



**DOD FOIA Misconduct Part V
Navy FY 2018 Appeals FOIA Raw Data
No Bases for Disposition**

**DOJ OIP & OGIS Underfunded
Thus Ineffective**

PUBLIC COMMENT

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by

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HYPERLINKED OUTLINE

Issues

- FY 2018 open appeals closed with no FOIA raw data disposition bases
- Failing to upload correspondence to FOIAonline

Discussion of Non-Compliance Issues

Context

Sample Hammond Public Comments

Recommendations

Hammond FOIA Advisory Committee Nomination – Biography and Anticipated Contributions

DISCUSSION OF NON-COMPLIANCE ISSUES

1. There is no disposition reason in Navy's FY 2018 FOIA raw data for the seven FY 2018 appeals in Table 1. The moot determination is inaccurate, likely reflecting earlier false FOIA reporting and more.

Agencies are required to provide raw data with their annual FOIA reports.

[DoD Open Government > Transparency > FOIA > DoD Annual Reports to AG \(defense.gov\)](#)

<https://open.defense.gov/Transparency/FOIA/DoD-Annual-Reports-to-AG/>

Table 1

Navy FY 2018 FOIA Raw Data

Tracking Number	Appeal Date Received	Date Closed	Disposition	Reason	"Other" Reason
DON-NAVY-2018-005727	3/21/2018	4/13/2018	Affirmed on Appeal		
DON-NAVY-2018-004426	2/14/2018	2/15/2018	Affirmed on Appeal		
DON-NAVY-2018-003669	1/26/2018	1/26/2018	Closed for Other Reasons	Other	Moot
DON-NAVY-2018-002151	12/8/2017	1/9/2018	Affirmed on Appeal		
DON-NAVY-2018-011584	9/14/2018	10/11/2018	Affirmed on Appeal		
DON-NAVY-2018-000464	10/18/2017	10/31/2017	Partially Affirmed & Partially Reversed/Remanded		
DON-NAVY-2018-011584	9/14/2018	10/11/2018	Affirmed on Appeal		

DISCUSSION OF NON-COMPLIANCE ISSUES

2. Navy violated FOIAonline and Navy policy procedures in failing to post correspondence to the Correspondence Tab within FOIAonline as mandated.
 - a. FOIAonline.gov is a FOIA portal and records repository for records associated with requests and appeals.
 - b. In 2013 Navy mandated use of FOIAonline for all requests and appeals. Requesters with an account may enter requests and appeals directly; Navy FOIA offices are required to enter all requests and appeals received by other means.
 - c. FOIAonline requires that correspondence to requesters be initiated from within the application (where requesters have provided email addresses) or that agencies contemporaneously upload correspondence sent by other means. In all cases correspondence to me is required by email.
 - d. Navy further amplified the requirement to upload all correspondence into FOIAonline in its SECNAVINST 5720.4G of January 15, 2019.
 - e. Some entries to FOIAonline stating that final determinations had been made were after January 15, 2019.
 - f. Navy had to consciously override the FOIAonline default that would have sent me notices of the closures.
 - g. Then, Navy failed to place correspondence into the correspondence tab, which would provide a date and time stamped record of the correspondence and delivery.

3. Every FY 2018 appeal I submitted to Navy was inaccurately reported in annual FOIA reports. See *my public comment*, "[DOD FOIA Misconduct Part IV. FY 2018 Appeals Disappeared + DOJ OIP & OGIS Underfunded, Thus Ineffective.](#)"

CONTEXT

General Context

- I am a private citizen Freedom of Information Act advocate, Naval Academy graduate/career veteran/DoD civilian and now reluctant whistleblower who loves our country and believes that “An informed citizenry is at the heart of a dynamic democracy.” (Thomas Jefferson). Integrity and accountability matter.
- If appointed to the 2022 – 2024 FOIA Advisory Committee, I will humbly and faithfully represent the interest of non-lawyer private citizen requesters and work to improve FOIA processes for all.
- There are countless of my DOD FOIA requests and appeals **from 2013** forward that are open and unreported or falsely reported in annual and quarterly FOIA reports.
- From my own records there are 2,000+ instances of false FOIA reporting or other malfeasance involving DOD, NARA, DOJ. Likely tens or hundreds of thousands of similar issues federal agency wide.
- FOIA raw data and DOJ's FOIA.gov data upon which the public, auditors, and researchers rely is materially inaccurate.
- Navy improperly destroyed potentially hundreds of thousands of FOIA case records over many years, some in anticipation of judicial review.
- FOIA mediation and compliance oversight fall under NARA's Office of Government Information Services (OGIS), while DOJ's Office of Information Policy (DOJ OIP) also has uncomfortable, confusing, overlapping FOIA compliance oversight responsibility.
- I have asked GAO to conduct Freedom of Information Act (FOIA) audits of DOJ OIP and OGIS regarding gross underfunding impacting mission accomplishment and inaccurate reporting to Congress and the President. Then, GAO should review staff training to achieve certifications, appropriate grade levels, and performance standards that reward quality.

See my public comment: [Failure - FOIA Compliance Oversight & Funding. Part 2. No Joking Matter.](#)

- OGIS and DOJ OIP failed to act when confronted with false FOIA reporting.

March 29, 2022, Senate FOIA Hearings.

The March 29, 2022, Senate FOIA hearings again exposed an utter lack of FOIA oversight compliance and mediation due to both NARA's Office of Government Information Services and DOJ's Office of Information Policy being grossly underfunded. Nothing ever changes. The media summed up the hearings in articles, such as "Senators Unite to Slam FOIA Compliance" and "DOJ's Lack of Enforcement."

See my public comments:

- [Senators Unite to Slam FOIA Compliance + POGO](#);
- [Senate Hearing on FOIA. DOJ's Lack of Enforcement + Malfeasance + Open The Government Statement](#);
- [Failure - FOIA Compliance Oversight & Funding. Part 2. No Joking Matter.](#)

Office of Government Information Services (OGIS) Underfunded and Ineffective.

As part of the OPEN Government Act of 2007, the FOIA was amended to create the Office of Government Information Services (OGIS) within the National Archives and Records Administration. OGIS was tasked with FOIA compliance oversight and offering of mediation to resolve disputes between requesters and agencies as a non-exclusive alternative to litigation. OGIS opened in September 2009 but did no mediation in the first two years. See my public comment [Mandatory Right to Dispute Resolution - OGIS Malfeasance??](#)

OGIS also has compliance oversight responsibility (5 U.S. Code § 552 (h)(2)(B): “review compliance with this section by administrative agencies”). OGIS and NARA’s Acting Archivist wrongfully deny compliance oversight responsibility, I believe due to a lack of resources. OGIS claims to have two people assigned to FOIA compliance and audits for over 800,000 FOIA requests per year (plus administrative appeals), yet OGIS’ Federal Advisory Committee Act reports to GAO state that compliance lead Kirstin Mitchell is the full time FOIA Advisory Committee Designated Federal Officer, leaving no time for FOIA Compliance.

For OGIS, the inadequacy of funding is dire. OGIS had **\$1.629M in 2013** for compliance and mediation with a mediation caseload of 300 – 400 cases per year. That grew to over 4,600 cases in 2019 with **only \$1.2M by 2020**, despite inflation and mandatory pay raises. All the while, NARA got every dime that they asked for in 2019: \$377.8M.

It is physically impossible to mediate 4,600 cases with just three junior staff mediators, so OGIS closes cases rapidly without mediation and makes apparent false statements regarding alternative dispute resolution in its annual Ombuds Reports to Congress and the President. Office of Government Information Services (OGIS) Dispute Resolution Case Metrics (rewarding rapid case closure) are provably false, and OGIS discontinued posting its mediation case processing logs and closure letters (likely due to staffing shortfall and inaccuracy). This is like the Veterans Administration scandal where senior leadership reaped huge bonuses for reducing appointment backlogs by cookin’ the books, while veterans awaiting appointments became ill and some sadly died. See [Mediation Program | National Archives](https://www.archives.gov/ogis/mediation-program) <https://www.archives.gov/ogis/mediation-program> .

In lieu of contacting responsible agency staff to engage in mediation, OGIS wrongly contacts the Agency FOIA Public Liaison (FPL), which is a separate, non-exclusive requester statutory right for alternative dispute resolution. Then, OGIS copies whatever false, nonsensical response it receives from the FPL into closure letters without contacting the FOIA request or appeal processing entities directly or giving the requester a chance to respond – no mediation whatsoever even when specifically

sought. OGIS essentially converts every request for OGIS mediation into a request for FPL dispute resolution in clear violation of the intent and text of the statute. They do not have the resources to do otherwise, nor has NARA sought such resources.

OGIS apparently does not hire certified/accredited compliance auditors or mediators or promote training to achieve such certifications. Position descriptions should be modified to require certification and reevaluated to assess grade level based on the certifications and high-level interactions, and OGIS training plans should be modified to enable current staff to attain certification within a reasonable time.

See my public comments:

[NARA, PLEASE FUND OGIS!! \(PART 1\)](#)

- **[HOT! Semo OGIS. Budget Numbers do not Comport w. NARA Published Budgets!](#)**
- **[QUESTIONS for June 29, 2022 OGIS Annual FOIA Meeting v2](#)**
- **[OGIS Funding and Case Accountability Logs.pdf](#)**

DOJ OIP & Known Massively False Annual FOIA Reports and FOIA.gov data

DOJ OIP who also has FOIA compliance oversight responsibility is similarly grossly underfunded and unable to audit annual FOIA reports, which are massively, massively false. DOJ's FOIA.gov data is massively inaccurate as well. Everyone knows it.

See my public comments:

- **[NARA FY 22 FOIA Data Stripped from FOIA.gov?? + NARA False FOIA Reporting?](#)**
- **[DOD MASSIVE FALSE REPORTING PART II + "Still Interest" Abuse](#)**

- [DOD Massive False Reporting Part III July 2022. 5-yr. Late Acknowledgements](#)
- [DOD Massive False FOIA Reporting. Part 1. Letter to SECDEF, Complaint to DOJ OIG](#)
- [DOJ Office of Information Policy Compliance Inquiries](#)

U.S. Archivist’s FOIA Advisory Committee Involvement

Members of the 2020 – 2022 FOIA Advisory Committee have addressed inadequate funding in their recommendations and may be able to provide records to support audit. I certainly will.

One recommendation of the Committee is to return OGIS as a direct report to the Archivist with line-item funding from Congress. The Acting Archivist has not acted on that recommendation. The Committee considered recommending that OGIS be removed from the executive branch (due to conflicts and inadequate funding) and placed under Congress. This may be reconsidered during the 2022 – 2024 Committee term. OGIS is likely underfunded twenty-fold compared with state entities performing the same mission, yet OGIS’ Director has not highlighted funding deficiencies in annual Ombuds reports or testimony to Congress (likely due to pressure from NARA senior leadership) and NARA refuses to release internal budget request and execution records sought under FOIA.

Refusal to Release FY 2016 & Complete FY 2017 Raw Data

- In clear violation of the FOIA statute and DOJ OIP guidance, DOD has refused to post its FY 2016 FOIA raw data and DOD’s FY 2017 raw data for DHA does not contain any FOIA tracking numbers.
- See <https://open.defense.gov/Transparency/FOIA/DoD-Annual-Reports-to-AG/>
- I have been complaining about this to DOD and DOJ OIP for years and seeking action. DOD could not have produced the annual FOIA reports (although materially inaccurately) without the raw data.

- DOJ states:

The raw statistical data used in the report must be available without charge, in a searchable format, that is downloadable in bulk.

In addition to posting the human-readable and NIEM-XML version of your Annual FOIA Report, the FOIA Improvement Act of 2016 now requires that your agency also post the raw data that made up your Annual FOIA Report. See 5 U.S.C. § 552(e)(3)(A)-(C) (2014), amended by FOIA Improvement Act of 2016, Pub. L. No. 114-185, 130 Stat. 538. To meet this requirement, agencies will need to provide the underlying data elements behind each request, administrative appeal, and consultation received and processed that is used to create the Annual FOIA Report at the conclusion of each fiscal year. This data is used to create the aggregated data tables for Sections IV-VIII, X, and XII.A-XII.C of the Annual FOIA Report, and contains such fields as the date the request or appeal was received, the request or appeal disposition, and the date closed. To assist agencies with this new requirement, OIP created a [Raw Data Template](#) which contains all of the raw data fields used in creating an agency Annual FOIA Report.

- Column B of the [Raw Data Template](#) is the “Request N

SAMPLE HAMMOND PUBLIC COMMENTS

Many public comments are also posted in HTML to [Document Cloud](https://www.documentcloud.org/app?q=%2Buser%3Arobert-hammond-106693%20):
<https://www.documentcloud.org/app?q=%2Buser%3Arobert-hammond-106693%20> Examples:

1.	All Panelist Chat to June 9, 2022 FOIA Advisory Committee Meeting. OGIS & DOJ Funding + Missing FOIA.gov Data.”
2.	NARA FY 22 FOIA Data Stripped from FOIA.gov?? + NARA False FOIA Reporting?”
3.	Failure - FOIA Compliance Oversight & Funding. Part 2. No Joking Matter
4.	Comments to Unlawful Chief FOIA Officers Meeting of November 17, 2021
5.	Mandatory Right to Dispute Resolution - OGIS Malfeasance??
6.	DOD Massive False FOIA Reporting. Part1. Letter to SECDEF Complaint to DOJ OIG +v3
7.	Sample FOIA Template With Recent Developments to Combat Agency Misconduct
8.	HOT! Semo OGIS. Budget Numbers do not Comport w. NARA Published Budgets!
9.	DOD MASSIVE FALSE REPORTING PART II + “Still Interested” Abuse
10.	NARA, PLEASE FUND OGIS!! (PART 1)
11.	NARA FOIA & Financial Malfeasance \$789,730 + Alteration of Records and Loss of Public Trust?
12.	Archivist of USA & OGIS Posting Policy Does Not Comport with Law
13.	QUESTIONS for June 29, 2022 OGIS Annual FOIA Meeting v2
14.	The Uncommon Man. Response to Hon. David S. Ferriero June 10, 2021 Comments to FOIA Advisory Committee.”
15.	DOD’ Cites Change to CFR 32 CFR Part 286.4 as Unlawful Basis for Omitting OGIS Mediation Rights
16.	Senate Hearing on FOIA. DOJ's Lack of Enforcement + Malfeasance + Open The Government Statement
17.	Senators Unite to Slam FOIA Compliance + POGO
18.	OGIS Negligence Generally & Improper June 29, 2022 FOIA Meeting

SAMPLE HAMMOND PUBLIC COMMENTS

19.	FOIAonline - Recommended System Changes
20.	Violations of the ADA in FOIA Redactions, Simple Solution
21.	Hammond Planned Chat Comments to 4.7.2022 FOIA Advisory Committee Meeting
22.	DOD Massive False Reporting. 5 yr. Late Acknowledgements, Unusual Circumstances Abuse
23.	OGIS Funding and Case Accountability Logs
24.	DOJ OIP Compliance Inquiries
25.	DOD FOIA Misconduct Part IV. FY 2018 Appeals Disappeared + DOJ OIP & OGIS Underfunded, Thus Ineffective

RECOMMENDATIONS

GAO

- Conduct Freedom of Information Act (FOIA) audits of DOJ OIP and OGIS regarding gross underfunding impacting mission accomplishment and inaccurate reporting to Congress and the President. Then, GAO should review staff training to achieve certifications, appropriate grade levels, and performance standards that reward quality. See my public comment: [Failure - FOIA Compliance Oversight & Funding. Part 2. No Joking Matter.](#)
- Conduct audits of Department of Navy's early destruction of FOIA case records over many years numbering potentially hundreds of thousands of pages of records, including destroying records in anticipation of litigation.
- Conduct audits of widely known massive false FOIA reporting by Department of Navy, Defense Health Agency, and National Archives. I am prepared to identify 2,000 examples of false FOIA reporting and/or other violations of law from my own records and believe that there are tens or hundreds of thousands of federal agency wide discrepancies just through computer matching of FOIA portal data (such as FOIAonline.gov) to agency FOIA annual report raw data.
- Note that unfavorable audit results if as the result of insufficient funding and/or misaligned responsibility are a blessing – an attachment to future budget requests.

GAO or NARA's OIG

Conduct an audit of NARA's underfunded and ineffective Unauthorized Records Disposition Unit including errant handling of cases regarding destruction of records sought under FOIA.

DOD Generally

- Post FOIA raw data for FY 2016 and re-post FY 2017 raw data for DHA to include individualized tracking numbers.
- Amend past FOIA reports and raw data to accurately reflect known inaccuracies, including past admissions thereof.
- Respond to my FOIA requests seeking DOD FOIA raw data.
- Proactively post DOD FOIA processing logs.

Navy

- Address the compliance issues identified herein through return email correspondence to me.
- Amend FOIA reports and raw data reports to DOD and DOJ's FOIA.gov.
- Provide accurate status and estimated completion dates for all my FOIA requests and appeals dating back to FY 2013 (including Walter Reed).
- In all correspondence to me provide my personal request number and verbatim citation of records sought to accurately identify such FOIA request or appeal. In any FOIA request or appellate determination include a copy of my FOIA request or appeal per the format sought in my requests or appeals.
- Provide all correspondence via email to perseverance2013@aol.com.
- Include OGIS and FPL rights in all correspondence as required by statute.
- Engage in OGIS mediation regarding the matters cited herein.

OGIS

- Initiate a comprehensive audit of Navy annual FOIA reporting using the data provided herein. Contact me for additional data.
- Report in the Ombuds report instances of materially false reporting and other non-compliance by DOD, Navy, DHA, NARA cited herein and in my other public comments.
- Engage in mediation with Navy regarding the matters cited herein.
- Amend past Ombuds reports to accurately report the number of times OGIS or the agency FPL ENGAGED in alternative dispute resolution (ADR) per statute, *vice* improperly reporting the number of times the requester sought ADR. The numbers are not the same.
- In future Ombuds reports include the number of times OGIS refused formal mediation and the number of times the agency refused mediation. Per statute:

“The Office of Government Information Services shall offer mediation services to resolve disputes between persons making requests under this section.”

- Include the name of an accountable person in all OGIS correspondence rather than “The OGIS Staff.”
- Return to posting mediation logs and mediation closure letters.
- Return to including satisfaction surveys to evaluate the quality of OGIS mediation work.
- Modify position descriptions and performance standards to require mediation staff to be certified/accredited mediators and compliance staff to be certified/accredited auditors. Provide needed training on government time and at government expense, allowing sufficient time for current staff to achieve certifications. Reevaluate position descriptions to determine if certifications increase the grade levels.

DOJ OIP

- Require DOD to post its FY 2016 FOIA raw data and FY 2017 raw data with DHA FOIA and appeals tracking numbers.
- Require DOD to amend past errant FOIA reports and raw data and to publicly post same.
- Require DOD to correct FOIA.gov data.
- Conduct a comprehensive audit of DOD's annual FOIA reports and raw data, including data of my FOIA requests and appeals.
- Conduct compliance inquiries into the matters cited herein, independent of any OGIS actions.
- Clarify the calculation of FOIA request and appeal receipt dates as to calculating the first day received.
- Clarify that there is no attorney-client relationship between the appellate authority and the agency at the appeals stage and that communications with the applicable agency are not exempt under Exemption 5.
- Clarify that records of case records and searches performed for a FOIA request sought under a subsequent FOIA request are not exempt from disclosure until litigation (if any) occurs.

NARA

- Initiate a comprehensive audit of OGIS materially underfunding and mission accomplishment or failure thereof. OGIS is underfunded twenty-fold (\$34M).
- Include the name of an accountable person in all NARA correspondence rather than "The FOIA Staff."

- Modify OGIS performance metrics to reward quality of work rather than arbitrary case closure, which diminished quality.
- Initiate an OIG audit of underfunding and mission accomplishment/failure of the Unauthorized Records Disposition Unit.

DOJ

- Properly fund DOJ OIP to perform its compliance mission; else seek to transfer the audit function to GAO.

FOIA Advisory Committee 2022 - 2024

- Establish a Compliance Subcommittee; else elevate the responsibilities of the Process Subcommittee to meaningfully address FOIA compliance.
- Ask OGS and DOJ OIP to identify funding requirements to properly execute their missions.

HAMMOND FOIA ADVISORY COMMITTEE NOMINATION

BIOGRAPHY AND ANTICIPATED CONTRIBUTIONS

I would be humbled and honored to serve as either an “all other requester” or as a recently retired 45-year federal employee, supporting the Technology, Process and/or other sub-committees where I can impact meaningful process improvements.

I volunteer in advance to participate in writing the final term report.

I am a “doer” who is extraordinarily efficient in drafting and coordinating process improvements to achieve consensus and excellent final work products.

Key Qualifications.

- Active non-attorney FOIA requester for over nine years, FOIA litigant (both with representation and pro se), who participated in two formal mediations.
- Actively use multiple FOIA portals.
- Passionately participated in every open FOIA meeting for the last two years, researching and preparing constructive oral and written public comments with recommendations to address serious process and funding deficiencies; the quality of which is evident. No one has done more.
- Routinely communicate with more than 1,000 FOIA professionals, media, interested parties, GAO, and Congress.
- Over 45 years of federal service and two+ years at Information Network Systems supporting DOD with extensive experience and high-level accreditations in information technology, finance, and as a warranted contracting officer – the Committee needs such expertise.
- Chaired high-level federal agency wide committees for over a decade, drafting and achieving consensus on process improvements in multiple functional areas and complex electronic data information exchange (including foreign with entities).
- Top Secret clearance – sensitive to records release. Participated in defending FOIA withholding as a fed.
- Multiple post-graduate degrees, certifications, high honors, trainer.