



OGIS stance: “We’re from the government and we’re here to help!”

How often have you heard that statement? When you heard it, did you believe it? In the OPEN Government Act of 2007 Congress baked customer service into FOIA by creating OGIS to help the FOIA community resolve disputes and to recommend improvements to the administration of FOIA. Congress also codified the role of FOIA Public Liaison, a supervisory official “to whom a requester ... can raise concerns about the service the requester has received from the FOIA Requester Center, following an initial response from the FOIA Requester Center Staff. FOIA Public Liaisons shall be responsible for assisting in reducing delays, increasing transparency and understanding of the status of requests, and assisting in the resolution of disputes.” 5 U.S.C. § 552(l). FOIA requesters now have several avenues for assistance with FOIA matters: an agency’s requester/customer service center, an agency’s FOIA Public Liaison or FOIA office, or OGIS. All are valid and intended to lead to efficient customer service.

Requesters routinely seek help obtaining the status of pending requests and/or appeals, a service we provide as FOIA Ombudsman. In a few instances, agencies told us that they will provide status information directly to requesters, but will not share that information with OGIS. In other words, we’ve been told to go away and let the agency handle the matter. While it is good customer service to offer this means of obtaining the status of a request or appeal, insisting that a customer use that service (rather than allowing him or her to use OGIS if that is the requester’s wish) is counterproductive and places a bureaucratic hurdle in the process. This is the type of situation that Attorney General Eric Holder cautioned against in his March 19, 2009 FOIA Memorandum in which he encouraged FOIA professionals to be mindful of their obligation to work “in a spirit of cooperation” with FOIA requesters. When OGIS contacts an agency to obtain the status of a request or an appeal, we are not acting as a proxy for the requester. Rather, we are fulfilling our statutory mission and the requester is exercising his or her statutory right to seek OGIS assistance. Likewise, when working with OGIS — not around it — to assist a requester, agencies are complying with FOIA’s legal requirements.

We have observed that agencies that collaborate with OGIS enjoy these benefits:

1. Problem solving. Our broad experience dealing with nearly 50 agencies, including all 15 Cabinet-level departments, and many, many FOIA problems makes us an ideal partner for brainstorming solutions. Let’s work together to assist requesters!
2. Delivering difficult news. We hear time and again that FOIA requesters find it easier to digest bad news when it comes through OGIS rather than directly from the agency. This may be due in part to bad feelings that a requester can develop toward an agency as a result of a FOIA dispute, and to our independence as the FOIA Ombudsman advocating for neither the agency nor the requester, but for the FOIA process.
3. Providing a pressure valve. OGIS provides a listening ear for FOIA requesters who need to vent their frustrations. This allows the agency to focus on fulfilling requests rather than fielding angry calls. By the way, OGIS also provides a listening ear for FOIA professionals who need to vent their frustrations.

For all of these reasons, we recommend that agencies partner with OGIS to provide the most efficient customer service available, and not get hung up on artificial requirements that a requester use only one of the avenues of assistance. We are all in this together — to provide good customer service — and to do so efficiently is taking another step towards fully complying with FOIA.

Note: this piece first appeared on OGIS’s blog, The FOIA Ombudsman on June 17, 2011. Join the conversation at: blogs.archives.gov/foiablog



OGISance: What's up with referrals these days?

Among OGIS's recent cases are several from customers advised that their FOIA requests have been referred to other agencies for processing. In accordance with agency FOIA regulations, that's usually no problem. But in the OGIS cases, the agencies making the referrals did not identify the name of the agencies to which they referred the requests, and did not offer to assist the requesters in determining the status of the referred requests. As a result, the requests seem lost in that big black hole sometimes known as the federal government!

Generally, agency FOIA regulations allow for the referral of a request or a portion of a request to another agency when that other agency can better decide whether any responsive records are exempt from disclosure under FOIA, and, if so, whether the records should be released on a discretionary basis. An agency will refer records when the responsive records were created by or initially acquired by another agency or component, which is presumed to be best able to make the release determination. The referring agency should notify the requester of the referral and tell the requester of the name of the component or agency to which the records were referred. However, as with many rules, there is an exception – in certain cases, identifying the agency receiving the referral may in itself disclose a sensitive, exempt fact. In such fairly unusual instances, the referring agency need not identify the receiving agency or component.

Although there are advantages to record referrals, namely, administrative efficiency and consistency of responses, the cases brought to OGIS highlight an inefficiency in this practice. If one agency refers a request to another unidentified agency and provides no avenue for the requester to determine the status of the referred request, the FOIA process shuts down.

OGIS recommends that a referring agency identify the receiving agency and provide the requester with contact information for a FOIA professional in the receiving agency, allowing the requester to track the request. In those atypical cases in which identifying the receiving agency would reveal a sensitive, exempt fact, the agency making the referral should continue to assist the requester in determining the status of the referred request in the unidentified agency. OGIS notes that the Justice Department's Office of Information Policy issued related guidance in a FOIA Update, Summer 1991, titled Referral and Consultation Procedures.

Agencies following this recommended practice would indeed promote a fair, efficient FOIA process – and earn a gold star for outstanding customer service! OGIS is all about a fair and efficient FOIA process, so let us know your thoughts on the topic.

Note: this piece first appeared on OGIS's blog, The FOIA Ombudsman on May 11, 2011. Join the conversation at: blogs.archives.gov/foiablog