

Subcommittee on Freedom of Information Act (FOIA) Proactive Disclosure for the FOIA Advisory Committee

Recommendations to the FOIA Advisory Committee on Proactive Disclosure and the Rehabilitation Act Section 508

January 16, 2018

The FOIA Advisory Committee and its Subcommittees were established by the United States Open Government National Action Plan and the directive in the FOIA, 5 U.S.C. § 552(h)(2)(C), stating that the Office of Government Information Services (OGIS) within the National Archives and Records Administration (NARA) should "identify procedures and methods for improving compliance" under the Freedom of Information Act.

The FOIA Advisory Committee opened consideration of this topic by inviting the General Services Administration (GSA) and the Access Board at the October 25, 2016 meeting to enlighten the Committee about their interpretations of the legal requirements of Section 508 compliance. After more than a year of careful study and conversations, the Subcommittee is submitting the following recommendations to the Archivist of the United States for consideration by the FOIA Advisory Committee. The goal of these recommendations is to ensure that the maximum possible information released both proactively and in response to FOIA requests is posted online, while complying with Section 508 of the Rehabilitation Act, [which requires](#) that "members of the public with disabilities have comparable access to publicly available information and services unless doing so would impose an undue burden on the agency."

We recommend that the Archivist:

- **Launch an interagency effort to develop standard requirements for FOIA processing tools to ensure both the tools and their outputs are Section 508 compliant.** Since 1998, documents have been required to be "born 508 compliant" so that government employees and customers with disabilities may access them. Often the procedures and tools used by agencies to process documents for public release strip away metadata and other features that made the documents accessible to ensure that sensitive information cannot be reverse-engineered. In FY 2016 agencies spent \$478 million processing FOIA requests and appeals including a sizable amount spent for FOIA processing software. The agencies should review requirements and procurement strategies to ensure 508 compliance is a top priority.
- **Encourage agencies not to remove documents already posted on their websites because they may not be Section 508 compliant.** We encourage agencies to remediate documents that are not currently 508 compliant—documents that have optical character recognition are also much easier for all individuals to search through and utilize. Nevertheless, we discourage the removal of information from agency websites that is useful to the public, even if the information posted is not fully compliant with Section 508 of the Rehabilitation Act. Agencies should ensure that their FOIA reading rooms include contact information that individuals with disabilities can use if they encounter inaccessible documents.
- **Request that OGIS conduct an assessment of the methods undertaken by agencies to prepare documents to post on agency FOIA reading rooms.** There are millions of pages of documents currently posted on agency FOIA reading rooms. OGIS should investigate the

different methods and processes agencies use to prepare records for posting to FOIA reading rooms and identify possible best practices.

- **Encourage OIGIS to highlight the issues with proactive disclosure and 508 compliance in its report to Congress by recommending that legislation be enacted to clarify agency requirements under the Rehabilitation Act, especially as they relate to proactive posting of large numbers of records.** We support the goal of improving information access for all citizens. However, too often agencies do not have the resources to remediate records released proactively or under FOIA, thus potentially preventing them from being able to post these records in their FOIA reading rooms. Agencies should keep in mind that they have flexibility to proactively disclose records while seeking to maximize accessibility, and Congress should ensure that agencies have sufficient resources to meet both accessibility and proactive disclosure requirements.
- **Recommend that agencies conduct an “undue burden” analysis by balancing their Section 508 and FOIA statutory obligations while keeping in mind that the Rehabilitation Act allows agencies to release electronic documents that are not Section 508 Compliant if rendering them compliant would “impose an undue burden on the agency.”** We recommend as a best practice that agencies make additional efforts to provide a 508-compliant index or catalog of records and a simple and streamlined process for persons with disabilities to request the records in accessible formats.
- **In summary, agencies should already be creating Section 508 compliant documents before they are ever requested under FOIA or posted proactively. Agencies should develop standard requirements for FOIA processing tools to ensure both the tools and their outputs are Section 508 compliant. Agencies should not remove posted documents that do not comply with Section 508 from agency websites. Likewise, agencies should undertake an analysis of what constitutes an undue burden in deciding to post information proactively.**