the full text searching of FOIA logs.*

Similar to the recommendations discussed above, the fourth Committee term urged up-to-date posting of FOIA logs as structured data, not PDFs, and outlined 13 fields that should be included in the data. Our informal survey found that 43% of agencies say they post FOIA logs in searchable structured data formats. However, we believe the respondents probably assumed that PDFs were “structured data,” even if in reality PDFs fall short in doing so. We note our email correspondence with the FOIAengine group<sup>15</sup> on March 15, 2024, regarding their assessment of 323 federal agency websites:

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<sup>15</sup> FOIAengine (<https://poliscio.com/about-foia-engine/>) is a company that digitizes federal FOIA logs and then sells subscriptions for those wishing to monitor FOIA request activity for commercial interests, journalism, and research. Others also digitize FOIA logs for various purposes, including to help requesters hone their requests (e.g., MuckRock’s FOIA Log Explorer, at <https://www.muckrock.com/foi/logs/>).



Only half of all departments and agencies have posted FOIA logs online, and just eight percent (27) provided logs in a structured data format such as Excel or CSV. In addition, none of the agencies or departments included all of the fields recommended by the FOIA Advisory Committee. The FOIAEngine assessment identified the Securities and Exchange Commission logs as the best model for other agencies.

On behalf of the greater FOIA requester community and civic society organizations, the nongovernmental representatives on this term's Committee believe that greater implementation of this recommendation will be of substantial benefit to requesters being able to identify and obtain previously released records, including in the ways identified in the commentary to the recommendation. Additionally, with the increasing availability of automation tools, production of FOIA logs with the metadata elements identified in the recommendation will greatly aid in efficient searches of their contents.<sup>16</sup> OGIS and OIP should encourage agencies to seek out technical expertise both in-house and external to the government.

#### 2018-05

#### **OGIS to assess methods for posting to reading rooms.**

*Request that OGIS conduct an assessment of the methods undertaken by agencies to prepare documents for posting on agency FOIA reading rooms.*

OGIS did issue an [assessment](#) in December 2020 of how agencies prepare documents for posting on their FOIA websites, stating that 83% reported that they have procedures for posting to their reading rooms.<sup>17</sup> The report offers 18 best practices for agencies to consider when preparing and posting documents. The assessment's foundation came from an OGIS [report](#),<sup>18</sup> which showed that, generally, agencies are complying with FOIA's mandate and have procedures for preparing documents for posting on FOIA reading rooms, and it is largely FOIA staff who are preparing documents for posting.

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<sup>16</sup> We are aware of commercial requesters' use of FOIA logs for their own purposes. See Margaret Kwoka, "FOIA, Inc.," 65 *Duke Law Journal* 1361-1437 (2016), <https://scholarship.law.duke.edu/dlj/vol65/iss7/2>.

<sup>17</sup> OGIS Issue Assessment: Methods Agencies Use to Prepare Documents for Posting on Agency Freedom of Information Act (FOIA) Websites: <https://www.archives.gov/ogis/foia-compliance-program/targeted-assessments/posting-docs-assessment-2020-dec-16>.

<sup>18</sup> See OGIS Freedom of Information Act Compliance Through the 2018 National Archives and Records Administration's Records Management Self-Assessment, <https://www.archives.gov/files/ogis/assets/2018-foia-compliance-self-assessment-report.pdf>.

In our survey, most agencies (91%) said they follow the 18 best practices recommended by OGIS in posting records to their FOIA online reading rooms (likely skewed toward more compliant agencies, based on the survey sample), and while they may attempt to follow them, more remains to be done. According to the OGIS 2020 assessment report, many agencies struggled to post documents in compliance with Section 508, particularly when redaction software automatically converts documents to PDF or TIFF files. The report provided other practices that could be bolstered by agencies to improve their reading rooms. Another assessment might be conducted to see if agencies have improved since 2020, and to identify areas that could use further attention.

## 2022-03

### **Agencies should post information about Glomar/Neither Confirm Nor Deny responses on their websites.**

*We recommend that agencies provide information to requesters on their websites about the circumstances that will likely result in a “Neither Confirm Nor Deny” response, and, when possible, include suggestions on how to avoid such a response.*

Several recommendations in the 2020-2022 term involved the “Glomar” response, also called “Neither Confirm Nor Deny.” Some Committee members have felt the responses can be confusing to requesters. The Reporters Committee for Freedom of the Press (RCFP) conducted a [study](#) to assess the extent of use of Glomar by agencies and how it is tracked and communicated.<sup>19</sup> RCF determined that at least 1,000 Glomar responses are issued by federal agencies annually. The study did not examine how agencies explain Glomar responses on their websites.

Our survey (results in Appendix C) indicated that 64% of agencies responding say they do not provide Glomar information on their websites, 27% say not applicable, and only 9% yes. Our analysis of CFO Reports indicated that only one agency of the reports reviewed (Housing and Urban Development) said it posts its Glomar responses. Many agencies report tracking them, and many reported not Glomar responses at all.

Future Committees may want to revisit this issue and encourage more action to provide greater understanding of Glomar, better tracking of its use (e.g., a field included in all agency FOIA logs), and how requesters can avoid it.

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<sup>19</sup> Shawn Musgrave and Adam A. Marshall, “We FOIA’d Every Federal Agency for Their ‘Glomar’ Responses. Here’s What We Learned.” Reporters Committee for Freedom of the Press (March 15, 2024), <https://www.rcfp.org/glomar-denials-data-analysis/>. Nearly 300 federal agencies provided information about their use of Glomar denials from 2017 through 2022. Despite working for nearly two years to collect the data, some of the key agencies that tend to issue Glomar responses (FBI, State, CIA, etc.) did not provide the records, or did not provide the records in time for the report.

## 2. Improved Search/Processing Technology

### 2020-11 **OIP should provide more guidance on e-discovery tools for searches.**

*We recommend that the Office of Information Policy provide further guidance on the use of e-discovery tools to assist agencies in meeting their obligations to conduct an adequate search of electronic records, including but not limited to email in Capstone repositories.*

### 2020-22 **The Archivist should promote AI technologies for search and redaction.**

*The Archivist should work with other governmental components and industry in promoting research into using artificial intelligence, including machine learning technologies, to (i) improve the ability to search through government electronic record repositories for responsive records to FOIA requests and (ii) identify sensitive material for potential segregation in government records, including but not limited to material otherwise within the scope of existing FOIA exemptions and exclusions.*

Our survey asked two questions of agencies applicable to these recommendations. In one question, only 23% of agencies (5 out of 22) stated that they employed some form of machine learning or artificial intelligence in the FOIA process. A second question asked whether agencies use e-discovery tools to search for records, and here 77% of agencies (17 out of 22) reported that they do in some form. In our analysis of CFO Reports, 23 agencies mentioned using e-discovery tools and technology in their search for agency records from specified vendors. Five agencies seemed to imply they were using machine learning. Nine agencies reported using some type of automated method to review records for exempt material.

For reasons that have been discussed at greater length in the approved recommendation M-5 (future Recommendation 2024-12) from this term's Modernization Subcommittee regarding the issuance of one or more requests for information (RFIs) on the subject of AI and FOIA, we believe that the accelerating pace of electronic records' being created and stored within agency repositories demands greater attention to how state-of-the-art search methods can be used to make FOIA workflows more efficient. Moreover, it is not clear that the e-discovery tools agencies report to be using are sufficient to meet the challenge of unprecedented volumes of email preserved in Capstone repositories, and all other forms of electronic records found in networks, shared drives, and structured databases.

We believe OGIS and OIP should continue to work closely with the CFO Council's Technology Committee in furtherance of all three of these recommendations. These efforts may also include following up with federal agency representatives in attendance at the NexGen FOIA Tech

Showcase 2.0 event scheduled for May 14-16, 2024, which will include highlighting e-discovery and AI technologies of use in the FOIA context.

### 3. First-Person Requests

**2022-13** **Agencies should identify the most requested first-person requests.**  
*We recommend that agencies that receive frequent first-person requests should identify the most requested records and develop a plan for processing such records that leverages technology, and promotes efficiency and good customer service.*

**2020-14** **Agencies should provide alternatives to FOIA for common first-party records (e.g., A-Files).**  
*We recommend that the Office of Government Information Services and the Office of Information Policy have agencies identify common categories of records requested frequently under the FOIA and/or Privacy Act by or on behalf of individuals seeking records about themselves, for the purpose of establishing alternative processes for providing access to these records to requesters in a more efficient manner than the FOIA.*

These recommendations, along with [2022-11](#) (to shift out of FOIA first-party FOIA requests those records needed for benefits or proceedings), and [2022-13](#) (that agencies identify the most requested first-person requests and create efficient processing methods), are intended to reduce the burden on agencies and requesters by shifting first-person requests out of the FOIA process into a more streamlined, efficient system. The Government Accountability Office noted in its 2024 [report](#) on backlogs<sup>20</sup> that moving first-party requests out of the FOIA process could reduce backlogs and streamline the system.

OGIS published an [assessment](#)<sup>21</sup> in August 2021 that makes three recommendations, including that agencies explain in plain language on FOIA websites the steps requesters should take to obtain access to first-party records. Further, OIP asked agencies in their 2021 Chief FOIA Officer [Reports](#),<sup>22</sup> to describe any common categories of first-party requests and whether the agencies have explored establishing non-FOIA access to those records.

Specific to immigration files, a [subcommittee](#) of the Homeland Security Advisory Council<sup>23</sup> formed to independently advise the DHS Secretary,

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<sup>20</sup> “Freedom of Information Act: Additional Guidance and Reliable Data Can Help Address Agency Backlogs,” Government Accountability Office (March 2024), <https://www.gao.gov/products/gao-24-106535>, at 38.

<sup>21</sup> See OGIS Issue Assessment: Commonly Requested Categories of First-party Records, <https://www.archives.gov/ogis/foia-compliance-program/targeted-assessments/first-party-records-30-aug-2021>.

<sup>22</sup> See <https://www.justice.gov/oip/guidelines-2021-chief-foia-officer-reports>.

<sup>23</sup> <https://www.dhs.gov/homeland-security-advisory-council>.

**recommended** in March 2023 that DHS engage an internal component or a contractor to assess the agency’s first-person requests and make recommendations for the design and implementation of an alternative system.<sup>24</sup> The recommendation goes on to say that any assessment should be completed within 12 months of initiation and that DHS should seek funding from Congress for such a study. We urge OGIS to continue to monitor the status of this effort.

Our review of CFO Reports indicated that 26 agencies reported providing alternative means for making commonly requested documents outside of FOIA. However, these reports mostly consisted of making proactive disclosures under FOIA (applying the “Rule of Three,” etc.), in contrast to providing alternative processes for requesting records (e.g., DHS A-Files). Of our survey respondents, a third indicated they have attempted to identify frequently requested first-person records and establish an alternative method of dissemination, a third said they have not, and a third indicated that it is not relevant to their agency. Additional attention is needed on this issue, particularly within DHS, to better streamline the system.

#### 4. Nurturing a Transparency Culture

**2020-17**     **Agency leaders should send annual FOIA reminders to employees.**  
*We propose that the Chief FOIA Officers Council recommend that agency leadership annually issue a memorandum reminding the workforce of its responsibilities and obligations under FOIA and encouraging the workforce to contact the agency’s FOIA officer for assistance with the FOIA process.*

Our survey found that only two out of 21 agencies issue annual memoranda reminding employees of their FOIA responsibilities and obligations. The Subcommittee continues to believe that issuance of an annual agency-wide memorandum on FOIA by all federal agencies would publicly show continued support for FOIA on a government-wide basis. If OGIS and OIP are unable to convince the CFO Council that senior officials at each agency (including agency CFOs) issue an annual memorandum reminding the workforce of its responsibilities and obligations under FOIA, then we believe OIP should take on the responsibility for issuing guidance urging agencies to do so on their own accord.

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<sup>24</sup> See <https://www.dhs.gov/sites/default/files/2023-03/Openness%20and%20Transparency%20DHS%20Review%20Final%20Report%2003162023.pdf>.

2020-05

**Agencies to provide mandatory FOIA training for all agency employees.**

*We recommend that the Office of Information Policy issue guidance requesting agencies to provide annual mandatory FOIA training to all agency employees, as well as provide FOIA training to all new agency employees and contractors onboarding with an agency, including program-specific training if applicable. We further recommend that the Office of Government Information Services and the Office of Information Policy undertake a study of agencies' current FOIA training requirements and content.*

OIP has developed a [suite](#) of FOIA resources to train all levels of the federal workforce, including FOIA Training for Federal Employees and FOIA Training for FOIA Professionals modules that can be uploaded into agency learning management systems. OIP also offers a FOIA [Infographic](#), a one-page handout on FOIA basics for all employees new to the federal workforce. The Associate Attorney General has emphasized the training in a [memo](#) to agency General Counsels and Chief FOIA Officers.<sup>25</sup> To review agencies' FOIA training, OIP asked agencies in their 2021 and 2022 Chief FOIA Officer Reports to describe efforts to ensure proper FOIA training is made available and used by agency personnel, and to inform non-FOIA professionals of their obligations under FOIA. The 2024 GAO [report](#) indicated that increased employee training could help reduce backlogs.<sup>26</sup>

In our survey, about half the agencies (48%) indicated that they mandate training for all new employees and 30% said they require it annually for all employees. Of those who do it, 57% say it is very effective. CFO Reports indicate that every agency discusses training, but most do not do it for all staff. Most conduct training for FOIA professionals. The 2022-2024 term Resources Subcommittee, in its research on this topic, found similar results.

At its April 4, 2024, meeting, the FOIA Advisory Committee approved a recommendation proposed by the Resources Subcommittee that OIP issue further guidance urging agencies to require minimum training for all agency staff, not just FOIA professionals. We encourage OIP to reiterate that FOIA training is required of all federal employees and track compliance in its annual reports. This is not unusual – at least four states

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<sup>25</sup> <https://www.justice.gov/oip/memorandum-foia-training>.

<sup>26</sup> <https://www.gao.gov/blog/foia-backlogs-hinder-government-transparency-and-accountability>.

mandate public records training for all its employees,<sup>27</sup> and such training in other nations has been found to improve compliance with the law.<sup>28</sup>

## 2020-07

### **Agencies should include FOIA in their performance plans.**

*We recommend that the Office of Government Information Services and the Office of Information Policy examine the FOIA performance measures used in Agency Performance Plans and Reports to encourage agencies to include FOIA in their performance plans. We further recommend that OGIS submit the results of its assessment and any recommendations to Congress and the President in accordance with 5 U.S.C. § 552(h)(5).*

The Freedom of Information Act's Inclusion in Agency Performance Plans, [published](#) by OGIS in September 2022,<sup>29</sup> found that a quarter of departments reviewed included FOIA in their performance plans, and they varied widely. OGIS recommended to Congress and the President in its 2023 Annual Report that federal agencies that receive more than 50 FOIA requests annually should include FOIA in their annual performance plans, and those plans should include specific goals and metrics.

A question was asked about this in the survey, but it appeared there was confusion in the question - some agencies interpreted it as including FOIA in employee performance plans/appraisals, not agency performance plans.

OIP and OGIS followed through on this recommendation in reporting on compliance, and their work indicates a minority of agencies incorporate FOIA in their overall organizational performance plans. It may be possible to achieve greater compliance through OIP and OGIS making a business case for inclusion of FOIA in agency performance plans through a direct appeal through the CFO Council. While recognizing that agency performance planning varies, OIP may nevertheless wish to specifically request agencies in their responses to annual reporting to justify non-action in moving ahead on this recommendation.

## 2021-01

### **Congress should enact FOIA-like laws for some legislative records.**

*Congress should adopt rules or enact legislation to establish procedures for effecting public access to legislative branch records in the possession of congressional support offices and agencies modeled after those*

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<sup>27</sup> Michele Bush Kimball, "Mandated State-level Open Government Training Programs, 28 GOV. INFO. Q. 474-483 (2011). <https://doi.org/10.1016/j.giq.2011.04.003>.

<sup>28</sup> Gabriel Pina and Claudia Avellaneda, "Central Government Strategies to Promote Local Governments' Transparency: Guidance or Enforcement?", PUB. PERF. & MNGMT. REV. (2018); Gregory Michener and Simeon Nichter, "Local Compliance with National Transparency Legislation," 39 GOV. INFO. Q. (2022). <https://doi.org/10.1016/j.giq.2021.101659>.

<sup>29</sup> See <https://www.archives.gov/ogis/foia-compliance-program/targeted-assessments/agency-performance-plans-30-sept-2022>.

*procedures contained in the Freedom of Information Act. These should include requirements for proactive disclosure of certain information, procedures governing public requests for records, time limits for responding to requests, exemptions to be narrowly applied, and an appeal from any initial decision to deny access.*

OGIS delivered the recommendation to the Archivist of the United States after the Committee's vote at its meeting on June 10, 2021. OGIS transmitted the recommendation in letters to the chairpersons and ranking members of the Senate Judiciary Committee and the House Committee on Oversight and Reform on May 15, 2022.

No action has been taken by Congress to date. The Director of OGIS may wish to highlight this recommendation in future appearances before the Senate Judiciary Committee and the House Government Reform Committee. In addition, future FOIA Advisory Committees may urge this again, perhaps focusing attention on one specific agency, such as the Capitol Police. Perhaps a more concerted effort can also be undertaken by the advocacy community to educate lawmakers and their staff about this issue.

**2022-15**      **OGIS should have the authority to make binding decisions.**  
*We recommend that Congress give the Office of Government Information Services the authority to make binding decisions.*

**2022-19**      **Archivist should commission a study of costs/benefits of alternative enforcement mechanism(s).**  
*We recommend that the Archivist of the United States commission a feasibility study, incorporating input from requesters and agencies, to more deeply explore the costs and benefits of these recommendations [to reimagine OGIS] and refine the proposals to aid Congress in drafting legislation.*

In its 2020-2022 term the Committee approved six recommendations pertaining to creation of an alternative enforcement mechanism for resolving disputes outside of the courts. See "[Reimagining OGIS Report](#)" by the Legislation Subcommittee of the 2020-2022 term of the Committee.<sup>30</sup> A key premise to these recommendations was that they would reduce litigation and enable requesters to seek relief when denied records without hiring an attorney. The recommendations followed models adopted in some states (Connecticut, Pennsylvania, New Jersey, etc.), and dozens of other countries, most notably Mexico.<sup>31</sup>

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<sup>30</sup> <https://www.archives.gov/files/ogis/foia-advisory-committee/2020-2022-term/meetings/reimagining-ogis-recommendations-05.04.2022.pdf>.

<sup>31</sup> The Report includes an examination of the different models in the United States and in other countries, as well as a list of dozens of previous studies and reports on alternative enforcement mechanisms. *Id.*



OGIS provided a white paper to Senate Judiciary staff explaining the need for funding a costs/benefits study on alternative enforcement mechanisms, but no funding has materialized yet. OGIS has also discussed possible funding of this costs/benefits study with other organizations (both inside and outside government) with no positive results. We continue to recommend that OGIS pursue the costs/benefits study. We also suggest that future Committees explore other mechanisms, such as alternative dispute resolution in the judiciary (similar to what Ohio currently does, successfully, through its Court of Claims<sup>32</sup>), to accomplish the same ends.

We note that four other recommendations (giving OGIS authority to make binding decisions, allowing OGIS to review records in camera, increasing OGIS's budget, and giving OGIS a direct line-item budget from Congress) were deferred pending a costs/benefits study. Completion of a study could "un-freeze" these important recommendations.

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<sup>32</sup> See <https://ohiocourtofclaims.gov/public-records/>.

# Appendix C: Survey Findings

## Overview

The Subcommittee conducted an online survey of Chief FOIA Officers in Fall 2023 to gather information about the status of previous recommendations. Below are the results.

## FOIA Implementation Survey Summary

Implementation Subcommittee, FOIA Advisory Committee  
Nov. 21, 2023

### Method

This survey of federal agency Chief FOIA Officers was conducted by the Implementation Subcommittee of the FOIA Advisory Committee to get a sense for whether progress has been made in improving the FOIA process through previous committee recommendations. An email was sent on Oct. 26, 2023, from the Office of Information Policy on behalf of Implementation Subcommittee Co-Chair David Cuillier to all 120 agencies that are subject to FOIA. Of those agencies, 22 receive 0-10 requests annually, and more than half receive less than 100 requests. A link was provided to an online Qualtrics survey that included 37 questions. Participants were told in the email that the survey would take about 20 minutes to complete, was voluntary, and that no identifying information would be provided to the committee or OIP – only aggregated data (below) would be disseminated. A reminder email was sent after a few weeks, and the survey closed Nov. 14, 2023. In all, 22 agencies filled out the survey, representing a range of large and small agencies. Responses are provided below with the raw number of responses and percentages (some percentages do not add up to 100% because of rounding). Most questions closely mirrored the wording of a previous committee recommendation, and the specific recommendation link is provided below for each question. While a relatively small response rate (therefore perhaps skewed toward agencies excelling in FOIA processing), this may still be instructive for follow-up interviews, in conjunction with other data and insights.

**1. Does your agency conduct mandatory FOIA training for the following? (check all that apply) (2020-05)**

All new employees	13	48%
All current employees	8	30%
For FOIA staff	2	7%
No mandatory training	4	15%

**2. How effective, in your opinion, has this training been in improving the FOIA process at your agency?**

Very effective	12	55%
Moderately effective	3	14%
Slightly effective	2	9%
Not applicable	3	14%
Not sure	1	5%
No answer	1	5%

- 3. Does your agency require briefings on FOIA for incoming senior leaders? (2020-06)**
- |               |    |     |
|---------------|----|-----|
| Yes           | 10 | 48% |
| No            | 10 | 48% |
| Doesn't apply | 1  | 5%  |
- 4. If yes, how effective have these briefings been in improving the FOIA process at your agency?**
- |                      |   |     |
|----------------------|---|-----|
| Very effective       | 6 | 55% |
| Moderately effective | 4 | 36% |
| Slightly effective   | 1 | 9%  |
- 5. Has your agency incorporated appropriate performance standards in all employee appraisals and work plans to ensure compliance with the requirements of FOIA? (2018-07)**
- |     |    |     |
|-----|----|-----|
| Yes | 3  | 14% |
| No  | 18 | 86% |
- 6. Does your agency leadership issue an annual memo to employees reminding them of their responsibilities and obligations under FOIA? (2020-17)**
- |     |    |     |
|-----|----|-----|
| Yes | 2  | 10% |
| No  | 19 | 90% |
- 7. Does your agency use the new online FOIA training modules developed by the Office of Information Policy? (Check all that apply.) (2020-04)**
- |                   |    |     |
|-------------------|----|-----|
| For all employees | 4  | 16% |
| For FOIA workers  | 14 | 56% |
| For executives    | 2  | 8%  |
| Created our own   | 2  | 8%  |
| No                | 3  | 12% |
- 8. If your agency uses the new online FOIA training modules, how effective have they been in improving FOIA in your agency?**
- |                      |   |     |
|----------------------|---|-----|
| Extremely effective  | 1 | 5%  |
| Very effective       | 6 | 29% |
| Moderately effective | 4 | 19% |
| Slightly effective   | 3 | 14% |
| Not applicable       | 6 | 29% |
- 9. Does your agency provide on your website plain language, step-by-step explanations on how to file a FOIA request, in addition to your FOIA regulations? (2020-01)**
- |     |    |     |
|-----|----|-----|
| Yes | 20 | 91% |
| No  | 2  | 9%  |
- 10. Does your agency publish records to an online public reading room/library? (2018-05)**
- |     |    |     |
|-----|----|-----|
| Yes | 20 | 91% |
| No  | 2  | 9%  |

**11. Does your agency post on its FOIA website information for requesters about Glomar (Neither Confirm Nor Deny) responses, and why they might receive such a response? (2022-03)**

Yes	2	9%
No	14	64%
Don't issue	6	27%

**12. To what extent does your agency comply with 508 requirements in posting documents on your FOIA website? (2018-06)**

All comply with 508	14	67%
Some comply	4	19%
All do not comply	2	10%
Don't know	1	5%

**13. What recommendations do you have that you think would make it easier for agencies to post material online that complies with 508 requirements?**

- a. To allow agencies to post the documents without 508 compliance and only make the index 508 compliant. The agency can then make a specific document 508 compliant upon request.
- b. There is confusion related to 508 compliance. Many agencies struggle with this due to the issues related to pictures/graphs etc. Text is generally easy; however, hurdles remain.
- c. Specific, clear guidance for what makes a document 508 compliant.
- d. Send conventional materials to OIP and have OIP convert the materials.
- e. None.
- f. (Our agency) has a dedicated person that handles this for all employees who post online.
- g. An automated check or tool to assist with making documents 508 compliant.
- h. Ability to post for a certain period before the 508 obligations kick in (e.g., 30 days).

**14. Does your agency release records online in machine-readable formats, such as CSV, Excel, XML, or other structured data formats? (2020-12)**

Always	3	14%
Most of the time	4	19%
Sometimes	9	43%
Never	3	14%
Not sure	2	10%

**15. Does your agency post in your FOIA library FOIA logs in searchable structured data formats, such as Excel or CSV files? (2022-10)**

Yes	9	43%
No	11	52%
Don't know	1	5%

**16. Does your agency use e-discovery tools to search for records? (2020-11)**

Yes	17	77%
No	4	18%
Not needed	1	5%

**17. Does your agency use machine learning or artificial intelligence in the FOIA process (e.g., searching for records, filtering for exemptions)? (2020-22 and 2018-02)**

Yes	5	23%
No	17	77%

**18. Does your agency follow the 18 best practices recommended by the Office of Government Information Services in posting records to your online FOIA reading room? (2018-05)**

Yes	15	71%
No	5	24%
Don't know	1	5%

**19. How helpful has the Chief FOIA Officers Council's Technology Committee been in identifying best practices that can be implemented in your agency? (2018-01)**

Extremely helpful	2	9%
Somewhat helpful	4	18%
Neither helpful nor unhelpful	12	55%
Somewhat unhelpful	2	9%
Not aware of this committee	2	9%

**20. Does your agency have standard operating procedures defined for FOIA processing? (2020-08)**

Yes	20	95%
No	1	5%

**21. If so, in your opinion, are these standard operating procedures adequate? Have they made a difference?**

- a. Yes; however, they are in process of being updated.
- b. Yes. They inform agency employees of our process and assist in training for new employees with FOIA responsibilities.
- c. Yes. We are a small agency with three employees working part-time on FOIA (two processing requests). We generally have less than 100 requests annually and sometimes less than 50. While our process and procedures are a bit antiquated and our technology is limited, they are sufficient for our FOIA program.
- d. Yes, the standard operating procedures are adequate.
- e. Yes, I believe they are adequate. They may need to be revisited since we have seen an uptick of FOIA requests within the last quarter.
- f. we have recently received a FOIA request for these SOPs, so we will be reevaluating the benefit of having them. That said, they are helpful.
- g. They're adequate. We get very few requests.
- h. They are in draft so we don't know how adequate they will be yet.
- i. They are being newly updated, and we anticipate that the new version will be impactful.
- j. The SOP is reviewed annually and as needed. We find them adequate.
- k. SOPs have helped to ensure FOIA cases submitted to [the agency] are processed more effectively and consistently.

**22. Does your agency include FOIA in its agency performance standards, as recommended by the Office of Government Information Services? (2020-07)**

Yes	4	18%
No	10	45%
Only for FOIA staff	4	18%
Not sure	4	18%

**23. Do your agency regulations, directives, policies and guidance allow individuals access to records about themselves, regardless of whether they have legal representation in agency proceedings? (2022-12)**

Yes	15	68%
No	1	5%
Doesn't apply	4	18%
Don't know	2	9%

**24. Has your agency considered providing alternatives to FOIA for commonly requested documents? (2020-15)**

Yes	15	68%
No	7	32%

**25. Does your agency identify common categories of records requested frequently by individuals seeking records about themselves, and then establish alternative processes for providing access to requesters? (2020-14 and 2022-13)**

Yes	7	33%
No	7	33%
Doesn't apply	7	33%

**26. Which of the following best describes your awareness of the Federal FOIA Advisory Committee under NARA?**

I was/am a committee member	3	14%
I am familiar with the committee's work	9	41%
I have heard of the committee	9	41%
I have never heard of the committee	1	5%

**27. Which of the following best describes your awareness of the Committee's recommendations to the Archivist?**

I have enacted changes in response	1	5%
I am familiar with them	6	27%
I am somewhat aware of them	5	23%
I did not know about them	10	45%

**28. If your agency has enacted changes based on Committee recommendations, please briefly describe the nature of the changes.**

- a. Well, for one, whenever our agency relies on Exemption 5, we always identify the corresponding privilege. We already allow individuals to access information about themselves. As for easier first-person access, our employees can generally access their personal files through the government-wide personnel sites, e.g., EPP. With regard to parties in our cases, we are rolling out a beta program in the next week or two which

- will allow parties to electronically access their case files. Finally, some of the other recommendations are to address challenges not routinely encountered by our agency.
- b. We track and report on “Neither Confirm Nor Deny”/Glomar responses.
  - c. One example is the recommendation to post FOIA logs, which has been helpful.
  - d. (Our agency) upgraded its FOIA website. (We) also created templates that provide more detailed information about (our) search efforts. Additionally, (our) FOIA specialists are required to collaborate with FOIA requesters whenever there is any ambiguity regarding the information being requested, and to keep FOIA requesters updated about the status of their FOIA requests.

**29. If your agency has not implemented changes in response to the Committee's recommendations, why might that be?**

- a. We are a small independent agency that receives a maximum of 12 FOIA requests per year. Have had no appeals. The process we have in place seems sufficient.
- b. Many of the recommendations were already implemented before the Committee's recommendations.
- c. Lack of FOIA staff and resources.
- d. (Our agency) interprets these recommendations to be for the Archivist of the United States and OIP, which have at times been integrated into Chief FOIA Officer Reporting or new OIP requirements and CIA responds accordingly.
- e. A lot of the recommendations are not scalable for our agency.

**30. Is there anything else you would like to add, or questions/suggestions you might have for the FOIA Advisory Committee?**

- a. We're an agency with an FTE of 5. We have a very narrow mission and very few records that would be available under FOIA. I feel like most advisory committees forget that agencies like ours exist. I worry with the development of things like the online portal that we're going to see increasingly burdensome reporting requirements and fewer guardrails around the process. I'm already noticing an uptick in my number of requests and 99% of them are clearly designed for other agencies. I suppose I'm just saying this to remind the advisory committee that agencies like ours exist and should be considered where possible.
- b. One of the biggest challenges (our agency) FOIA unit faces is when a FOIA requester seeks "any and all" records without narrowing down or identifying specific topics.
- c. I would like for the Committee to keep in mind that smaller agencies, such as ours, simply do not encounter many of the problems experienced by larger agencies. In the end, many of the well-intentioned solutions, guidance, and requirements imposed on agency FOIA staff government-wide amounts to burdensome, busy work for some of us. This is especially so for agencies that do not have full-time FOIA personnel. Therefore, alternative solutions, guidance, and requirements for smaller or understaffed agencies would be much appreciated. That being said, I do believe that there was/is an initiative by the Committee to address small agency issues, which I greatly appreciate. I also acknowledge my lack of involvement in helping to address these concerns in recent years (because FOIA is not my full-time responsibility). However, I hope that moving forward I can assist the Committee in improving the FOIA landscape for small agencies.

# Appendix D: Chief FOIA Officer Reports Analysis

## Overview

The Department of Justice, Office of Information Policy (OIP) conducts an annual survey requiring Chief FOIA Officers to submit responses to a wide range of questions with respect to FOIA administration at their agency. The CFO reports for FY 2023 consisted of five parts, including over 60 questions asked of agencies.<sup>33</sup> Members of the Implementation Subcommittee<sup>34</sup> performed a limited review of recent Chief FOIA Officer Reports, primarily from FY 2023.<sup>35</sup> The purpose of this exercise was to assist the Subcommittee in making findings with respect to whether agencies have generally implemented past Committee recommendations, either directly in response to specific recommendations, or by taking actions consistent with the goals and objectives of our recommendations.

## Methodology

We selected recommendations from past terms of the FOIA Advisory Committee concerning subjects that tied into questions that were asked of agencies in the CFO reports. We reviewed responses to two of the Committee's recommendations that specifically requested OIP to incorporate certain questions into the reporting questions.<sup>36</sup> Other recommendations subject to our review were ones in which OIP staff either took it upon themselves, or OIGIS staff suggested and OIP staff agreed, to incorporate into the CFO reports.

Our sample of 2023 FY CFO reports included a review of reports from all 15 Cabinet departments, and 39 out of 65 available reports from other named federal agencies.<sup>37</sup> Each of our reviewers read designated CFO annual reports for the purpose of flagging the most relevant passages in the reports shedding light on implementation or compliance with FOIA policies and procedures recommended by the Committee.

This appendix represents a brief summary compilation of the results of our review.

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<sup>33</sup> A full list of the questions asked of agencies in the FY 2023 CFO reports can be found at: <https://www.justice.gov/oip/2023-chief-foia-officer-report-guidelines-agencies-receiving-more-50-requests-fiscal-year-2021>

<sup>34</sup> Reviewers included Subcommittee members Jason R. Baron, Lauren Harper, Michael Heise, and Ben Tingo.

<sup>35</sup> We also reviewed FY 2022 CFO reports for the purpose of looking at one question asked during that year on FOIA standard operating procedures (Recommendation 2020-08) that was not included in the FY 2023 reports.

<sup>36</sup> See Recommendations 2018-02 (search methods) and 2020-08 (standard operating procedures).

<sup>37</sup> A complete list of agencies that we reviewed is included at the end of this Appendix.



## Key Takeaways and Caveats

- We did not find *express* references in the CFO reports to past FOIA Advisory Committee recommendations. This was not, however, entirely unexpected, given that OIP did not ask agencies to make such specific references, either in terms of agency efforts at implementation of, or agency awareness of, our Committee's recommendations.
- A mixed picture emerges from the review with respect to whether reported policies and practices in the CFO reports align with past best practices recommendations from the FOIA Advisory Committee. For example, we found generally positive alignment in the areas of: undertaking reviews of technology and staffing resources; and use of standard-issue e-discovery software. In contrast, we found gaps or deficiencies in agencies reporting out policies that align with recommendations in the following areas: creating performance standards for non-FOIA professionals; providing training for senior officials, providing training for contractors, issuing annual reminders to staff; and using advanced search tools, using AI machine learning.
- We found differences in levels of implementation or compliance as between larger Cabinet departments and especially the smaller federal agencies. Predictably, Cabinet departments receiving a greater number of FOIA requests each year have a greater need for better technology to assist in processing those requests (*e.g.*, e-discovery software). On the other hand, in some cases very small agencies are more agile in being able to train a greater percentage of their FOIA staff.
- Due to the free-text nature of the reports, where agencies had discretion to provide responses of any length to specific questions (short, long, or not covering all points requested), there necessarily is a measure of both subjectivity and uncertainty with respect to any findings of agency implementation of policies truly conforming to specific Committee recommendations. Similarly, in certain cases the questions asked of agencies did not add up exactly with the scope of this Committee's recommendations. Our review attempted to capture the essence of what was being reported out as best we could determine.
- Our findings also need to be caveated to the extent that we found a bias in the annual reporting in favor of instances where an agency was able to expressly point to a specific positive policy or procedural change in line with the topic being asked about. For example, the FY 2023 report asked whether briefings on FOIA are given to incoming senior officials, and we counted on the order of 20 responses discussing their efforts at providing these briefings; whereas in none of the reports is there an express statement that the agency does *not* hold such briefings. We did not necessarily attribute the failure to provide a specific response as meaning that the agency does not carry out the actions being inquired about.

- The CFO reporting requirements provide agencies with the opportunity to provide insight into their overall FOIA efforts, across a wide range of activities. The annual reports also cover a number of ongoing challenges for agencies, most particularly reporting on their FOIA backlogs, that we have not tracked in this exercise. Given this, any findings regarding implementation or compliance with FOIA Advisory Committee recommendations needs to take into account the resource constraints and overall FOIA obligations that each agency is presented with.
- **Our key takeaway** is that this exercise did not provide a high degree of insight into the details of whether and to what extent agencies have put in place policies and procedures that implement or mirror FOIA Advisory Recommendations. This finding supports Recommendation #2 in the main Subcommittee report, requesting that OIP more directly request of agencies that they discuss how they have considered and implemented our Committee's recommendations.

## Findings Regarding Past Committee Recommendations

In the following section, we list each recommendation we reviewed accompanied by a brief summary statement of our findings.

**Recommendation 2018-02** – OIP to collect information in CFO reports on agency search capabilities.

**Recommendation 2020-11** – OIP will provide guidance to agencies on use of e-discovery tools to search for records.

*Findings:* Twenty-two (22) agencies mentioned using standard forms of e-discovery tools and technology in searches for agency records. References to the following software products (in alphabetical order) included: EnCase, FOIAXpress, iSearch, Microsoft eDiscovery, Relativity, and Xera. Only six (6) agencies referenced that they were using or considering more advanced forms of search, including using machine learning technologies. Eleven (11) agencies reporting using some type of automated method to review records for exempt material.

**Recommendation 2018-07** – Use of FOIA performance standards in employee appraisals.

*Findings:* The Federal Reserve was the only agency we reviewed that mentioned having FOIA performance measures for non-FOIA professionals.

**Recommendation 2020-05** – OIP guidance on annual mandatory FOIA training to all new and current employees and contractors.

*Findings:* Every agency we reviewed discussed their overall training efforts in detail. It is clear from the agency reports that they devote a great deal of resources in training their FOIA professionals. With respect to providing mandatory training for *all* new employees and contractors, very few agencies reported doing so.

**Recommendation 2020-06** – Agencies to provide FOIA briefings for senior officials during transitions and changes in leadership.

*Findings:* Many agencies did report providing some form of briefings to political appointees and other senior officials as part of onboarding at the beginning of an administration. Some agencies specifically included senior officials in connection with ongoing FOIA training. However, there are gaps where a number of agencies simply did not expressly reference “senior” officials when describing their overall training programs.

**Recommendation 2020-08** – OIP will collect information as part of CFO reports regarding standard operating procedures (SOPs) for FOIA processing.

*Findings:* Our review of a subset of the FY 2022 CFO reports did not reveal a substantial number of express references to SOPs. However, we note that OIP’s more comprehensive summary review reported that 79% of agencies did in fact have some form of SOPs, and 10% were developing them.<sup>38</sup>

**Recommendation 2020-13** – Agencies will review their FOIA technology and staffing to identify resources they need.

*Findings:* Virtually all agencies referenced performing some form of reviews of their technology and staffing needs. More detailed descriptions of the comprehensiveness of these agency reviews were provided in a much more limited number of cases. Unsurprisingly, it was almost universally the case that agencies expressed their desire for greater resources, especially in the form of additional staff.

**Recommendation 2020-15** – Agencies will make commonly requested documents available outside of FOIA, including in accessible online databases.

**Recommendation 2022-13** – Agencies should identify the most commonly requested records and develop a plan for creating efficiencies.

*Findings:* Twenty-seven (27) agencies reported providing alternative means for making commonly requested documents available outside of FOIA. However, these responses included agencies pointing to making proactive disclosures under FOIA (“the rule of three” for commonly requested requests), as well as more on point responses, for example, providing alternative processes for requesting specific records series (e.g., DHS A-Files).

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[https://www.justice.gov/d9/pages/attachments/2022/08/30/2022\\_cfo\\_assessment\\_methodology\\_combined\\_003.pdf](https://www.justice.gov/d9/pages/attachments/2022/08/30/2022_cfo_assessment_methodology_combined_003.pdf).

**Recommendation 2022-03** – Agencies should post on their FOIA websites information for requesters about *Glomar* responses.

*Findings:* HUD was the only agency in our review that specifically said it posted *Glomar* responses. Many agencies reported not using *Glomar* responses. For those who did, a majority of agencies reported not tracking them, while the remainder indicated that they do track their *Glomar* responses.

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## List of Agency CFO Reports Reviewed

### Cabinet Departments

1. **DOC** - Department of Commerce
2. **DOD** - Department of Defense
3. **DOEd** - Department of Education
4. **DOE** -Department of Energy
5. **DOI** - Department of the Interior
6. **DOJ** - Department of Justice
7. **DOL** - Department of Labor
8. **DOS** - Department of State
9. **DOT** - Department of Transportation
10. **DHS** - Department of Homeland Security
11. **HHS** - Department of Health and Human Services
12. **HUD** - Department of Housing and Urban Development
13. **TREASURY** - Department of the Treasury
14. **USDA** - Department of Agriculture
15. **VA** - Department of Veterans Affairs

### Other Federal Agencies and Entities

1. **AMTRAK** - National Railroad Passenger Corporation
2. **CIA** - Central Intelligence Agency
3. **CFTC** - Commodity Futures Trading Commission
4. **CFPB** - Consumer Financial Protection Bureau
5. **CIGIE** - Council of the Inspectors General on Integrity and Efficiency
6. **CSOSA** - Court Services and Offender Supervision Agency
7. **DFC** - U.S. International Development Finance Corporation
8. **EPA** - Environmental Protection Agency
9. **FEC** - Federal Election Commission
10. **FHFA** - Federal Housing Finance Agency
11. **FLRA** - Federal Labor Relations Authority
12. **FTC** - Federal Trade Commission
13. **GSA** - General Services Administration

14. **MSPB** - Merit Systems Protection Board
15. **NASA** - National Aeronautics and Space Administration
16. **NARA** - National Archives and Records Administration
17. **NCUA** - National Credit Union Administration
18. **NEH** - National Endowment for the Humanities
19. **NLRB** - National Labor Relations Board
20. **NSF** - National Science Foundation
21. **NTSB** - National Transportation Safety Board
22. **NRC** - Nuclear Regulatory Commission
23. **ODNI** - Office of the Director of National Intelligence
24. **OGE** - Office of Government Ethics
25. **OPM** - Office of Personnel Management
26. **OSC** - Office of Special Counsel
27. **OSHRC** - Occupational Safety and Health Review Commission
28. **PBGC** - Pension Benefit Guaranty Corporation
29. **PEACE CORPS** - Peace Corps
30. **RRB** - Railroad Retirement Board
31. **SBA** - Small Business Administration
32. **SEC** - Securities and Exchange Commission
33. **SSA** - Social Security Administration
34. **TVA** - Tennessee Valley Authority
35. **USAID** - United States Agency for International Development
36. **USAGM** - United States Agency for Global Media
37. **USCPS** - United States Consumer Product Safety Commission
38. **USCSHIB** – United States Chemical Safety and Hazard Investigation Board
39. **USPS** - United States Postal Service

## Appendix E: Interview Summaries

### Overview

Implementation Subcommittee members<sup>39</sup> conducted virtual interviews with 10 federal FOIA officials to learn more about their level of knowledge of the work of the FOIA Advisory Committee, as well as actions taken to implement past recommendations. Interviewees were informed that their responses would be anonymous, *i.e.*, neither their names nor the names of their affiliated agencies would be identified in any write-ups of their interview. In fulfillment of our representation, we are providing here a summary analysis of the collective interviews undertaken; however, we have chosen to include selected anonymous, verbatim quotations from interviewees which particularly illustrate important points.

Our Subcommittee sought out individuals with substantial expertise in administering the FOIA within their agencies. Those interviewed consisted of senior FOIA officers, as well as senior lawyers with responsibility for FOIA in various Offices of General Counsel. In virtually all cases, interviewees had at least a decade of experience working in assistance of FOIA programs, with some having as much as 20 to 30 years' experience in the FOIA area. Agencies in which these individuals work ranged from the very small (less than 10 total staff in the entire agency), to Cabinet departments comprising tens of thousands of employees.

We asked participants three main questions:

1. How aware have you and your colleagues been of the Federal FOIA Advisory Committee and its work, including its past recommendations to agencies?
2. In what areas have you taken any actions in direct response to the Committee's recommendations?
3. What suggestions or ideas do you have which would assist the Committee in having a greater impact with your agency's implementation of the Committee's recommendations?

Interview notes were collected, reviewed, shared amongst Subcommittee members, and are summarized here.

### Key Takeaways

1. While the interviewees themselves were generally aware of the existence of the FOIA Advisory Committee, there wasn't a strong awareness of the breadth of or specifics with respect to the Committee's past recommendations. The FOIA staff reporting to the interviewees may or may not be aware of our Committee, unless and until our interviewees specifically apprised them of its existence.

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<sup>39</sup> Interviews were conducted in early 2024 by Subcommittee members Jason R. Baron, Ben Tingo, Catrina Pavlik-Keenan, and Luke Nichter.

2. The interviewees do especially pay attention to DOJ guidance issued by the Office of Information Policy (OIP). To a much lesser extent they are aware of written materials on the Office of Government Information Services (OGIS) website or the OGIS blog, “The FOIA Ombudsman.” Interviewees do, however, keep themselves apprised of American Society of Access Professionals (ASAP) programs, and Chief FOIA Officers (CFO) Council meetings, at both of which OGIS and OIP representatives appear and provide updates on the work of the FOIA Advisory Committee.
3. In the absence of OIP or OGIS requesting reports on how specific FOIA Advisory Committee recommendations are being complied with, it has been left to the individual interviewees themselves to keep in mind any individual recommendations that they believe would be applicable to their agencies.
4. Some interviewees believe that agency FOIA staff are overwhelmed by all the guidance and recommendations coming from OIP, OGIS, and this Committee. A number of the interviewees expressed the view that not all recommendations raised issues that were applicable to the particular circumstances their agency is facing. Some interviewees wished that the Committee would specify which agencies (or types of agencies) would benefit from particular recommendations, based on any specific findings that the Committee has made.
5. In a similar vein, some interviewees perceived the recommendations to show some measure of naiveté, to the extent that implementation was just not possible with existing resources.
6. A wide variety of recommendations were made by interviewees on how the Committee might have higher visibility and more impact with respect to agency implementation of specific recommendations. These primarily consisted of suggesting more active participation by the heads of OGIS and OIP in “getting the word out” when the latest final report of the FOIA Advisory Committee has been published, including announcements in writing as well as participation in various agency and other forums (*e.g.*, ASAP) where specific recommendations are discussed.
7. A common theme in the interviews was skepticism regarding how agencies can keep track of and implement an ever-growing number of recommendations from the Committee.

## **Compilation of Responses to Interview Questions**

### **Q1. How aware have you and your colleagues been of the Federal FOIA Advisory Committee and its work, including its past recommendations to agencies?**

- Interviewee was “very aware” of the Committee. They have attended meetings and receive the emails that are sent out with the recommendations.
- Interviewee was “very familiar” with the FOIA Advisory Committee, and “generally familiar” with various of the Committee’s recommendations. The

- interviewee was not, however, aware of [Recommendation 2023-01](#), regarding (b)(5) designations in more detail, nor the Committee’s call for comments on a model determination letter ([Recommendation 2024-01](#)).
- “Pretty aware.”
- We were unaware of those [recommendations] until now, other than indirectly through ad hoc participation in various surveys. It [is] great to see all the recommendations and actions taken on the Committee's dashboard.
- “We have only recently become aware of the Committee through a former member of our agency’s board. But, through participation in surveys conducted by NARA and others, we have been [made] aware about many of the information-gathering recommendations that came from the Committee.”
- Interviewee personally very familiar both with the FOIA Advisory Committee and its recommendations. However, they didn’t think their staff follow Advisory Committee’s actions on their own. The interviewee said that they have in the past recommended both to the CFO and their staff that they watch FOIA Advisory Committee meetings either streaming live or afterwards on YouTube.
- Interviewee stated that staff have minimal awareness of the FOIA Advisory Committee or its output. The interviewee has encouraged staff to attend past public meetings (or watch on YouTube). One problem of awareness is that there are fewer general meetings for FOIA officers and staff held by DOJ/OIP than there used to be. There is also no general listserv with updates. Some awareness that the FOIA Officer has of the Committee is due to subbing in for the Department’s CFO at meetings of the CFO Committee, but even there, references to the work of our Committee were viewed as “minimal.”
- One interviewee stated that there is a general lack of awareness of the OGIS FOIA Ombudsman Blog.
- One interviewee said they were personally very familiar both with the FOIA Advisory Committee and its recommendations, but if their staff were polled, they would predict only 30% to 50% would have an accurate picture of what the FOIA Advisory Committee is (how it is comprised), or what it does (make recommendations). The interviewee went on to state the following:
  - they have in the past recommended that staff review FOIA Advisory Committee public meetings online.
  - they have gone through final reports of the FOIA Advisory Committee with selected staff to discuss recommendations and compare against agency policies and protocols, to “close out” the need for any further action in appropriate cases.



- the general awareness government-wide of the work of the FOIA Advisory Committee would likely be disappointing to its members, given the work and energy that goes into producing final reports. In general, agency FOIA staff are overwhelmed with the number of issuances conveying guidance. The interviewee urged that staff of OGIS and OIP, and the members of the FOIA Advisory Committee, all need to find ways to better highlight their efforts, “lest they labor in obscurity.”
- Interviewee “very familiar” personally with the FOIA Advisory Committee. The interviewee discusses the work of the Committee “incessantly” to their staff of 12+ employees.
- “Not so much” aware of the Committee. The interviewee happened to come across some recommendations this year and was happy to know [they were] out there.

**Q2. In what areas have you taken any actions in direct response to the Committee’s recommendations?**

*In Direct Response*

Specific recommendations that were cited in interviews that directly led to revisions in current agency policies:

- Proactive disclosure practices. Identified items that need to go on the website.
- Internal record-keeping of FOIA logs (interviewee unsure if this guidance came from Committee or from DOJ).
- Currently in the middle of attempting to revamp the agency website to account for various Advisory Committee recommendations.
- Implemented the Glomar guidance and created a box in their tracking system to accommodate this recommendation.

An interviewee discussed a direct connection between the passage of congressional legislation requiring the submission of applications online, where the FOIA Advisory Committee’s various recommendations regarding agency proactive disclosure and enhancement of websites provided a guide as to how to best implement new legislative requirements. The agency “seized” on the work of the FOIA Advisory Committee as part of this overall effort. While interviewee “can’t say that but for the Committee’s recommendations” the agency wouldn’t have implemented improvements, but they “might have watered down some” and not been “as vigorous with respect to disclosures.”

### *Indirect Influence*

Interviewee stated that the Committee's recommendations have over time raised awareness of certain issues, and in at least some selected cases have acted as an indirect catalyst for innovation. This is especially true with respect to providing a better online interface with the public, certain time/volume issues, and release to one/release to all policies.

"We are just now seeing improvements incrementally" in FOIA processes, through technology and otherwise. The recommendations will continue to be reviewed as progress is made."

The FOIA Advisory Committee's [Recommendation 2018-01](#), which resulted in the creation of a CFO Technology Committee as part of the CFO Council, inspired the interviewee to get involved in the work of the CFO Technology Committee.

The interviewee said that they have been "inspired" to make reforms in agency FOIA processes in a collective way: through keeping up with DOJ and OGIS issuances, by attending CFO Council meetings, ASAP meetings, and by work with foia.gov. However, they could not point to a specific recommendation in a FOIA Advisory Committee final report that has been implemented due to knowledge of the report itself. The interviewee gave the following additional reasons for the lack of greater implementation with Committee recommendations:

- the interviewee did not necessarily agree with everything said in particular recommendations, and so at best would take into consideration only a portion of the suggested best practices.
- there is no "mandate" from on high (DOJ or DOJ/OIP or OGIS) to report back on how FOIA Advisory Committee recommendations are being considered.
- the Department pays much greater attention to Government Accountability Office (GAO) audits, where there have been several extending back over the last decade. A duty exists to respond back to GAO as to implementation of the recommendations set out in these audit reports.

An interviewee also reported using the Committee's recommendations for what are likely to become requirements or future issues. One interviewee expressed the view that Committee's recommendations help smaller agencies like the one they worked at better understand separate guidance issued by OIP.

### *Minimal or No Effect*

Interviewee stated that other than to respond to the mentioned surveys, their office has not taken any actions in direct response to the committee's recommendations.

"May have implemented one" but wasn't sure.

Interviewee couldn't say that there had ever been a "direct" tie in between the Committee's recommendations and the agency making changes in FOIA policies. This is largely due to the fact that in the interviewee's opinion, the agency had implemented policies consistent with the recommendations, to the extent applicable.

### **Q3. What suggestions or ideas do you have which would assist the Committee in having a greater impact with your agency's implementation of the Committee's recommendations?**

*More active involvement of OGIS, the FOIA Advisory Committee, and the CFO Council in Promoting Committee Recommendations*

1. The FOIA Advisory Committee as a whole or individual members could come to the agency to report on the latest recommendations from the Committee
2. The CFO Council could make its members aware of the actions of the FOIA Advisory Committee, including through individual presentations and simple updates.
3. OIP and OGIS might wish to (better) highlight FOIA Advisory Committee Recommendations on their website, on social media, or in other ways. Does either agency issue press releases when recommendations come out? When the FOIA Advisory Committee issues a final report, does DOJ OIP send out a transmittal?
4. OGIS might wish to remind FOIA officers to read its FOIA Ombudsman Blog, which does provide timely updates on FOIA Advisory Committee recommendations.
5. Members of the FOIA Advisory Committee could evangelize recommendations within their own agencies.
6. NARA's annual reporting obligations to agencies, to the extent they address FOIA, might include a question on awareness (and implementation) of FOIA Advisory Committee recommendations. *{Note: NARA does ask this question as part of the Records Management Self-Assessment completed by all agencies.}*
7. One interviewee said they would seriously consider responding to any calls for comments by the FOIA Advisory Committee on draft recommendations. The interviewee was unaware that OGIS had made

known that the Committee was seeking input on the model determination letter.

8. OGIS staff or Advisory Committee members should provide updates at ASAP conferences. There have been historical turf issues as between OIP and OGIS, that may have lessened now; nevertheless, it would be a good thing for OIP and OGIS to strive to work collaboratively in getting the word out about the work of the FOIA Advisory Committee, in as many forums as possible (including OIP and OGIS training, webinars held jointly, conferences attended, etc.).
9. Interviewee expressed enthusiasm for incorporating new ideas into agency FOIA work processes. They value the expertise of individuals serving on the FOIA Advisory Committee, and would very much appreciate being made more aware of the ongoing work of the Committee through reminders of meetings, reports out at government and outside forums (like ASAP), as well as communications about deliverables from the Committee.
10. The FOIA Advisory Committee could discuss with the Administrative Conference of the United States (ACUS) and GAO on the various ways in which those entities follow up with agencies on the implementation of their recommendations. (Many ACUS recommendations are legislative proposals, and may not be applicable.)
11. To the extent the FOIA Advisory Committee will in the future be engaged in querying agencies about compliance with past recommendations, this may be seen on the part of agency personnel as a resource drain – especially with an ever-accumulating number of recommendations. Given agency backlogs and other resource demands, more tailored inquiries would accomplish more bang for the buck.
12. OGIS (perhaps with OIP) could host a webinar focusing on ideas coming out of the FOIA Advisory Committee regarding agency websites.
13. Agency FOIA officers who have experience in implementing FOIA Advisory Committee recommendations should speak at public meetings of the Committee.
14. Interviewee is a big fan of ASAP and would suggest that the FOIA Advisory Committee try to have a greater presence during ASAP events.
15. Drafting recommendations earlier in the two-year term would enable those recommendations to be socialized within the government with the opportunity for feedback. Suggestion made that the Committee set a goal of having at least some recommendations fully fleshed out at the one-year mark.
16. OGIS and possibly OIP should host a forum to discuss the final report recommendations from each term.
17. Human connections are more important than directives or emails. This argues for webinars (or live in-person forums) with representatives of OGIS, OIP and the Advisory Committee discussing recommendations.

### *Greater Involvement of OIP in Committee Recommendations*

18. OIP could add a question or questions to the annual CFO report asking whether agency staff have read the FOIA Advisory Committee's recommendations and the extent to which they have considered implementing them. [See Recommendation I-2, which adopts this suggestion]
19. OIP could send out emails to FOIA officers when the FOIA Advisory Committee either has made recommendations or is asking for public input on recommendations. The interviewee said that when OIP issues a substantive piece of guidance or an update, the interviewee routinely holds in-person meetings with all staff (either formal or brown bags) to discuss what OIP is saying and how to implement the advice. They would certainly be happy to hold a meeting focused on FOIA Advisory Committee recommendations.
20. Have DOJ or OIP seek funding to implement Committee recommendations (or alternatively direct recommendations to the General Services Administration to seek funding)
21. DOJ memoranda from the AG and DOJ/OIP transmittals are considered the "gold standard" with respect to interpretive guidance agencies receive on FOIA. Given this, the FOIA Advisory Committee may wish to issue recommendations in the form of "We recommend that OIP issue guidance ..." rather than making general recommendations to agencies.

### *Not all Recommendations Applicable To All Agencies*

22. The FOIA Advisory Committee should consider issuing recommendations tailored to large agencies, rather than all agencies. Or to specific agencies that are in need of further guidance (akin to GAO reports covering selective agencies).
23. To increase engagement with smaller agencies, the Committee needs to focus on their issues with examples of clear small agency problems (as opposed to those that are really only relevant to larger agencies).
24. The biggest issue the interviewee has is that they are a micro-agency, so a lot of the Committee's work, best practices, etc., are not really practical for this size. Should keep in mind the relevance of recommendations to all agencies, or make them specific to size.
25. Doesn't know how much time we should invest in guidance for smaller agencies.
26. In evaluating agency "implementation" of past/present or future recommendations, the FOIA Advisory Committee should keep in mind that not all recommendations apply to all agencies. While there may be appropriate circumstances where follow-up audits or investigations are appropriate, the FOIA Advisory Committee should not be issuing findings that trigger either type of actions in cases of noncompliance with

inapplicable recommendations. One recommendation does not fit all federal FOIA offices and agencies, and they need to realize that.

### *Diminishing Value of Recommendations and Other Considerations*

27. Committee should figure out what the target audience is for its recommendations, and provide updates distributed through the “right” channels. However, too many emails or other communications will drown out interest or focused attention on the most important matters the Committee is interested in getting the word out on.
28. When issuing recommendations, the FOIA Advisory Committee would be well advised to provide more in the way of practical guidance on how a given recommendation is to be implemented. One way of informing itself would be to seek agency input – before recommendations are issued – as to how the recommendation would be implemented and what would be its impact (both in a positive sense in improving agency FOIA processes, as well as in a negative sense as an additional burden or resource-drain).
29. The FOIA Advisory Committee should consider the quality and impact of its recommendations, rather than believing itself to be under a continuing mandate to maximize the quantity of recommendations. A limited number of new recommendations (as in the ACUS model) might serve the purpose better of focusing agency attention on the work of the Committee.
30. Agencies are so far behind in terms of dealing with backlogs, and with the growing burdens in responding to federal court litigation, there are no resources to consider implementing material changes to the FOIA process. In other words, If the FOIA Advisory Committee can’t “solve” (or at least make progress) in fixing backlogs, then everything else being recommended is essentially de minimis.
31. The interviewee believed there was diminishing value in the FOIA Advisory Committee continually putting out recommendations. At the end of the day, FOIA is all about finding responsive records – that is what the sole focus should be on in terms of making improvements in workflows.
32. A need exists for massive additional resources; only in that way could agencies have the ability to fine tune current policies, procedures, protocols along the lines that the FOIA Advisory Committee suggests are best practices.
33. The Advisory Committee should make clear when recommendations are not dependent on an agency receiving large, additional resources. Examples: C-suite reminders to all incoming staff and contractors on the availability of training; revising agency performance plan to account for FOIA workflows.
34. Implementing recommendations is difficult in an increasingly complex policy and legal environment.
35. For Committee members themselves to realize: sometimes there is a certain naiveté on display as to the likely real-world impact (or lack thereof) of certain recommendations; may behoove the Committee to have

some kind of pre-training, especially for outside reps, as part of an “onboarding” process, to normalize expectations.

36. The Committee’s impact would be greater if OMB’s Director of the Office of Information and Regulatory Affairs (OIRA) would issue an “all Executive branch agency” memorandum, highlighting the importance of FOIA compliance, and referencing the work of the FOIA Advisory Committee over its various terms. This could include some kind of reporting requirement into OIP and OGIS as to how agencies have implemented Committee recommendations.